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By Office of General Counsel at 1:46 pm, Apr 19, 2022

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By Office of the Commission Secretary at 5:14 pm, May 05, 2022



April 19, 2022

Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: Advisory Opinion Request

Dear Commissioners and Staff:

Pursuant to 52 U.S.C. § 30108, we seek an advisory opinion on behalf of our client Hispanic Leadership Trust (“HLT”; FEC ID C00809970).

HLT is a non-connected, “hard money” political committee (i.e., not an independent expenditure-only committee or “hybrid PAC”) with the mission of electing and re-electing Hispanic Republican candidates to Congress. Importantly, HLT is not the authorized campaign committee or leadership PAC of any candidate or officeholder.

Akin to CHC Bold PAC and Congressional Black Caucus PAC, whose respective “Chairs”^{1,2} actively maintain separate leadership PACs,^{3,4} HLT seeks to formalize the titles, roles, and responsibilities that Members of Congress may have without HLT becoming either an additional leadership PAC of those Members or “affiliated” with those Members’ existing leadership PACs. Therefore, through this advisory opinion request, HLT seeks answers to the following questions:

¹The CHC BOLD PAC’s website identifies Rep. Ruben Gallego as the PAC’s “Chair.” <https://www.boldpac.com/members/ruben-gallego>.

² The Congressional Black Caucus PAC’s website identifies Rep. Gregory Meeks as the PAC’s “Chair.” <https://www.cbcpac.org/leadership/rep-gregory-meeks>.

³ Latino Leaders for Equality, Growth, Opportunity, Progressive Action & Change (“LLEGO-PAC”) is Rep. Gallego’s designated leadership PAC. LLEGO-PAC’s FEC reports, *available at* <https://www.fec.gov/data/committee/C00576975/?tab=raising>, indicate the leadership PAC has raised more than \$71,000 to date during the current election cycle, meaning it is not dormant while Rep. Gallego is serving as BOLD PAC’s “Chair”.

⁴ Build America PAC is Rep. Meeks’ designated leadership PAC. Build America PAC’s FEC reports, *available at* <https://www.fec.gov/data/committee/C00377143/?tab=raising>, indicate the leadership PAC has raised more than \$172,000 to date during the current election cycle, meaning it is not dormant while Rep. Meeks is serving as the CBC PAC’s “Chair.”

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Question 1: HLT would like to give the titles of “Chair” and “Vice Chair” to Members of Congress to signify their fundraising role for HLT. HLT asks the Federal Election Commission (“FEC” or “Commission”) to confirm that such titles, in and of themselves, do not result in the Committee becoming either: (i) an additional leadership PAC of those Members; or (ii) “affiliated” with those Members’ existing leadership PACs.

Question 2: If the answer to Question 1 is that merely giving the titles of “Chair” and “Vice Chair” to Members of Congress will result in HLT becoming an additional leadership PAC and/or affiliated with the Members’ existing leadership PACs, HLT asks the Commission to confirm that giving the titles of “*Honorary Chair*” and “*Honorary Vice Chair*” to Members to signify their fundraising role for HLT will not trigger such consequences.

Question 3: HLT asks the Commission to confirm that HLT will not become a leadership PAC or affiliated with the existing leadership PACs of Members of Congress if Members engage in one or more of the following activities: (i) serve on HLT’s board of directors; (ii) hold officer positions with HLT; (iii) direct HLT to contribute to certain candidates; (iv) direct HLT’s fundraising strategy; and/or (v) hire and/or fire HLT employees and consultants.

Question 4: HLT asks the Commission to confirm that HLT will not become a leadership PAC or affiliated with the existing leadership PACs of Members of Congress if Members are responsible for raising a large percentage of contributions to HLT.

Question 5: HLT asks the Commission to confirm that HLT will not become a leadership PAC or affiliated with the existing leadership PACs of Members of Congress if there are similar patterns of contributions to, or disbursements by, HLT and the Members’ leadership PACs.

