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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

The No Labels Party of Arizona, an
Arizona political party,

Plaintiff,

vs.

Adrian Fontes, in his official capacity as
the Secretary of State of Arizona,

Defendants.

No.

**MOTION FOR PRELIMINARY
INJUNCTION AND ORDER TO
SHOW CAUSE**

(Hearing Requested)

Plaintiff The No Labels Party of Arizona (“Plaintiff” or “No Labels Arizona”) hereby moves for a preliminary injunction against Defendant Adrian Fontes, in his official capacity as the Secretary of State of Arizona (the “Secretary”). No Labels Arizona has lodged with this motion a proposed Order to Show Cause and proposed form of preliminary injunction.

I. INTRODUCTION

Secretary Fontes has determined that No Labels Arizona must nominate candidates for Corporation Commissioner and U.S. Senator in Arizona, even though the party has unequivocally disavowed any desire to do so. No Labels Arizona has chosen not to nominate candidates for any office other than President and Vice President. Forcing No Labels Arizona to participate in electoral races against its will violates both Arizona law

1 and the U.S. Constitution.

2 Under Arizona law, a party must nominate its non-presidential candidates in a
3 primary election, but a party’s participation is required if—*and only if*—the party intends
4 to make nominations for those offices in the ensuing general election and desires to have
5 the names of its candidates for those offices printed on the general election ballot. The
6 U.S. Constitution also guarantees fundamental freedoms of speech and association that
7 preserve a party’s organizational autonomy over its entirely private and internal decision
8 of whether to participate in an election for a public office.

9 Exercising its statutory and constitutional rights, No Labels Arizona determined
10 and set forth in its Constitution and Bylaws that its sole objective in Arizona is to
11 nominate a consensus candidate for President and Vice President. No Labels Arizona
12 does not want to nominate candidates for Corporation Commissioner or U.S. Senator (or,
13 for that matter, for congressional, state, judicial, county, or precinct office). Forcing No
14 Labels Arizona to do so would not only violate Arizona state law, it also would infringe
15 on the organization’s constitutionally guaranteed rights. A preliminary injunction is
16 necessary because No Labels Arizona is likely to succeed on the merits, it would suffer
17 irreparable harm if the Secretary were not enjoined, the balance of equities falls heavily
18 in No Labels Arizona’s favor, and the public interest demands solicitude for statutory and
19 constitutional rights.

20 **II. BACKGROUND**

21 **A. No Labels Arizona’s goals and the boundaries of its association.**

22 No Labels Arizona’s purpose is the potential nomination of candidates for
23 President and Vice President for the 2024 General Election. *See* Ex. 1, Decl. of Gail
24 Koshland Wachtel (“Wachtel Decl.”) ¶¶ 4–5. It envisions the potential nomination as
25 being a unity ticket with bipartisan-oriented candidates fulfilling that role. *Id.* ¶ 4.

26 Consistent with this objective, No Labels Arizona has decided that it will not
27 nominate candidates for any other state or federal office to appear on the 2024 general
28 election ballot. *Id.* ¶ 5. The party’s exclusive focus on the potential nomination of

1 candidates for President and Vice President is vital, given the public’s limited attention
2 span and the organization’s finite time and resources available prior to the 2024 General
3 Election. *Id.* ¶ 7. The distraction, message-dilution, and division that would accompany
4 an effort to participate in any down-ballot elections could compromise No Labels
5 Arizona’s ability to achieve its goal of potentially nominating a unity ticket for President
6 and Vice President. *Id.*

7 No Labels Arizona’s Constitution and Bylaws set forth this focused mission. *Id.*
8 ¶¶ 4–6, Ex. A. Under these governing documents, No Labels Arizona is to “obtain ballot
9 access for candidates nominated by No Labels [Arizona] for the federal offices of
10 President and Vice President,” but it expressly “shall not nominate” a “candidate for a
11 state, county, municipal, school, or district office or position.” *Id.* ¶ 6, Ex. A. No Labels
12 Arizona has deliberately structured itself this way because it has determined this is the
13 best way to pursue its associational goals. *Id.* ¶ 7.

