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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 23-26-A
AGENDA ITEM
For meeting of Nov. 16, 2023

November 9, 2023

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by RMK*
Acting General Counsel

Neven F. Stipanovic *NFS by RMK*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Lindsay Bird *LCB*
Attorney

Subject: Draft AOR 2023-07 (Upshur County Republican Executive Committee)

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 p.m. (Eastern Time) on November 15, 2023.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2023-07

2
3 Charles Spies, Esq.
4 Benjamin I. Mehr, Esq.
5 Dickinson Wright PLLC
6 International Square
7 1825 Eye Street, NW
8 Suite 900
9 Washington, DC 20006

DRAFT A

10
11 Dear Messrs. Spies and Mehr:

12
13 We are responding to your advisory opinion request on behalf of the Upshur
14 County Republican Executive Committee (“Upshur County”) regarding the application of
15 the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
16 regulations to the affiliation status of Upshur County with the West Virginia Republican
17 Party (“State Party”). The Commission concludes that, under the facts presented here,
18 Upshur County and the State Party are not affiliated for the purposes of the Act’s
19 contribution limits.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on
22 September 28, 2023, and publicly available information, including disclosure reports
23 filed with the Commission.

24 Upshur County is the Republican party executive committee for Upshur County,
25 West Virginia.¹ In West Virginia, county executive committees like Upshur County are
26 created and organized by state statute.² State law provides that voters elect members of
27 county executive committees to four-year terms in primary elections, and county

¹ Advisory Opinion Request (“AOR”) at AOR003.

² W. Va. Code § 3-1-9 (c)-(h).

1 executive committees fill any vacancies for the remainder of an unexpired term.³ State
2 law further provides that county executive committees will select their own officers.⁴

3 Three members of Upshur County are also members of the State Party’s
4 Executive Committee, which has a total membership exceeding one hundred members.⁵
5 Upshur County and the State Party share no overlapping officers or employees, and
6 neither committee has members, officers, or employees who were previously members,
7 officers, or employees of the other committee.⁶ No organization owns a controlling
8 interest in Upshur County.⁷

9 Upshur County maintains a federal account registered with the Commission.⁸
10 The State Party and its agents had no role in establishing Upshur County’s federal
11 account.⁹ Upshur County has exclusive control over the use of its funds, and
12 “contributions from Upshur County are not made in cooperation, consultation with, or at

³ *Id.* § 3-1-9 (c) & (f). Upshur County’s bylaws provide its Chair fills member vacancies. AOR008.

⁴ W. Va. Code § 3-1-9 (c) & (f). *See also* AOR006. Upshur County officers are elected by a vote of its members. *Id.* In the event of a vacancy, officers are appointed by the chair until the next scheduled meeting, at which time the vacancy is filled by a majority vote of members. *Id.* at 8.

⁵ AOR005-6.

⁶ AOR005.

⁷ AOR004.

⁸ AOR003; Upshur County Republican Executive Committee, Statement of Organization, FEC Form 1, (Apr. 23, 2023), <https://docquery.fec.gov/pdf/461/202304219581254461/202304219581254461.pdf>.

⁹ AOR005. Likewise, Upshur County and its agents had no role in forming the State Party. *Id.*

1 the request of the State Party.”¹⁰ Rather, financial decisions are “determined by a
2 majority vote of the [Upshur County] members at a formal meeting.”¹¹

3 Upshur County states that it does not engage in joint fundraising with the State
4 Party and “does not have a similar pattern of contributions or contributors that indicate a
5 formal or ongoing relationship with the State Party.”¹² Upshur County has filed one
6 federal disclosure report, which does not list any contributions.¹³ Upshur County and the
7 State Party both received transfers from the joint fundraising committee “Team
8 Morrisey.”¹⁴ This committee appears to have discontinued its joint fundraising
9 relationship with the State Party before entering into a joint fundraising relationship with
10 Upshur County.¹⁵

11 Upshur County states that it has not received funds from the State Party or any
12 committee established, financed, maintained, or controlled by the State Party.¹⁶ The
13 State Party does not cause or arrange for funds to be provided to Upshur County on an
14 ongoing basis.¹⁷ Similarly, Upshur County has not provided or arranged for funds to be

¹⁰ AOR004.