THE LAW

1. Leadership PACs.

The Federal Election Campaign Act of 1971, as amended (“Act” or “FECA”), defines a “leadership PAC” as:

with respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the

candidate or individual, except that such term does not include a political committee of a political party.⁵

In a 2003 rulemaking, the Commission determined *per se* that “an authorized committee and a leadership PAC will not be deemed to be affiliated.”⁶ The Commission rejected proposed regulatory approaches under which a leadership PAC would be affiliated *per se* with an authorized committee on the mere basis that any one of the following factors (among others) is present:

- “the candidate or officeholder is clearly identified as described in 11 CFR 100.17 on either the stationery or letterhead of the [leadership PAC]”;
- “the candidate, officeholder or his campaign staff, office staff, or immediate family members, or any other agent, has the authority to approve, alter or veto the [leadership PAC’s] solicitations, contributions, donations, disbursements or contracts to make disbursements”;
- “the candidate or officeholder signs solicitation letters and other correspondence on behalf of the [leadership PAC]”;
- “the candidate or officeholder has the authority to approve, alter or veto the [leadership PAC’s] solicitations.”⁷

Nonetheless, the 2003 rulemaking did not address the extent to which “leadership PACs may still be deemed affiliated with *other unauthorized committees*” under the Commission’s preexisting affiliation rules.⁸

2. Affiliated Committees.

“All committees . . . established, financed, maintained or controlled by the same . . . person, or group of persons . . . are affiliated.”⁹ “Affiliated committees” share a single limit on the contributions they make to candidates and other political committees. Moreover, a

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

⁶ Final Rules on Leadership PACs, 68 Fed. Reg. 67013 (Dec. 1, 2003).

⁷ *Id.* at 67,014 (describing Alternatives A and B), 67,016 (rejecting both alternatives as “too rigid and overbroad”).

⁸ *Id.* at 67,017 (emphasis added).

⁹ *Id.* § 100.6(g)(2).

single limit applies to the aggregate contributions a person makes to committees affiliated with each other.¹⁰

3. Establish, Finance, Maintain, or Control (“EFMC”).

The Commission’s regulations set forth a number of “circumstantial factors” it may consider when determining whether committees are EFMCd by the same person or group of persons.¹¹ These “circumstantial factors” include, *inter alia*:

- “Whether a sponsoring organization or committee has common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees”;
- “Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures”;
- “Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee”;
- “Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee”; and
- “Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the sponsoring organizations or committees.”¹²

¹⁰ 11 C.F.R. § 110.3(a)(1).

¹¹ *Id.* §§ 100.5(g)(4)(ii); 110.3(a)(3)(ii).

¹² *Id.* (emphasis added). We note that the Commission’s EFMC regulations under *id.* § 300.2(c) include similar factors. However, that rule implements the “soft-money solicitation” prohibitions in the “Bipartisan Campaign Reform Act of 2002” (“BCRA”) and does not apply to a “hard money”-only PAC such as HLT.

Under the Commission's multifactored affiliation and EFMC tests, the presence or absence of any single factor is not dispositive; rather, the Commission purports to "examine [these factors] in the context of the overall relationship" between committees.¹³

DISCUSSION

1. HLT will not become EFMCd by Members of Congress if HLT merely gives those Members the titles of HLT "Chair" and "Vice Chair" to signify their fundraising role with HLT.

First, in AO 2003-12 (Flake), although then-Rep. Jeff Flake held the title of a ballot measure committee's "Chairman,"¹⁴ that did not appear to be the dispositive basis (if a basis at all) for the Commission's conclusion that Flake EFMCd the committee. Rather, the Commission appears to have reached its EFMC conclusion on the basis that:

- "Representative Flake [was] among the individuals who formed [the committee], and he signed the documents with the Arizona Secretary of State's office creating [the committee]"; and
- "An individual who also served as Representative Flake's part-time campaign consultant aided the referendum Committee with its State filings and opened its bank account."

On these facts, the Commission concluded that "Representative Flake had an active and significant role in the formation of" the committee.¹⁵

Second, while being an organization's "Chairperson" in some legal contexts could connote a position of authority and control, this is not always the case. For example, in contrast to the Chairs of some other federal agencies, the Commission's rotating Chair and Vice-Chair generally do not have any more power than the other commissioners and still must attain at least four votes before taking any action on behalf of the Commission.

¹³ *Id.* §§ 100.5(g)(4)(ii), 110.3(a)(3)(ii).

