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By Office of the Commission Secretary at 5:49 pm, Jul 27, 2022

July 27, 2022

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

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

Dear Ms. Selinkoff:

This letter responds to your July 26, 2022 e-mail requesting additional information about our advisory opinion request on behalf of the Hispanic Leadership Trust (“HLT”). Specifically, a Commissioner has asked: “What communications did Susan Lilly have regarding the establishment of HLT with any prospective members of the HLT board (or anyone acting on their behalf) prior to the establishment of HLT?”

**1. Facts**

Ms. Lilly did not discuss the formation of HLT in any specificity with any of the prospective HLT officers or board members prior to the committee’s formation. She did not act at their direction, nor did she consult with any of them during the formation process.

As Hispanic Republican members of Congress, Representatives Diaz-Balart and Gonzales have had a long-standing and general desire that there be some type of entity to assist Hispanic Republican congressional candidates, similar to what BOLD PAC does on the Democratic side of the aisle; however, they did not have any specific type of entity in mind. For example, they did not suggest forming a super PAC, a “hard money” PAC, a non-FEC-registered Section 527 organization, a Section 501(c)(4) entity, etc.

Through her role as a fundraising consultant for Representatives Diaz-Balart and Gonzales, Ms. Lilly was aware of this general idea that they had.

Based on high-level discussions that Ms. Lilly has had with Representatives Diaz-Balart and Gonzales about the general concept, she took the initiative on her own and took the specific steps earlier this year of consulting with legal counsel, retaining an FEC “compliance firm,” picking the HLT name, asking for HLT to be created, and managing HLT’s initial and day-to-day activities up to this point. Ms. Lilly did not take any of these steps at the direction of—whether express or implied—any of the prospective HLT officers,

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board members, or any of their agents. At no point during these processes did Ms. Lilly consult with any of the prospective HLT officers or board members or report back to them on what she was doing.

## 2. Discussion

Ms. Lilly's high-level discussions with Representatives Diaz-Balart and Gonzales about the general concept of creating an entity to support Hispanic Republican candidates for Congress does not rise to the level of these Members of Congress "establishing" HLT under the Commission's EFMC and affiliation rules and precedents.

The Commission precedent that is most on point here is AO 2003-12 (Flake).<sup>1</sup> In that AO, Rep. Flake "signed the documents filed with the Arizona Secretary of State that formed" the entity at issue.<sup>2</sup> In addition, "an individual who served as Representative Flake's part-time campaign consultant aided [the entity] with its State filings and with establishing its bank account."<sup>3</sup> It is unclear to us what the basis was for this second fact recitation in the Flake AO, since it does not appear to be in Flake's request or any of the supplemental materials. However, given the close nexus between the campaign consultant's role and Rep. Flake's role in forming the entity, the consultant presumably was acting at Flake's direction and working hand-in-glove with Flake.

The high-level discussions that Ms. Lilly had with Representatives Diaz-Balart and Gonzales about the concept of creating some type of entity to support Hispanic Republican candidates for Congress is a far cry from the facts in the Flake AO. As discussed above, and unlike the facts in the Flake AO, Representatives Diaz-Balart and Gonzales did not get into any level of specificity with Ms. Lilly about how or when such an entity was to be formed. They did not give any specific directive to form HLT. They did not instruct her on what the entity should be called. They did not instruct her on which vendors to retain.

In this sense, Ms. Lilly's prior high-level discussions with Representatives Diaz-Balart and Gonzales "inspired" her to establish HLT, just as the formation of Our Revolution in MUR 7683 was "inspired" by the ideas of Sen. Bernie Sanders.<sup>4</sup> In that matter, the Office of

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<sup>1</sup> See Draft A at 12, li. 13-14 (citing and discussing AO 2003-12); Draft B at 11, li. 2-4 (same); Draft C at 10, li. 10-14 (same).

<sup>2</sup> AO 2003-12 at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> MUR 7683 (Our Revolution), First General Counsel's Report at 9 ("Both Responses acknowledge that Sanders 'inspired' the creation of Our Revolution. However, Our Revolution asserts that it was 'established and has continued to operate independently' of Sanders . . .").

General Counsel concluded that such a nexus with a federal officeholder did not give rise to an EFMC finding, and the Commission did not pursue enforcement.<sup>5</sup>

Finally, as we noted in our Second Supplement (at 3-4), and consistent with our representations above:

Ms. Lilly did not form HLT while acting as an “agent” to [Representatives Diaz-Balart or Gonzales or their leadership PACs].

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. AO 2015-09 (Senate Majority PAC/House Majority PAC).

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For all the reasons set forth above, the Commission should *not* conclude that Representatives Diaz-Balart and Gonzales “established” HLT if they were also to serve as its officers and/or directors based on the high-level discussions they had with Ms. Lilly about the general concept of creating some type of entity to support Hispanic Republican candidates for Congress.

Sincerely,



Chris K. Gober

Eric Wang

Counsel to Hispanic Leadership Trust

cc: Ms. Jennifer Waldman

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<sup>5</sup> MUR 7683 (Our Revolution), Vote Certification (Aug. 11, 2021) and Statement of Reasons of Commissioners Sean J. Cooksey and James E. “Trey” Trainor, III.