14 **B. Secretary Fontes forces No Labels Arizona to nominate candidates and**
15 **participate in elections for Corporation Commissioner and U.S. Senator.**

16 Recently, two individuals filed statements of interest to run as nominees for
17 Corporation Commissioner and U.S. Senator, holding themselves out as No Labels
18 Arizona candidates. *See* Ex. 2. By filing these statements of interest, the individuals
19 apparently intend to collect signatures and submit petitions to run in the August 1, 2024,
20 primary for these offices, and then appear as “No Labels” nominees on the November
21 2024 general election ballot. *Id.* At least one of these individuals has publicly stated that
22 the “goal is to torture No Labels.” Reid J. Epstein and Lisa Lerer, *Fearing Third-Party*
23 *Spoilers vs. Trump, Biden Allies Try to Squash Them*, N.Y. Times, Oct. 8, 2023,
24 [https://www.nytimes.com/2023/10/08/us/politics/biden-trump-third-parties-no](https://www.nytimes.com/2023/10/08/us/politics/biden-trump-third-parties-no-labels.html)
25 [labels.html](https://www.nytimes.com/2023/10/08/us/politics/biden-trump-third-parties-no-labels.html).

26 But No Labels Arizona does not object to the Secretary’s acceptance of these
27 individuals’ statements of interest because they apparently intend to harm No Labels
28 Arizona. No Labels Arizona would object even if these individuals had earnest motives

1 and were ideal candidates. Indeed, No Labels Arizona would object if the Arizona
2 equivalent of Mother Teresa were to file a statement of interest for Corporation
3 Commissioner or U.S. Senator. Consistent with its core mission and structure, No Labels
4 Arizona simply does not wish to nominate *anyone* for Corporation Commissioner or U.S.
5 Senator. Wachtel Decl. ¶¶ 4–7, Ex. A. The only race in which No Labels Arizona may
6 potentially participate and nominate candidates is the election for President and Vice
7 President, should it nominate individuals for those offices. *Id.* Forcing No Labels
8 Arizona to participate in primary and general elections for offices in which it has no
9 organizational interest would undermine the party’s core objective and its means for
10 pursuing the same. *Id.* ¶ 7.

11 No Labels Arizona has repeatedly informed the Secretary of its intention to
12 nominate only candidates for President and Vice President. *Id.* ¶¶ 8–10, Ex. B, Ex. C,
13 Ex. D. A June 2, 2023 letter to the Secretary’s counsel, for example, explained that as of
14 that date “the No Labels Party will nominate a Presidential ticket ‘as provided in § 16-
15 344,’ but it does *not* desire to have the names of any other candidates printed on the
16 official ballot at the 2024 general election and will therefore not hold a primary election
17 for any office.” *Id.* ¶ 8, Ex. B. No Labels Arizona’s Chair sent another letter to the
18 Secretary on August 11, 2023 opting out of the State’s 2024 Presidential Preference
19 Primary and informing the Secretary again that “the No Labels Party will nominate
20 candidates only for the offices of President and Vice President, and does not desire to
21 have the names of candidates for any other office printed on the official general-election
22 ballot at the 2024 general election.” *Id.* ¶ 9, Ex. C.

23 After learning of the statements of interest filed by the two individuals seeking to
24 run as No Labels Arizona candidates for Corporation Commissioner and U.S. Senator, on
25 August 14, 2023, No Labels Arizona again informed the Secretary by letter that A.R.S.
26 § 16-301(A) and the U.S. Constitution require his office to reject the statements of
27 interest. *Id.* ¶ 10, Ex. D. The letter emphasized that Arizona law permits No Labels
28 Arizona to limit the party’s participation to just those primary and general elections for

1 the public offices of its choice. *Id.* The letter also cautioned the Secretary that forcing
2 No Labels Arizona to participate in an election against its will would be unconstitutional.
3 *Id.*

4 Secretary Fontes responded on September 22, 2023, by letter from his Elections
5 Director that any candidate of a party will be permitted to participate in Arizona’s primary
6 election. *Id.* ¶ 11, Ex. E. The response letter added that the “candidate who receives the
7 highest number of votes in the Primary Election will be the political party nominee and
8 appear on the General Election ballot.” *Id.* Ignoring the authorities cited in No Labels
9 Arizona’s letter, including A.R.S. § 16-301(A) and the First and Fourteenth Amendments,
10 the response letter therefore suggested that the candidates had their own right to appear
11 on a ballot as a political party’s candidate or nominee that superseded No Labels
12 Arizona’s rights. *Id.*