¹⁴ AO 2003-12 (Flake) at 7. This advisory opinion applied the Commission's EFMC regulation at 11 C.F.R. § 300.2(c). As explained in note 12, *supra*, that regulation does not apply to HLT. However, we address this advisory opinion to the extent that the Part 300 regulation is "adapted from the Commission's [affiliation] regulation at 11 C.F.R. § 100.5(g)." AO 2021-06 (Kelly) n.4. Therefore, the analysis and conclusion in AO 2003-12 arguably could have some bearing on HLT's request.

¹⁵ AO 2003-12 at 7.

Notably, the Commission's multifaceted affiliation and EFMC rules also do not specifically address an individual holding the title of "Chairperson." Rather, for a committee to even come within the ambit of the Commission's affiliation and EFMC rules, the committee's "Chair" would need to have at least one of the powers or characteristics specifically addressed by those rules (e.g., directing or participating in the committee's governance, having an active or significant role in the committee's formation, etc.).

Third, as the Commission concluded in its 2003 leadership PAC rulemaking, to determine that a committee is EFMCd by an officeholder merely because the officeholder "signs solicitation letters" or "is clearly identified" in the committee's fundraising materials (e.g., as the committee's "Chair") would be "too rigid and overbroad."¹⁶

Fourth, to conclude that a committee is EFMCd by Members merely because they hold the titles of "Chair" or "Co-Chair" of the committee would be out of line with the existing practice in the "regulated community." For example,¹⁷ as noted above:

¹⁶ See note 7, *supra*.

While the 2003 rulemaking technically did not address the issue this request raises—i.e., the circumstances under which a leadership PAC and other unauthorized committees may be affiliated by virtue of being EFMCd by the same Members of Congress—the same general principle should apply here. *Cf.* AO 2021-06 (Kelly) at 10 (concluding that having Rep. Robin Kelly's "name and title of chair [of the Democratic Party of Illinois] . . . appear on the letterhead of any solicitation soliciting funds in amounts and from sources prohibited by the Act" would violate the Act's ban on federal officeholders soliciting "soft money." However, the Commission did *not* conclude that Rep. Kelly's title as "Chair" in and of itself meant the state party committee was EFMCd by her).

¹⁷ The examples we present here do not address the Democratic and Republican political parties' congressional campaign committees, which are "chaired" by Members of Congress. *See, e.g.,* <https://www.dsc.org/news/michigan-senator-gary-peters-to-chair-dsc-for-2022-cycle-to-protect-and-expand-democratic-senate-majority/> and <https://dccc.org/dccc-chair-maloney-announces-senior-leadership-roles-for-2022-election-cycle/>. The Act and Commission regulations specifically provide that a "leadership PAC does not include a political committee of a political party." *See* 52 U.S.C. § 30104(i)(8)(B); 11 C.F.R. § 100.5(e)(6). This should not be understood to imply that political party committees such as the Democratic Senatorial Campaign Committee or Democratic Congressional Campaign Committee otherwise could come within the ambit of being regulated as "leadership PACs" by being EFMCd by Members of Congress merely because they are "chaired" by Members. It is more likely that these are only "belts and suspenders" provisions acknowledging the congressional campaign committees' longstanding practice.

- **CHC BOLD PAC:** The CHC BOLD PAC’s website identifies Rep. Ruben Gallego as the PAC’s “Chair.”¹⁸ Latino Leaders for Equality, Growth, Opportunity, Progressive Action & Change (“LLEGO-PAC”) is Rep. Gallego’s leadership PAC.¹⁹ LLEGO-PAC does not identify CHC BOLD PAC as an affiliated committee on LLEGO-PAC’s FEC Form 1.²⁰ For its part, CHC BOLD PAC also does not identify as a leadership PAC on its FEC Form 1, nor does it identify LLEGO-PAC as an affiliated committee.²¹ In short, CHC BOLD PAC is not operating as an additional leadership PAC of Rep. Gallego or as an affiliated committee of LLEGO-PAC merely by virtue of Rep. Gallego being CHC BOLD PAC’s “Chair.”²²
- **CONGRESSIONAL BLACK CAUCUS PAC:** The Congressional Black Caucus PAC (“CBC PAC”) website identifies Rep. Gregory Meeks as the PAC’s “Chair.”²³ Build America PAC is Rep. Meeks’ leadership PAC.²⁴ Build America PAC does not identify the CBC PAC as an affiliated committee on Build America PAC’s FEC Form 1.²⁵ For its part, the CBC PAC also does not identify as a leadership PAC on its FEC Form 1, nor does it identify Build America PAC as an affiliated committee.²⁶ In short, CBC PAC is not operating as an additional leadership PAC

¹⁸ <https://www.boldpac.com/members/ruben-gallego> (Although this committee’s donations page (<https://secure.actblue.com/contribute/page/bold-homepage>) and FEC registration (C00576975) identify it as “CHC BOLD PAC,” its website URL is merely “boldpac.com.”)

