AACU
American Association of Clinical Urologists, Inc.

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April 3, 2017

Shawn Woodhead Werth
Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Via email

RE: Comment on AOR 2017-01, American Urological Association

The American Association of Clinical Urologists (AACU) and its Separate Segregated Fund, UROPAC, submit these comments in opposition to the request of the American Urological Association (AUA) for the Commission to reverse its 2002 conclusion that AACU and AUA are affiliated pursuant to 52 U.S.C. § 30116(a)(5) and the Commission's regulations.

In summary, AACU acknowledges that there have been certain changes in the relationship between AACU and AUA over the last 15 years, but believes those changes are not sufficiently material to cause the Commission to reverse its position and disputes the characterization of those changes as "unwinding many of their close connections." AOR at 12. The AOR selectively presents certain temporary or transitional circumstances in a manner that fails to show continuing ties between the organizations. Moreover, additional factors weighing in favor of affiliation which were present, but not presented fully, in 2002 and remain present or relevant today should strengthen the weight of analysis in favor of a continuing finding of affiliation.

Lest disagreement between AACU and AUA over the correct legal conclusion regarding this AOR be cited as a factor against affiliation, we note that disagreements over legal standards even within unitary organizations (not excluding Federal agencies) are hardly uncommon, and can even be significant and ongoing. Such heartfelt debate may indeed evidence continuing shared ties. In any case, disagreement as to the proper conclusion of the Commission's affiliation analysis cannot logically be cited as a factor in that analysis, lest the analytical process swallow its own tail.

AACU wishes to rectify the incomplete presentation of certain factors in the AUA request and to present evidence of additional factors regarding membership, current and former overlapping officers, governance ties, staff, and founding weighing in favor of a continued finding of affiliation between the two organizations.

AUA's Decision to Stop Providing Administrative Support to UROPAC is Irrelevant to the Affiliation Analysis

AUA cites its decision to stop providing administrative support and participating in governance of UROPAC as evidence of disaffiliation between AACU and AUA. AUA's desire to be allowed to start its own SSF with limits separate from those of UROPAC, which is the only legally significant purpose of its request, cannot factor in the analysis of whether ties between AACU and AUA are so significant that SSF's of the two organizations are treated as a single political committee for purposes of FECA's contribution limits. Otherwise, any two otherwise affiliated organizations could announce a disagreement over operation of a shared SSF and then cite that disagreement to escape shared contribution limits.

AUA Played a Significant Role in Founding the AACU

While IRS rules in the 1960s did not allow the degree of formal connection between 501(c)(3) and 501(c)(6) organizations permitted today, for practical purposes, the AACU was founded by the AUA as a related organization permitted to lobby on behalf of AUA members This was because the AUA was then prohibited from all lobbying activity. The AACU was founded by AUA's President and other AUA Members at an AUA meeting. *AACU history 1968-2001*, available at: http://www.aacuweb.org/about/history. A history of the New York Section of the AUA likewise states simply that the AUA "formed" the AACU. http://nyaua.com/about-us/history-of-aua/. The foundational role of the AUA has been reflected continuously for fifty years in the shared membership, governance ties, joint policy efforts, overlapping officers, and shared staff throughout the 50 year history of AACU.

AACU and AUA are Continuing Shared Public Policy Advocacy

AUA presents the conclusion of the 2017 Urology Joint Advocacy Conference (JAC) as representing the end of joint public policy efforts. AUA is, however, already planning a 2018 Urology Summit which AUA has invited AACU to participate, including financial cooperation. AACU Board and Executive Committee Members sit on the planning committee for the Summit, which will effectively replace the JAC. The Health Policy Forum at AUA's upcoming Annual Meeting is presented jointly by AUA and AACU. The AACU Hoffman Lecture is also part of the official AUA Annual Meeting program. http://www.aua2017.org/common/pdf/publications/Scientific-Program.pdf. AACU Board and Executive Committee Members have overlapping positions on AUA Committees that oversee AUA health policy and legislative affairs. The AACU has three designated seats on the AUA Public Policy Council: the AACU President, Past President, and Health Policy Chair.

Shared advocacy efforts are continuing and significant at the section and state levels. The 2016 AACU State Society network program began with a joint presentation by AACU and AUA Presidents, included a panel presentation by the AUA President, and featured three separate presentations by the AUA Data Committee Chair. http://cqrcengage.com/aacu/file/HPr0A1bjced/Program-9th_Annual_AACU_SSN-6102016.pdf A Majority of Presidents of AUA regional sections (affiliated with the AUA) attend this forum each year. Several AUA regional sections feature regular public policy updates from the AACU in publications and meetings.