13 **III. LEGAL STANDARD**

14 A plaintiff seeking a preliminary injunction must show: “[1] that he is likely to
15 succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of
16 preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an
17 injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20
18 (2008). “A preliminary injunction may also be appropriate if a movant raises ‘serious
19 questions going to the merits’ and the ‘balance of hardships . . . tips sharply towards’ it,
20 as long as the second and third *Winter* factors are satisfied.” *Disney Enters., Inc. v.*
21 *VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

22 **IV. ARGUMENT**

23 **A. No Labels Arizona is likely to succeed on the merits.**

24 **1. Count One: Violation of A.R.S. § 16-301(A).**

25 Arizona law specifies when a candidate’s name should be included on a primary
26 election ballot:

27 At a primary election, each political party entitled and *intending* to make
28 nominations for the ensuing general or special election, *if it desires* to have

1 the names of its candidates printed on the official ballot at that general or
2 special election, shall nominate its candidates for all elective, senatorial,
3 congressional, state, judicial, county and precinct offices to be filled at such
election except as provided in § 16-344.¹

4 A.R.S. § 16-301(A) (emphases added).

5 “[I]f the plain meaning of [a] statute is unambiguous, that meaning is controlling.”
6 *Close v. Thomas*, 653 F.3d 970, 974 (9th Cir. 2011) (citation omitted); *see also McMurray*
7 *v. Dream Catcher USA, Inc.*, 220 Ariz. 71, 75 ¶ 12 (App. 2009) (“clear and unequivocal”
8 text of statute is controlling).

9 A.R.S. § 16-301(A) is plain and unambiguous. It twice makes clear that just
10 because a party is *entitled* to participate in a primary election for a particular public office
11 does not mean it *must* do so. The party must “intend[.]” to make a nomination for that
12 public office and “it”—the political party—must “desire[.]” to have the name of the
13 party’s nominee for such office appear on the general election ballot. The word
14 “intending” and the phrase “if it desires” have clear meanings. The Secretary would
15 render those words meaningless surplusage. But Arizona statutes are presumed to avoid
16 “mere surplusage, and instead give meaning to each word, phrase, clause, and sentence .
17 . . so that no part of the statute will be void, inert, redundant, or trivial.” *Ariz. State Univ.*
18 *Bd. of Regents v. Ariz. State Ret. Sys.*, 242 Ariz. 387, 389 ¶ 7 (App. 2017) (cleaned up).
19 Giving meaning to those words, § 16-301(A) guarantees a political party the right to
20 decide whether to participate in the primary and general election for a public office. A
21 political party that decides not to nominate a candidate through a primary election in a
22 race covered by that statute must live with the consequence that “no candidate for that
23 office for that party may appear on the general or special election ballot.” A.R.S. § 16-
24 302. Arizona law thus does not mandate a party’s participation in the election.

25 Even if the statute were susceptible to a different construction—one that mandated
26

27 ¹ The cross-referenced statute, A.R.S. § 16-344, does not apply here because the
28 offices at issue do not involve the office of presidential elector, which is the office that is
addressed in § 16-344.

1 a political party’s participation in an election against the party’s wishes—the court should
2 adopt the statutory construction that would not create a constitutional violation. *See*
3 *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S.
4 568, 575 (1988) (“[T]he elementary rule is that every reasonable construction must be
5 resorted to, in order to save a statute from unconstitutionality” (citation omitted)). As
6 discussed in the following section, construing Arizona statutes to mandate No Labels
7 Arizona’s participation in elections against its will would violate No Labels Arizona’s
8 First and Fourteenth Amendment rights. The Court should avoid that statutory
9 construction and, instead, construe A.R.S. § 16-301, consistent with its plain meaning, to
10 give No Labels Arizona the right to choose the elections in which it will participate.