HLT is without knowledge of the extent to which Rep. Gallego is involved in controlling or directing CHC BOLD PAC’s operations beyond merely holding the “Chair” title.

¹⁹ LLEGO-PAC, FEC Form 1 (amend. Mar. 9, 2021), available at <https://docquery.fec.gov/cgi-bin/forms/C00576975/1503339/>.

²⁰ See *id.*

²¹ CHC BOLD PAC, FEC Form 1 (Jun. 22, 2021), available at <https://docquery.fec.gov/cgi-bin/forms/C00365536/1535326/>.

²² See also note 3, *supra*.

²³ <https://www.cbcpac.org/leadership/rep-gregory-meeks>

²⁴ Build America PAC, FEC Form 1 (amend. Oct. 3, 2011), available at <https://docquery.fec.gov/cgi-bin/forms/C00377143/746546/>. (Notwithstanding the age of this Form 1, the FEC’s website indicates this is the most current Form 1 for this committee.)

²⁵ See *id.*

²⁶ CBC PAC, FEC Form 1 (amend. Sep. 21, 2020), available at <https://docquery.fec.gov/cgi-bin/forms/C00147512/1440989/>.

of Rep. Meeks or as an affiliated committee of Build America PAC merely by virtue of Rep. Meeks being the CBC PAC's "Chair."²⁷

2. **Even if HLT is deemed to be EFMCd by Members of Congress if those Members merely hold the titles of HLT "Chair" and "Vice Chair," HLT will not become EFMCd by Members if they hold the titles of "Honorary Chair" and "Honorary Co-Chair" to signify their fundraising role with HLT.**

As the Commission has recognized, such "honorary" titles are "position[s] specifically related to fundraising."²⁸ And, of course, merely fundraising for a committee does not mean that an officeholder or candidate EFMCs the committee.²⁹

3. **HLT will not become a leadership PAC or affiliated with any leadership PACs merely because Members of Congress engage in one or more of the following activities: (i) serve on HLT's board of directors; (ii) hold officer positions with HLT; (iii) direct HLT to contribute to certain candidates; (iv) direct HLT's fundraising strategy; and/or (v) hire and/or fire HLT employees and consultants.**

As a preliminary matter, the Supreme Court has sharply criticized an "FEC [regulatory] regime . . . applying ambiguous standards" and an "open-ended rough-and-tumble of factors."³⁰ This describes the FEC's EFMC rules "to a T." To wit, the rules purport to examine "circumstantial factors" "in the context of the overall relationship" between persons and entities, and do not specify how the factors are weighed or how many factors must be triggered to result in an EFMC relationship. These "ambiguous" and "open-ended"

HLT is without knowledge of the extent to which Rep. Meeks is involved in controlling or directing the CBC PAC's operations beyond merely holding the "Chair" title.

²⁷ See also note 4, *supra*.

²⁸ See 11 C.F.R. § 300.64(c)(3)(v)(A).

²⁹ See, e.g., AO 2011-12 (Majority PAC/House Majority PAC) (concluding that officeholders and candidates may fundraise for independent expenditure-only committees, provided that they do so within the "hard money" limits; the Commission did not suggest that merely fundraising for the committees could trigger the prohibition against such individuals EFMCing entities that raise and spend "soft money" under 52 U.S.C. § 30125(e)(1)); MUR 7683 (Our Revolution), Statement of Reasons of Commissioners Sean J. Cooksey and James E. Trainor, III at 5 (citing First General Counsel's Report at 7).