¹¹ AOR003.

¹² AOR005.

¹³ Upshur County Republican Executive Committee, 2023 Mid-Year Report, FEC Form 3X (July 31, 2023).

¹⁴ *See id.*; West Virginia Republican Party, Inc., 2023 May Monthly Report, FEC Form 3X (May 19, 2023); West Virginia Republican Party, Inc. 2023 February Monthly Report, FEC Form 3X (Feb. 17, 2023).

¹⁵ *Compare* Team Morrisey, Amended Statement of Organization, FEC Form 1, (Mar. 9, 2023) *with* Team Morrisey, Amended Statement of Organization, FEC Form 1 (Apr. 28, 2023); *see also* Upshur County Republican Executive Committee, 2023 Mid-Year Report, FEC Form 3X (July 31, 2023).

¹⁶ AOR005.

¹⁷ *Id.*

1 provided to the State Party or any committee established, financed, maintained or
2 controlled by the State Party.¹⁸

3 The State Party bylaws contain a provision recognizing county executive
4 committees have exclusive authority to collect and disburse party funds in their
5 respective counties.¹⁹ However, Upshur County acknowledges that the State Party
6 bylaws also provide that, under certain circumstances, the State Party may participate in
7 the governance of county executive committees.²⁰ Upshur County characterizes the
8 relevant bylaw provisions as “technical provisions and hypothetical scenarios.”²¹

9 Specifically, the State Party may exert control over “any other matter of the
10 business of any [county executive committee] which in the opinion of the State Executive
11 Committee of the State Chairman shall be of sufficient importance to the Republican
12 party to require removal from local consideration and action by the State Executive
13 Committee.”²² Upshur County characterizes this process as rare and not reflective of
14 how Upshur County makes decisions about finances or policies.²³ Upshur County

¹⁸ *Id.*

¹⁹ Bylaws of Republican State Executive Committee of West Virginia (“State Party Bylaws”), Article XV, <https://wvgop.org/wp-content/uploads/2022/05/WVGOP-Bylaws-Final-March-26-2022.pdf> (last visited Oct. 13, 2023) (“The County Executive Committee’s authority is exclusive and shall include the managing and directing of Party affairs in their respective county including the collection and disbursement of Party funds. . .”). State law provides that “The state executive committee of each party may make such rules for the government of such party, not inconsistent with law, as may be deemed expedient; and it may also revoke, alter, or amend, in any manner not inconsistent with law, any present or future rules of such party.” W. Va. Code § 3-1-11.

²⁰ AOR005.

²¹ *Id.*

²² AOR006-7; State Party Bylaws, Article XIII.

²³ AOR007.

1 reiterates that, in practice, it has full control of all decisions related to its finances and
2 states that the “provision should be viewed in the [overall] context of the state and county
3 parties’ grassroots function.”²⁴

4 The State Party bylaws also enable the State Party to remove a member by
5 majority vote in the event of misfeasance, malfeasance, or nonfeasance in office,²⁵ fill
6 vacancies when the county executive committee is unable to do so,²⁶ and elect officers in
7 the event of a tie vote.²⁷ Additionally, the State Party bylaws provide that the State Party
8 may exercise “temporary exigent jurisdiction” over a county executive committee when
9 “time is of the essence” to fill a vacancy or name an officer temporarily.²⁸ However,
10 Upshur County states that the use of these provisions is “extraordinary and rare,” and
11 maintains that “the primary mechanism” through which Upshur County’s members are
12 elected is through a Republican primary election as provided by state law.²⁹ Likewise,
13 the primary mechanism through which officers are appointed is by a vote of Upshur
14 County’s membership.³⁰

15 Upshur County notes in its request that “the current State Party leadership does
16 not support Upshur County’s independence.”³¹

²⁴ *Id.*

²⁵ State Party Bylaws, Article XI (b).