11 Exercising its statutory right, No Labels Arizona repeatedly informed Secretary
12 Fontes that it neither intends nor desires to nominate candidates for any congressional,
13 state, judicial, county, or precinct office, including U.S. Senator and Corporation
14 Commissioner, to appear on the 2024 general election ballot. Wachtel Decl. ¶¶ 8-10, Ex.
15 B, Ex. C, Ex. D. The Secretary seeks to override No Labels Arizona’s decision. Through
16 his Elections Director, the Secretary has decided that any registered member of a party
17 will be permitted to run as the party’s candidate in a primary election for any state or
18 federal office, regardless of the party’s expressed intention not to participate in that
19 election. *Id.* ¶ 11, Ex. E. Further, the Secretary has determined that the “candidate who
20 receives the highest number of votes in the Primary Election will be the political party
21 nominee and appear on the General Election ballot.” *Id.*

22 The Secretary’s actions violate A.R.S. § 16-301(A). His decision to compel No
23 Labels Arizona to nominate a candidate in an election in which the party expressly desires
24 not to participate contravenes Arizona law. Thus, No Labels Arizona is likely to succeed
25 on its claims for declaratory and injunctive relief. *See* 28 U.S.C. § 2201 (allowing the
26 Court to provide No Labels Arizona with a declaration of its rights); A.R.S. § 12-1832
27 (same); *Melendres v. Arpaio*, 784 F.3d 1254, 1264 (9th Cir. 2015) (noting the district
28 court has discretion to enter an injunction). Again, granting relief to No Labels Arizona

1 based on this statute allows the Court to avoid addressing the constitutional issues set
2 forth in Count II. *See United States v. Kaluna*, 192 F.3d 1188, 1197 (9th Cir. 1999) (en
3 banc) (“Prior to reaching any constitutional questions, federal courts must consider
4 nonconstitutional grounds for decision. This is a fundamental rule of judicial restraint.”
5 (quoting *Jean v. Nelson*, 472 U.S. 846, 854 (1985))).

6 **2. Count Two: First and Fourteenth Amendment via Section 1983.**

7 Although the Court can, and should, decide this case based solely on Arizona law,
8 if the Court concludes that the Arizona statute mandates or gives the Secretary discretion
9 to require that a political party participate in elections against its wishes, then it should
10 rule that the Secretary’s actions here violate No Labels Arizona’s constitutional rights.
11 No Labels Arizona is entitled to declaratory and injunctive relief under 42 U.S.C. § 1983
12 because the Secretary has (1) acted under color of state law and (2) deprived No Labels
13 Arizona of rights secured by the Constitution. *Gibson v. United States*, 781 F.2d 1334,
14 1338 (9th Cir. 1986).

15 The Secretary indisputably acted under color of state law. The Secretary is the
16 State of Arizona’s chief election officer, responsible for the administration and
17 implementation of election laws in Arizona. Pursuant to this authority, the Secretary,
18 through his Elections Director, overrode No Labels Arizona’s decision not to nominate
19 candidates and participate in elections for offices other than President and Vice President.
20 Wachtel Decl. ¶ 11, Ex. E. The Secretary, in his official capacity and through the conduct
21 of his employees, officers, agents, and servants, acted under color of state law at all times
22 relevant to this action.

23 As for the substantive constitutional violation, the Supreme Court has construed
24 the First Amendment as protecting a right to associate with others for the purpose of
25 exercising the freedom of speech expressly safeguarded by that amendment. *See Roberts*
26 *v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). “[A] corollary of the right to associate is the
27 right not to associate.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000). This
28 First Amendment right “is protected by the Fourteenth Amendment from infringement by

any State.” *Democratic Party of U.S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 121 (1981).

Perhaps nowhere is this freedom of association protection more critical than with political parties and their process for selecting nominees, which sit “at the very heart of the freedom of assembly and association.” *Cousins v. Wigoda*, 419 U.S. 477, 491 (1975) (Rehnquist, J. concurring in the result). A party’s “determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.” *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224 (1986). “Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association’s being.” *Jones*, 530 U.S. at 574 (citation omitted).

Courts have repeatedly and “vigorously affirm[ed] the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party ‘select[s] a standard bearer who best represents the party’s ideologies and preferences.’” *Jones*, 530 U.S. at 575 (quoting *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989)). A state may not substitute its own judgment for that of the party in determining “the structure which best allows it to pursue its political goals.” *Tashjian*, 479 U.S. at 224. This “special protection” allows the party to “choose a candidate-selection process that will in its view produce the nominee who best represents its political platform.” *N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 202 (2008). Indeed, political parties are largely “autonomous in their extension of the right to represent their party.” *Duke v. Cleland*, 783 F. Supp. 600, 602 (N.D. Ga.), *aff’d*, 954 F.2d 1526 (11th Cir. 1992).