³⁰ *Citizens United v. FEC*, 558 U.S. 310, 336 (2010) (internal citations and quotation marks omitted).

rules amount to a “know it when I see it” approach that produces “arbitrary and capricious” results.³¹

Moreover, if Members of Congress were to serve on HLT’s board of directors, hold officer positions with HLT, direct HLT to contribute to certain candidates, direct HLT’s fundraising strategy, and/or hire and/or fire HLT employees and consultants, they would only be doing so as one of several Members with such authority over HLT. By contrast, each Member has sole control over his or her own leadership PAC, and each leadership PAC has only one officeholder or candidate as its “sponsor.”³²

In the context of corporate PACs, the Commission has concluded that, where one corporate PAC sponsor has less than 50 percent control over a joint venture partnership’s board of directors, the joint venture partnership’s PAC is not affiliated with the minority partner’s PAC.³³ The Commission should reach the same conclusion here: To the extent that no individual Member of Congress has 50 percent or more authority to control HLT’s operations and activities, HLT should not be considered EFMCd by any of those Members or affiliated with their leadership PACs by virtue of: (i) serving on HLT’s board of directors; (ii) holding officer positions with HLT; (iii) directing HLT to contribute to certain candidates; (iv) directing HLT’s fundraising strategy; and/or (v) hiring and/or firing HLT employees and consultants.

Even if HLT were to have only two Members of Congress as directors/officers, and each were to have 50 percent authority over the committee’s operations and activities, HLT still should not be considered EFMCd by either of those Members or affiliated with their leadership PACs. Although the Commission’s advisory opinions have concluded that the PACs of corporations, each of which owns and controls 50 percent of a joint venture, are

³¹ Compare AO 2003-12 (concluding that Rep. Flake EFMCd a ballot measure committee where he signed the committee’s articles of incorporation and his campaign consultant “assisted” with the committee’s state corporate filings and opened its bank account) with MUR 7683 (Our Revolution), First General Counsel’s Report (recommending dismissal of allegation that Sen. Bernie Sanders EFMCd a Section 501(c)(4) entity, notwithstanding that the organization purported to be “founded” by Sanders, and notwithstanding the organization’s close ties to Sanders vis-a-vis personnel).

³² See 52 U.S.C. § 30104(i)(8)(B) (referring in the singular to “the candidate or the individual” that EFMCs the leadership PAC) (emphasis added); see also 11 C.F.R. § 100.5(e)(6) (referring in the singular to “a candidate for Federal office or an individual holding Federal office” and “the candidate or individual” that EFMCs the leadership PAC) (emphasis added).

³³ AO 1984-36 (American Health Capital).

affiliated with the joint venture's PAC,³⁴ those opinions are distinguishable from the facts here.

Specifically, those opinions were based on regulations that ask whether a "sponsoring organization" or committee exercises authority or control over another "sponsoring organization" or committee.³⁵ Those regulations do not apply to HLT. To wit, even if only two Members of Congress each were to have 50 percent authority and control over HLT's operations and activities, they would be exercising authority and control as individuals.³⁶ Their leadership PACs would not be exercising authority and control over HLT. And while the FEC Form 1 (Line 6) may refer to Members as "sponsors" of their leadership PACs, that same terminology is not used for other unauthorized committees. Thus, the analogy cannot be drawn that the Members, acting as their leadership PACs' "sponsors," are EFMing any "sponsor" of HLT (nor does HLT have any "sponsoring organization," since it is not a separate segregated fund).

4. HLT will not become a leadership PAC or affiliated with any leadership PACs merely because any Member of Congress is responsible for raising a large percentage of contributions to HLT.

The Office of General Counsel ("OGC") has, on occasion, intimated that candidates and officeholders who raise a large percentage of an entity's funds could be deemed to have "financed" the entity under the EFMC rules.³⁷ The Commission, however, has never endorsed such a position, much less articulated any standards whatsoever as to what percentage of an entity's funds a candidate or officeholder must raise to trigger an EFMC finding. Moreover, the only provisions in the Commission's regulations that even arguably could be mustered to support such a position do not, on their face, apply to the situation here:

- 11 C.F.R. §§ 100.5(g)(4)(ii)(H) and 110.3(a)(3)(ii)(H) ask "[w]hether a sponsoring organization or committee causes or arranges for funds in a significant amount or on

³⁴ See AOs 1987-34 (Telenet), 1979-56 (SCOTTPAC).