²⁶ *Id.* at Article XIII § 1.

²⁷ *Id.*

²⁸ *Id.* at Article XIII § 2.

²⁹ AOR006.

³⁰ *Id.*

³¹ AOR007.

1 ***Question Presented***

2 (1) *Is Upshur County independent from the State Party for purposes of the Act's*
3 *contribution limits?*
4

5 ***Legal Analysis***

6 Yes, Upshur County is independent from the State Party for the purposes of the
7 Act's contribution limits.

8 Political committees, including state and local party committees, are “affiliated” if
9 they are established, financed, maintained, or controlled by the same corporation, labor
10 organization, person, or group of persons, including any parent, subsidiary, branch,
11 division, department, or local unit thereof.³² For purposes of the Act's contribution
12 limits, contributions made to or by affiliated political committees are considered to have
13 been made to or by a single political committee.³³

14 Commission regulations establish a rebuttable presumption that a state party
15 committee and local party committees in the same state are *per se* affiliated.³⁴ This
16 presumption is rebutted if:

17 (i) The political committee of the party unit in question has not received funds
18 from any other political committee established, financed, maintained, or
19 controlled by any party unit; and
20

21 (ii) The political committee of the party unit in question does not make its
22 contributions in cooperation, consultation or concert with, or at the request or

³² 52 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii).

³³ 52 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1).

³⁴ See 11 C.F.R. § 110.3(b)(3) (“All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee.”).

1 suggestion of any other party unit or political committee established, financed,
2 maintained, or controlled by another party unit.³⁵

3
4 Upshur County states that it has not received funds from the State Party or any
5 political committee established, financed, maintained or controlled by the State Party and
6 that the State Party has similarly not received any funds from Upshur County or from any
7 political committee established, financed, maintained or controlled by Upshur County.³⁶

8 Upshur County further asserts that it does not make its contributions in cooperation,
9 consultation, or concert with, or at the request or suggestion of the State Party or any
10 committee established, financed, maintained or controlled by the State Party.³⁷ Rather,
11 decisions about Upshur County’s contributions are made by a majority vote of its
12 members at a formal meeting.³⁸ Accordingly, the Commission concludes that Upshur
13 County and the state committee are not *per se* affiliated under 11 C.F.R. § 110.3(b)(3).

14 In the absence of *per se* affiliation, the Commission examines ten circumstantial
15 factors within the context of the overall relationship to determine whether one committee
16 has established, financed, maintained, or controlled the other committee.³⁹ These ten

³⁵ 11 C.F.R. § 110.3(b)(3)(i)-(ii).

³⁶ AOR005.

³⁷ AOR003-4.

³⁸ AOR003, 5.

³⁹ 11 C.F.R. §§ 100.5(g)(4)(i) and (ii)(A)-(J); 11 C.F.R. 110.3(a)(3)(i) and (ii)(A)-(J). *See also* Advisory Opinion 2005-02 (Corzine II) at n.8 (“Even if the presumption is rebutted, [state and local party] committees may be affiliated under the affiliation factors set out in 11 CFR 110.3(a).”); Advisory Opinion 1997-18 (CRPCC) at n.2 (“Even if the presumption [at 11 C.F.R. § 110.3(b)(3)] is rebutted, a finding of affiliation, regardless of the intent of the organizations concerned, may be made should other factors of affiliation exist as set out in 11 CFR 110.3(a).”).

1 circumstantial factors, each of which is discussed below in turn, do not constitute an
2 exhaustive list, and other factors may be considered.⁴⁰

3 *A. Controlling Interest*

4 This factor considers whether a sponsoring organization owns a controlling
5 interest in the voting stock or securities of the other sponsoring organization.⁴¹ Upshur
6 County states that no organization owns an interest in its voting stock or securities.⁴² The
7 absence of such ownership weighs against affiliation.