While a final agreement as to shared advocacy efforts at the national level for 2018 and future years has not been concluded, continuing cooperative efforts are under active discussion. The Commission should not act on the present request under the misimpression that shared public policy advocacy efforts have ended. Indeed, the inevitably shared interests of the shared membership of the two organizations virtually demand that the two organizations continue to cooperate in public policy efforts, notwithstanding temporary organizational tensions.

AACU and AUA Will Continue to Have Overlapping Board Membership

AUA indicates that as of May 2017, no AUA Board Member will be a current or former Board Member of AACU. AACU Board Member and President-elect, Dr. Patrick McKenna, is currently alternate Member of the AUA Board from the North Central Section. Dr. McKenna will rotate onto the AUA Board in two years at which point, if not before, the two organizations will again have overlapping Board Members.

AUA cannot know today whether other current or former AACU Board Members will join AUA's Board as early as this year since AUA Board elections will not be conducted until the AUA's upcoming annual meeting. See AUA Bylaws, Article VIII. A majority of AUA Board is selected by the AUA's eight chartered sections. Id., Article IV, Section 11.2. AUA Sections frequently chose current or former AACU Board Members, or other Urologists who hold significant positions in AACU, to represent the regional bodies on the AUA Board. Even if there were no overlapping Board member in a particular year, the continuing AACU-AUA membership overlap, particularly among Urologists who are more active in association affairs, makes it virtually certain that such Board overlap will occur in the future. In any case, the Commission should not take AUA prediction about what its Members and sections may or may not do in the future as a factor presently weighing in favor of a disaffiliation finding.

While AO requestors naturally cite particular factors in requests, AUA has presented currently undetermined future facts regarding shared public policy advocacy and governance ties in favor of a present determination. At a minimum, the Commission should await the conclusion of these determinations between the organizations before weighing them against a continued affiliation finding.

AACU and AUA Have Overwhelmingly Overlapping Membership

AUA acknowledges the very strong pattern of overlapping membership between AACU and AUA, but attempts to minimize the significance of that overlap. AUA argues that the small size of the "well organized" community of Urology specialists makes it inevitable that Urology organizations will have significant membership overlap, and names certain other organizations with overlapping membership among Urologists. AOR at FN 1. AACU acknowledges that certain other Urology-related organizations may be affiliated with AACU and AUA under the FECA and FEC regulations, but that fact surely does not weigh against a finding of affiliation between AACU and AUA. AUA's admission that the community of Urology specialists is small and well organized is simply more evidence of affiliation among Urology specialty organizations.

AACU acknowledges that membership overlap alone may not be determinative of affiliation, but the overwhelming overlap between AACU and AUA weighs strongly in favor of an affiliation finding.

Fully 98% of AACU Members are concurrently AUA Members. The pattern of virtually complete overlap from AACU (the smaller organization) to AUA has been consistently present for the fifty year history of the AACU. If this degree of membership overlap does not weigh strongly in favor of affiliation, then the membership overlap factor is devoid of meaning.

AACU and AUA Have Extensive Shared Governance Ties

Beyond the strong pattern of overlapping national Boards, AACU and AUA also share a pattern of overlapping or rotating officers, committee members, and regional board members. Since the founding of AACU, many AUA Presidents have earlier served as President of the AACU (moving from leadership in the smaller to the larger organization). Given the continuing pattern of individuals serving as officers first in one organization and either subsequently or contemporaneously in the other, many future AUA Presidents are likely to have earlier served as officers of AACU.

AACU and AUA have geographically identical US regional sections. AACU Bylaws provide that AACU Board Members be elected from the AUA Sections. AACU Bylaws, Article IV, Section 7. Several of these sections have additional explicit governance ties, overlapping committees, or overlapping officers. As an example, the New England Section of the AUA (NEAUA) designates an official Section representative to the AACU, reporting to leadership of both AACU and NEAUA. http://neaua.org/newsletters/2016-december-full.cgi. The AACU provides financial support for functions at AUA Section meetings.

Below the national Board level, there is an extensive pattern of members serving on committees or leadership positions in both organizations. For instance, a member of the AACU Executive Committee currently sits on the AUA Science and Quality Committee that oversees all of the AUA Health Policy, and Legislative affairs. This same member chairs the AUA Workforce and Graduate Medical Education working group. Examples of members who have served concurrently or successively in leadership positions in AACU and AUA are included as an attachment to these comments. As with the examples submitted with the 2002 Advisory Opinion request, this list is very partial. This pattern of overlap continues as strongly today as it has for the past 50 years.