³⁵ See *id.*; see also 11 C.F.R. § 110.3(a)(3)(ii)(B), (C).

³⁶ As the Commission has recognized, individuals "may wear multiple hats" when acting on behalf of different entities. MUR 7288 (DNC Services Corporation), Factual and Legal Analysis at 6.

³⁷ See, e.g., MUR 6798 (Vitter), First General Counsel's Report at 10 (noting that then-Senator David Vitter "was involved in the [] fundraising efforts" of an independent expenditure-only committee as a factor for determining EFMC, but citing no authority for this proposition); MUR 7683 (Our Revolution), First General Counsel's Report at 18 (discussing in an EFMC analysis whether Senator Bernie Sanders raised funds in a "significant amount" and on an "ongoing basis" for a Section 501(c)(4) entity, and citing 11 C.F.R. § 300.2(c)(2)(vii), (viii)).

an ongoing basis to be provided to another sponsoring organization or committee” (emphasis added). As discussed above for Question 3, there would not be any “sponsoring organization” or other committee raising money for HLT. Only individual Members of Congress and HLT’s fundraising consultants would be raising money for HLT.

- 11 C.F.R. § 300.2(c)(2)(vii) and (viii) ask whether an officeholder or candidate “provides funds [] in a significant amount or on an ongoing basis to [an] entity” or “causes or arranges for funds in a significant amount or on an ongoing basis to be provided to [an] entity.” As explained in note 12, *supra*, that regulation only applies to organizations that raise or spend “soft money,” and HLT is not such an organization.

In short, there is no Commission regulation or other legal authority that says that any Member of Congress who raises money for HLT could be deemed to have EFMCD HLT if the Member raises a large percentage of its funds.

5. HLT will not become a leadership PAC or affiliated with any leadership PACs merely because there are similar patterns of contributions to, or disbursements by,³⁸ HLT and the leadership PACs of Members of Congress who are involved in HLT’s fundraising and decisionmaking.

According to OGC, where two organizations share 70 percent of their contributors, this presents a “close call” as to whether one organization has EFMCD the other.³⁹ “On the other hand, one would expect some degree of overlap between the contributor bases of ideologically compatible organizations without there necessarily being a ‘formal or ongoing relationship’ between the two organizations.”⁴⁰

And so it is here. To paraphrase OGC, where Member of Congress are involved in raising money for, or making contributions or disbursements from, a committee like HLT, one would expect some degree of overlap between the contributor bases of those Members’

³⁸ 11 C.F.R. §§ 100.5(g)(4)(ii) and 110.3(a)(3)(ii), which could apply to HLT, do not address disbursement patterns. *Id.* § 300.2(c)(2)(x) asks “[w]hether the sponsor and the entity have similar patterns of receipts or disbursements.” (emphasis added). However, as discussed in note 8, *supra*, the latter regulation does not apply to HLT. Nonetheless, we include disbursement patterns in this question out of an abundance of caution.

³⁹ MUR 5343 (Democratic Senate Majority PAC-Non Federal Account), First General Counsel’s Report at 11-12.

⁴⁰ *Id.*

leadership PACs⁴¹ and HLT, the candidates that the committees support, and the vendors that the committees use (since those are the vendors the Members are familiar with). This, however, does not necessarily mean there is a formal or ongoing relationship between the committees.

CONCLUSION

For the reasons discussed above, the Commission should conclude that:

- HLT may give Members of Congress the titles of “Chair” and “Vice Chair” to signify their fundraising role for HLT without the committee becoming an additional leadership PAC of those Members or affiliated with their existing leadership PACs.
- If giving Members of Congress the titles of “Chair” and “Vice Chair” will *per se* cause HLT to become an additional leadership PAC of those Members or affiliated with those Members’ existing leadership PACs, then giving Members the fundraising titles of “Honorary Chair” and “Honorary Vice Chair” will not trigger such consequences.
- HLT may have Members of Congress serve on HLT’s board of directors, hold officer positions with HLT, direct HLT to contribute to certain candidates, direct HLT’s fundraising strategy, and hire and fire HLT employees and consultants without the committee becoming an additional leadership PAC of those Members or affiliated with their existing leadership PACs.
- HLT will not become an additional leadership PAC of Members of Congress or affiliated with their existing leadership PACs if any Members are responsible for raising a large percentage of contributions to HLT.
- HLT will not become an additional leadership PAC of Members of Congress or affiliated with their existing leadership PACs if there are similar patterns of contributions to, or disbursements by, HLT and the Members’ leadership PACs.