8 *B. Governance*

9 This factor considers whether a sponsoring committee has the authority or ability
10 to direct or participate in the governance of another committee through provisions of
11 constitutions, bylaws, contracts, or other rules, or through formal or informal practices or
12 procedures.⁴³

13 The State Party bylaws outline two methods through which the State Party may
14 participate in the governance of Upshur County. The first method involves appointing
15 decision-makers in specific situations, as detailed in the analysis of factor (C) below. The
16 second method is a multi-step process that permits the State Party to exert control over
17 “any other matter of the business of any [county executive committee] which in the
18 opinion of the State Executive Committee of the State Chairman shall be of sufficient

⁴⁰ See Advisory Opinion 2004-41 (CUNA Mutual) at 3.

⁴¹ 11 C.F.R. §§ 100.5(g)(4)(ii)(A), 110.3(a)(3)(ii)(A).

⁴² AOR004.

⁴³ 11 C.F.R. §§ 100.5(g)(4)(ii)(B), 110.3(a)(3)(ii)(B).

1 importance to the Republican party to require removal from local consideration and
2 action by the State Executive Committee.”⁴⁴

3 Upshur County asserts that these provisions are “hypothetical” and urges the
4 Commission to view them within the context of the parties’ grassroots functions.⁴⁵
5 Upshur County states that, in practice, it alone makes decisions about its finances,
6 policies, and day-to-day governance.⁴⁶ Indeed, the State Party bylaws also recognize that
7 county executive committees have exclusive control over their funds.⁴⁷

8 The State Party’s bylaws allow them to participate in Upshur County’s “matters
9 of business” in certain limited circumstances. Consequently, this factor weighs in favor
10 of affiliation. However, the weight of this factor is reduced by the fact that the day-to-
11 day governance and control of funds remain solely under Upshur County’s jurisdiction.

12 *C. Hiring Authority*

13 This factor considers whether a committee has the authority or ability to hire,
14 appoint, demote, or otherwise control the officers or other decision-making employees or
15 members of another committee.⁴⁸

⁴⁴ AOR006-7; State Party Bylaws, Article XIII.

⁴⁵ AOR006.

⁴⁶ AOR005.

⁴⁷ State Party Bylaws, Article VX (“The County Executive Committee’s authority is exclusive and shall include the managing and directing of Party affairs in their respective county including the collection and disbursement of Party funds; the promotion of campaigns of Republican candidates who represent their county at the national, state and local levels and the recruitment of poll workers that will represent the Republican Party on Election Day and ensure the integrity of elections.”).

⁴⁸ 11 C.F.R §§ 100.5(g)(4)(ii)(C), 110.3(a)(3)(ii)(C).

1 The State Party bylaws provide that, under certain limited circumstances, the
2 State Party can appoint or remove Upshur County’s decision-makers. The bylaws state
3 that the State Party can remove a member by majority vote in the event of misfeasance,
4 malfeasance, or nonfeasance in office,⁴⁹ fill vacancies when the county executive
5 committee is unable to do so,⁵⁰ and elect officers in the event of a tie vote.⁵¹ The bylaws
6 also give the State Party the ability to temporarily fill a member vacancy or name an
7 officer when “time is of the essence.”⁵²

8 However, as provided by state law, Republican voters retain the primary authority
9 to elect Upshur County’s members.⁵³ Additionally, although the State Party bylaws
10 allow for discrete instances where, under specific circumstances, the State Party may
11 remove or appoint a single Upshur County member, the bylaws do not provide a
12 mechanism for the State Party to remove or appoint the majority of members at any given
13 time. Members make Upshur County’s decisions about finances and contributions by
14 majority vote. Accordingly, the removal or appointment of a single member would not
15 give the State Party the authority to direct such decisions.⁵⁴

⁴⁹ State Party Bylaws, Article XI (b).

⁵⁰ *Id.* at Article XIII § 1.

⁵¹ *Id.*

⁵² *Id.* at Article XIII § 2.