AACU and AUA Components Share Staff and Consultants

AUA indicates that the AACU and AUA do not share common staff or consultants. While this is true if the analysis is restricted to the AUA's national staff, AACU's Executive Director serves concurrently as Executive Director or Executive Staff of three of the eight AUA regional sections. http://urologyconnection.com/docs/client-prospectus.aspx The Executive Director's firm provides all staff support for AACU and these AUA regional sections. This shared staffing is independently significant in the affiliation analysis and also is indicative of the very well-coordinated operations of AACU and AUA at the regional level.

Conclusion and Pending AACU Request

For the foregoing reasons, AACU and UROPAC request that the Commission decline to reverse its 2003 finding that AACU and AUA are affiliated pursuant to 52 U.S.C. § 30116(a)(5). In order to

present a more complete picture of the strong historical and continuing ties between AACU and AUA, AACU will soon present its own independent Advisory Opinion request to the Commission.

Sincerely,

Charles McWilliams, MD, President AACU

Barbara Arango, Associate Director, AACU

David M. Mason, Assistant Treasurer UROPAC

Attachment: Partial list of overlapping AACU-AUA Officers

	AACU-AUA Officer Cross-Pollination	
	Partial Listing	
NAME	**AACU Board/Leadership**	**AUA/Section position(s)**
Datta Wagle, MD	AACU Past President	AUA President
Sushil S. Lacy, MD	AACU Past President	AUA President
William F. Gee	AACU Past President	AUA President; AUA Delegate to the RUC
B. Thomas Brown, MD, MBA	AACU Past President	AUA Board of Directors; Southeastern Section President
Charles W. Logan, MD	AACU Past President	AUA Board of Directors; South Central Section President
Jeffrey E. Kaufman, MD, FACS	AACU Past President	AUA Board of Directors; Western Section President; AMA Delegate
Gary Michael Kirsh, MD	AACU Past President	North Central Section President; UROPAC Chair
Anthony W. Middleton Jr., MD	AACU Past President	Western Section President
Arthur E. Tarantino, MD	AACU Past President	AUA Practice Management Committee Chair; New England Section President; UROPAC Chair
Jeffrey M. Frankel, MD	AACU Past President	Western Section HPC Chair; AUA Public Policy Committee member; AUA Legislative Affairs Committee member; AUA Urology Practice Journal Editor selection committee
Lawrence W. Jones, MD	AACU Past President	Western Section President
Mark D. Stovsky, MD, MBA, FACS	AACU Past President	North Central Section Treasurer; AUA Leadership Class; AUA Public Policy Council
Mark S. Austenfeld, MD	AACU Past President	South Central Section President
Douglas E. McKinney, MD	AACU Past President	Mid Atlantic Section President
Martin K. Dineen, MD	AACU Past President	AUA Public Policy Council member
Richard S. Pelman, MD	AACU Past President	AUA Men's Health Work Group Chair; AMA Delegate

Charles A. McWilliams, MD	President	South Central Section President; AUA Practice Management Committee member
Brian H. Irwin, MD	New England Section Representative	AUA Leadership Class
Damara L. Kaplan, PhD, MD	South Central Section Representative	South Central Section President; AUA Leadership Class
Eugene Y. Rhee, MD, MBA	Western Section Representative	AUA Gallaher Scholar; AUA Workgroup on Telemedicine; Western Section Health Policy Committee Vice-Chair
F. Michael Rommel, MD	Mid-Atlantic Section Representative	Mid-Atlantic Section President
Mark L. Fallick, MD	Mid-Atlantic Section Representative	AUA Coding & Reimbursement Committee; AUA State Affairs Task Force
Mark T. Edney, MD	Mid-Atlantic Section Representative	AUA Gallagher Scholar; Mid-Atlantic Section Health Policy Chair; AUA Legislative Affairs Committee member; AUA Public Policy Council member
Patrick H. McKenna, MD, FAAP, FACS	North Central Section Representative	AUA Public Policy Council member
Scott Sellinger, MD	Southeastern Section Representative	Board member/President-elect, Southeastern Section AUA (2017)
Kevin R. Loughlin, MD	AACU State Society Network Chair	AUA Board of Directors
R.Jonathan Henderson, MD	Health Policy Chair	AUA Public Policy Council member
Richard A. Memo, MD	Secretary/Treasurer	AUA Foundation Chair; AUA Board of Directors
Willie Underwood III, MD, MS, MPH	AMA Delegate	AUA Delegate to the AMA House of Delegates