⁴¹ We only address leadership PACs here because any analysis of the similarity in contributions and disbursements between Members’ *authorized committees* and HLT would be moot. The logical consequence of an EFMC finding on such a basis would be that HLT would be affiliated with Members’ authorized committees, and this cannot be as a matter of law. See 100.5(g)(5) (“Notwithstanding paragraphs (g)(2) through (g)(4) of this section, no authorized committee shall be deemed affiliated with any entity that is not an authorized committee.”).

Thank you in advance for your consideration of these questions. Please do not hesitate to contact us if there are any points in this request that need clarification.

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



May 3, 2022

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

Re: Supplement to Hispanic Leadership Trust Advisory Opinion Request

Dear Ms. Selinkoff and Ms. Waldman:

This letter follows up on our April 29, 2022 discussion regarding the pending advisory opinion request from the Hispanic Leadership Trust (“HLT”).

You asked for more information about the following issues:

1. Proposed Chair and Vice Chair

HLT would like to name Reps. Mario Diaz-Balart and Tony Gonzales as HLT’s Chair and Vice Chair, respectively.

Rep. Diaz-Balart’s leadership PAC is Maintaining All Republicans in Office PAC (FEC ID C00565630). Rep. Gonzales’ leadership PAC is Honor Courage Commitment PAC (FEC ID C00755173).

2. Funding From Leadership PACs, Authorized Committees, and Members’ Personal Funds

It is possible that certain Members of Congress and federal candidates may contribute to HLT from their leadership PACs, authorized committees, and personal funds. However, this is not expected to be a significant source of funding for HLT and is not expected to comprise more than five percent (if even that much) of HLT’s total funding over the long term.

As you have noted, to date, HLT has received a \$5,000 contribution from Honor Courage Commitment PAC. This, in and of itself, should not lead to a conclusion that Rep. Gonzales has established, financed, maintained, or controlled (“EFMC”) HLT for the reason stated above. However, in the unlikely event that the Commission were inclined to treat this as a basis for issuing an EFMC conclusion, HLT proposes to refund the contribution to avoid such a conclusion.

3. HLT Solicitations

It is likely that HLT will solicit contributions from existing contributors to the leadership PACs and authorized committees of Members of Congress who serve as HLT directors and officers. However, HLT also may solicit other contributors who have not already given to the leadership PACs and authorized committees of the foregoing.

As described below in the draft bylaws language, HLT proposes to have members of the Congressional Hispanic Conference¹ serve on HLT's Board of Directors. Given the number of Conference members, it is unlikely that there will be a very high correlation between the contributors who ultimately give to HLT and the contributors to any individual HLT Director's leadership PAC or authorized committee.²

4. Draft Bylaws Language

As we discussed, HLT has not adopted bylaws yet because the final bylaw provisions addressing the extent to which Members of Congress may participate in HLT's governance will depend on how the Federal Election Commission responds to the questions HLT has posed in its advisory opinion request. Nonetheless, we are providing the following *draft* bylaw provisions for consideration to the extent that they may be helpful in focusing the Commission's responses (proposed draft language is indicated in italics):³

4.1. Board of Directors

General Powers and Duties. *The direction and management of the Committee's⁴ affairs, as well as the control and disposition of its assets, is vested in its Board of Directors. The Board of Directors may exercise all of the powers of the Committee subject to the restrictions imposed by applicable law, the Articles of Incorporation, and/or these Bylaws. Each Director has a fiduciary responsibility to the Committee and a duty to act in good faith and in the best interests of the Committee.*

The Board of Directors shall elect the Committee's officers.

¹ The Congressional Hispanic Conference is an organization of Hispanic Republicans in the U.S. House of Representatives. More information about the Conference can be found here: <https://hispanicconference-mariodiazbalart.house.gov/>.

² As discussed in HLT's advisory opinion request (at 11), the Office of General Counsel has concluded that the mere fact that two entities share 70 percent of their contributors does not necessarily lead to the conclusion that one entity establishes, finances, maintains, or controls the other.