⁵³ *See* W. Va. Code § 3-1-9 (c).

⁵⁴ In the corporate context, the Commission has determined that the authority to appoint a minority of the members of a governing board of directors does not weigh heavily in favor of finding affiliation between two entities. *See* Advisory Opinion 2016-02 (Enable Midstream Services) at 7.

1 Likewise, Upshur County retains the primary authority to select its officers and
2 fill any vacancies.⁵⁵ The State Party’s authority to elect officers may be invoked only
3 when Upshur County cannot fulfill these responsibilities.

4 The Commission has previously concluded that a state party’s limited role in
5 removing a county party’s decision-makers was not dispositive to the affiliation analysis.
6 In Advisory Opinion 1978-09 (Republican State Central Committee of Iowa), the
7 Commission concluded that county party committees were not affiliated with the state
8 party committee even though the state party could remove certain county officers if they
9 failed to fulfill their duties. The Commission noted that the “primary mechanism for
10 removal of county officers is through action of the county committee itself.”⁵⁶

11 The State Party’s bylaws allow it to appoint or remove individual Upshur County
12 decision-makers in certain limited circumstances. Accordingly, this factor weighs in
13 favor of affiliation. However, the weight of this factor is diminished by the fact that the
14 primary authority to select and remove Upshur County’s decision-makers remains with
15 the voters and Upshur County itself.

16 *D. Common Membership*

⁵⁵ W. Va. Code § 3-1-9 (c) & (f). AOR006, 8.

⁵⁶ Advisory Opinion 1978-09 (Republican State Central Committee of Iowa), at 3-4 n.3. Since the issuance of Advisory Opinion 1978-09, the regulations have been revised to include additional circumstantial factors. *Compare* 11 C.F.R. § 100.5(g)(4)(ii)(A)-(J) (2019) *with* 11 C.F.R. § 100.14(c)(2)(ii) (1976). However, the circumstantial factors in force at the time of the 1978 opinion included “[p]rovisions of bylaws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity,” and “[t]he authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity.” 11 C.F.R. § 100.14 (C)(2)(ii)(B)-(C)(1976). Thus, the Commission’s analysis in Advisory Opinion 1978-09 remains relevant to the analysis of factors (B) and (C) in this matter.

1 This factor considers whether the committees have a common or overlapping
2 membership that indicates a formal or ongoing relationship between the committees.⁵⁷
3 The Commission has explained that common membership may constitute evidence of a
4 “formal or ongoing relationship” where two entities are made up of “largely the same
5 people in a manner suggesting an organized control over both groups.”⁵⁸

6 Here, three members of Upshur County are also members of the State Party’s
7 Executive Committee, which has a total membership exceeding one hundred members.⁵⁹
8 Upshur County states that there is no other overlap between the membership of Upshur
9 County and the State Party.⁶⁰ Thus, the limited overlapping membership between the
10 parties does not suggest organized control over both groups. Accordingly, this factor
11 weighs against affiliation.

12 *E. Common Officers or Employees*

13 This factor concerns whether the committees have common or overlapping
14 officers or employees, indicating a formal or ongoing relationship between the

⁵⁷ 11 C.F.R §§ 100.5(g)(4)(ii)(D), 110.3(a)(3)(ii)(D).

⁵⁸ Advisory Opinion 2004-41 (CUNA Mutual) at 5; Advisory Opinion 2007-13 (American Nurses) at 9; Advisory Opinion 2017-01 (American Urological Association) at 8; Advisory Opinion 2017-03 (American Association of Clinical Urologists and UROPAC) at 7-8.

⁵⁹ AOR006.

⁶⁰ AOR005.

1 committees.⁶¹ Upshur County states that it has no overlapping officers or employees
2 with the State Party.⁶² Accordingly, this factor weighs against affiliation.

3 *F. Former Officers or Employees*

4 This factor examines whether either committee has any members, officers, or
5 employees who previously were members, officers, or employees of the other committee,
6 indicating a formal or ongoing relationship or the creation of a successor entity.⁶³

7 Upshur County states that neither committee has members, officers, or employees who
8 were previously members, officers, or employees of the other committee.⁶⁴ Accordingly,
9 this factor weighs against affiliation.

10 *G. Providing the Provision of Funds or Goods*

11 This factor considers whether one committee provides funds or goods in a
12 significant amount or on an ongoing basis to the other committee but not including the
13 transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11
14 C.F.R. § 102.17.⁶⁵ Upshur County asserts that neither committee has provided funds or
15 goods to the other committee.⁶⁶ Accordingly, this factor weighs against affiliation.

16 *H. Arranging the Provision of Funds or Goods*

⁶¹ 11 C.F.R §§ 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E).

⁶² ARO005.

⁶³ 11 C.F.R §§ 100.5(g)(4)(ii)(F), 110.3(a)(3)(ii)(F).

⁶⁴ AOR005.

⁶⁵ 11 C.F.R §§ 100.5(g)(4)(ii)(G), 110.3(a)(3)(ii)(G).

⁶⁶ AOR005.

1 This factor considers whether a committee causes or arranges for funds in a
2 significant amount or on an ongoing basis to be provided to another committee, but not
3 including the transfer to a committee of its allocated share of proceeds jointly raised
4 pursuant to 11 C.F.R. §102.17.⁶⁷ Upshur County states that neither committee has
5 arranged for funds or goods to be provided to the other committee.⁶⁸ Accordingly, this
6 factor weighs against affiliation.

7 *I. Formation*

8 This factor considers whether a committee or its agent had an active or significant
9 role in the formation of the other committee.⁶⁹ Upshur County is a county executive
10 committee that was created and organized by state statute.⁷⁰ Upshur County asserts that
11 the State Party had no role in its creation and played no role in the establishment of its
12 federal account.⁷¹ Likewise, Upshur County had no role in the formation of the State
13 Party.⁷² Accordingly, this factor weighs against affiliation.

14 *J. Contribution Similarities*

⁶⁷ 11 C.F.R. §§ 100.5(g)(4)(ii)(H), 110.3(a)(3)(ii)(H).

⁶⁸ AOR005.

⁶⁹ 11 C.F.R. §§ 100.5(g)(4)(ii)(I), 110.3(a)(3)(ii)(I).

⁷⁰ AOR003; W. Va. Code § 3-1-9 (c)-(h).

⁷¹ AOR005.

⁷² *Id.*

1 This factor concerns whether the committees have similar patterns of
2 contributions or contributors that indicate a formal or ongoing relationship between the
3 committees.⁷³

4 Upshur County’s federal account has filed one disclosure report, which does not
5 identify any contributions.⁷⁴ Upshur County asserts that it does not have a similar pattern
6 of contributions with the State Party and that decisions regarding federal contributions are
7 “decided by a vote of the members of Upshur County at a formal meeting without
8 cooperation, consultation, suggestion, or direction from the state party.”⁷⁵ Accordingly,
9 the available facts indicate that the committees do not have a similar pattern of
10 contributions.

11 Upshur County and the State Party have both received transfers from the joint
12 fundraising committee “Team Morrissey.”⁷⁶ “Team Morrissey” was previously a joint
13 fundraising representative of the State Party.⁷⁷ However, it appears to have discontinued
14 its joint fundraising relationship with the State Party before entering into a joint

⁷³ 11 C.F.R. §§ 100.5(g)(4)(ii)(J), 110.3(a)(3)(ii)(J).

⁷⁴ Upshur County Republican Executive Committee, 2023 Mid-Year Report, FEC Form 3X (July 31, 2023).

⁷⁵ AOR005.

⁷⁶ Upshur County Republican Executive Committee, 2023 Mid-Year Report, FEC Form 3X (July 31, 2023); West Virginia Republican Party, Inc., 2023 May Monthly Report, FEC Form 3X (May 19, 2023); West Virginia Republican Party, Inc. 2023 February Monthly Report, FEC Form 3X (Feb. 17, 2023).