³ Note that, rather than providing the complete draft bylaws, we are providing only draft provisions that pertain to the issues raised in our advisory opinion request.

⁴ All references to the "Committee" in these draft bylaw provisions are to the Hispanic Leadership Trust.

Qualifications. *Incumbent members of the Congressional Hispanic Conference⁵ 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.*

Manner of Acting. *The act of a majority (i.e., more than fifty percent) of the Directors present in person at a meeting at which a quorum is present will be the act of the Board of Directors.*

4.2. Officers

Chair/President. *The Chair and President, who shall be a member of the Committee's Board of Directors, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as designated in these Bylaws and as may be assigned by the Board of Directors. In addition, such individual shall be the chief executive officer of the Corporation and shall have such other powers, duties, and responsibilities as designated in these Bylaws and as may be assigned by the Board of Directors, including: (i) establishing and maintaining an effective organization and structure with clearly defined roles, responsibilities, and reporting relationships; (ii) establishing and maintaining a process for open and consistent communication with the Board of Directors to ensure effective governance of the Corporation; and (iii) retaining and terminating Committee contractors in consultation with the Vice Chair and other Directors.*

Vice Chair/Vice President. *The Vice Chair and Vice President, who shall be a member of the Committee's Board of Directors, shall assist the Chair and President in all duties, preside at all meetings of the Board of Directors in the Chair's absence, and, in the event an office established by these Bylaws is vacated and the vacancy has not been filled by the Board of Directors, perform the duties and exercise the powers of the vacated Officer. In addition, such individual shall have such other powers and duties as designated in these Bylaws and as may be assigned by the Board of Directors.*

Fundraising and Contributions.

[ALTERNATIVE A] *The Chair shall determine the Committee's fundraising activities and contributions to candidates and other committees in consultation with the Vice Chair and other Directors.*

⁵ See note 1, *supra*. HLT's initial board of directors is expected to consist of current Congressional Hispanic Conference members.

Or, if the Commission determines the language in Alternative A will cause HLT to be affiliated with the Chair's leadership PAC:

[ALTERNATIVE B] *The Chair and Vice Chair shall jointly determine the Committee's fundraising activities and contributions to candidates and other committees in consultation with the other Directors.*

Or, if the Commission determines the language in Alternatives A and B will cause HLT to be affiliated with the Chair's and Vice Chair's leadership PACs:

[ALTERNATIVE C] *The Committee's fundraising activities and contributions to candidates and other committees shall be determined by a vote of the Directors.*

* * *

We believe the foregoing responses address the questions you posed to us during our discussion on April 29th. Please do not hesitate to contact us if there are any additional questions.

Sincerely,



Chris K. Gober
Eric Wang
Counsel to Hispanic Leadership Trust

RECEIVED

By Office of General Counsel at 3:27 pm, May 05, 2022

From: [Eric Wang](#)
To: [Jennifer Waldman](#); [Jessica Selinkoff](#)
Cc: [Chris Gober](#)
Subject: RE: Hispanic Leadership Trust AOR
Date: Thursday, May 5, 2022 1:14:43 PM

Jessica, Jennifer,

Per our call just now, the Hispanic Leadership Trust does not expect federal officeholders or candidates to be involved in the day-to-day operations of the committee. It is expected that consultants will perform that function at the direction of HLT's officers and directors.

Eric Wang | Partner | The Gober Group
ew@gobergroup.com | 202.417.3528

If you need to schedule a call with me, you can compare our schedules and book it [here](#)



From: Eric Wang
Sent: Tuesday, May 3, 2022 12:44 PM
To: 'Jennifer Waldman' <JWaldman@fec.gov>; Jessica Selinkoff <JSelinkoff@fec.gov>
Cc: Chris Gober <cg@gobergroup.com>
Subject: RE: Hispanic Leadership Trust AOR

Jessica, Jennifer,

It was nice to speak with you last week about our AO request. As we discussed, please find attached a supplement addressing the information you requested.

Please let us know if there is anything else that you need to finalize this AOR.

Thanks.

Eric Wang | Partner | The Gober Group
ew@gobergroup.com | 202.417.3528

If you need to schedule a call with me, you can compare our schedules and book it [here](#)



AOR018