⁷⁷ Team Morrissey, Amended Statement of Organization, FEC Form 1, (Mar. 9, 2023).

1 fundraising relationship with Upshur County.⁷⁸ Thus, although the committees share a
2 common contributor, the circumstances do not suggest a formal or ongoing relationship
3 between the committees. Accordingly, this factor weighs against affiliation.

4 *Context of the Overall Relationship Between the Entities*

5 In considering the foregoing circumstantial factors, the Commission examines
6 the “context of the overall relationship” between the entities to determine whether they
7 are properly considered affiliated.⁷⁹

8 Here, only two factors weigh in favor of affiliation. First, the State Party’s
9 bylaws allow it to participate in the governance of Upshur County under certain limited
10 circumstances. However, the bylaws also recognize that county executive committees
11 have control over their own funds.⁸⁰ And Upshur County’s day-to-day governance and
12 control of funds remain within its own purview.

13 Second, the State Party bylaws provide that, under certain limited circumstances,
14 the State Party can appoint or remove individual Upshur County decision-makers.
15 However, the primary authority to select and remove Upshur County’s decision-makers
16 remains with the voters and Upshur County itself.

⁷⁸ Compare Team Morrissey, Amended Statement of Organization, FEC Form 1, (Mar. 9, 2023) with Team Morrissey, Amended Statement of Organization, FEC Form 1 (Apr. 28, 2023); see also Upshur County Republican Executive Committee, 2023 Mid-Year Report, FEC Form 3X (July 31, 2023).

⁷⁹ See 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii).

⁸⁰ State Bylaws, Article VX.

1 Importantly, Upshur County characterizes the above-referenced bylaw provisions
2 as “hypothetical,” and asserts that the State Party is not in fact exercising control over its
3 affairs.⁸¹ Upshur County’s request seeks to establish that it is independent of the State
4 Party, even though Upshur County understands that the State Party opposes its
5 “independence.”⁸² Thus, Upshur County has demonstrated an intention to pursue its own
6 objectives even when they do not align with the objectives of the State Party.⁸³

7 Accordingly, on balance, after considering the circumstantial factors in the
8 context of the overall relationship between the entities involved, the Commission
9 concludes that Upshur County and the State Party are not affiliated for the purposes of
10 the Act’s contribution limits.

11 This response constitutes an advisory opinion concerning the application of the
12 Act and Commission regulations to the specific transaction or activity set forth in your
13 request.⁸⁴ The Commission emphasizes that, if there is a change in any of the facts or
14 assumptions presented, and such facts or assumptions are material to a conclusion
15 presented in this advisory opinion, the requestor may not rely on that conclusion as
16 support for its proposed activity. Any person involved in any specific transaction or

⁸¹ AOR004-6. The Commission notes that if the facts as presented in the advisory opinion request change, and the State Party in fact exerts control over Upshur County’s affairs, the conclusion reached in this Opinion would no longer apply.

⁸² AOR007.

⁸³ See Advisory Opinion 2017-03 (American Association of Clinical Urologists/UROPAC) at 14 (noting that one entity’s request for disaffiliation despite opposition from the other entity demonstrated an intention to pursue its own policy objectives, which was relevant to the evaluation of the overall relationship between entities).

⁸⁴ See 52 U.S.C. § 30108.

1 activity that is indistinguishable in all its material aspects from the transaction or activity
2 with respect to which this advisory opinion is rendered may rely on this advisory
3 opinion.⁸⁵ Please note that the analysis or conclusions in this advisory opinion may be
4 affected by subsequent developments in the law including, but not limited to, statutes,
5 regulations, advisory opinions, and case law. Any advisory opinions cited herein are
6 available on the Commission's website.

7 On behalf of the Commission,

8

9

10

Dara Lindenbaum,

11

Chair

⁸⁵

See id. § 30108(c)(1)(B).