A party’s rights in this regard can be “circumscribed” *only* if it chooses to avail itself of “the right to have [its] candidates appear with party endorsement on the general-election ballot.” *Lopez Torres*, 552 U.S. at 203. An organization has a core, fundamental right to structure its party and choose for itself the public offices for which it will put forward a nominee to appear on the general election ballot and thereby accept or reject “circumscription” from the state. This is how A.R.S. §16-301(A) operates.

1 Much of the jurisprudence in this area involves weighing the extent of a political
2 party's associational burden against a state's regulatory interest. But the courts evaluating
3 the constitutionality of a blanket primary (in *Jones*), a mandatory closed primary (in
4 *Tashjian*), and other similar election features examined political parties that had opted to
5 have their candidates appear with party endorsement on general election ballots. This
6 case is different. Here, the State is trying to compel a party to participate in an election
7 by forcing it to have candidates appear with party endorsement on a general election
8 ballot. This effort is even more invasive than regulations that pose "party raiding" or
9 similar concerns, because it would erase the party's autonomy altogether. A party's
10 decision to accept or reject state "circumscription" and its attendant consequences is, by
11 its nature, entirely private and internal to the party and cannot be overridden.

12 To be sure, if No Labels Arizona had wanted its candidates to appear with party
13 endorsement on the general election ballot for any down-ballot offices, the nominees for
14 those offices would have been selected in the state-run primary election and any one of
15 its members could have filed a statement of interest to become a candidate in that primary.
16 But that is not what happened. Instead, No Labels Arizona determined that its ballot line
17 in the 2024 general election may be used *only* for the offices of President and Vice
18 President. Wachtel Decl. ¶¶ 4–7. No Labels Arizona's Constitution and Bylaws
19 explicitly prohibit it from participating in any other election. *Id.* ¶ 6, Ex. A. Forcing No
20 Labels Arizona to do so would violate its Constitution and Bylaws and substantially
21 undermine its goals. *Id.* ¶ 6–7, Ex. A. It would also violate the U.S. Constitution, because
22 a state "may not constitutionally substitute its own judgment for that of the Party" with
23 regards to a party's strategic choices. *La Folette*, 450 U.S. at 123–24.

24 The Secretary's actions appear premised on the notion that individual citizens have
25 a freestanding right to appear on a ballot as a party's candidate or nominee. Wachtel
26 Decl. Ex. E. They do not. Even a political party is not constitutionally "entitled to have
27 its nominee appear on the ballot as that party's candidate." *Timmons v. Twin Cities Area*
28 *New Party*, 520 U.S. 351, 359 (1997); *see also Wash. State Grange v. Wash. State*

1 *Republican Party*, 552 U.S. 442, 453 n.7 (2008) (“The First Amendment does not give
2 political parties a right to have their nominees designated as such on the ballot.”). It
3 follows that an individual candidate cannot have a constitutional right to appear on a
4 ballot as a party’s candidate or nominee, particularly when doing so would violate the
5 First Amendment rights of the party. As the Supreme Court explained in *Lopez Torres*,
6 any individual’s right to run as a candidate for public office does not include a
7 “constitutional right to have a ‘fair shot’ at winning the party’s nomination.” 552 U.S. at
8 205. Indeed, any individual is free to run as a candidate and compete in an election
9 without any party affiliation at all.

10 Overriding No Labels Arizona’s considered judgment and its constitutional
11 guarantees, Secretary Fontes would require No Labels Arizona to nominate candidates
12 for offices it has chosen to avoid. Wachtel Decl. ¶¶ 11–12, Ex. E. The Secretary’s actions
13 violate No Labels Arizona’s right to determine its boundaries and structure itself to best
14 achieve its goals. The Secretary may disagree with No Labels Arizona’s policy and goals,
15 but he may not substitute his judgment for that of the party. *La Follette*, 450 U.S. at 126
16 (reversing judgment where the state statute “would violate Party rules”).

17 Accordingly, No Labels Arizona is likely to succeed on its Section 1983 claim for
18 declaratory and injunctive relief against Secretary Fontes.

19 **B. No Labels Arizona is likely to suffer irreparable harm.**

20 “The loss of First Amendment freedoms, for even minimal periods of time,
21 unquestionably constitutes irreparable injury.” *Elrod v. Burn*, 427 U.S. 347, 373 (1976);
22 *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established
23 that the deprivation of constitutional rights ‘unquestionably constitutes irreparable
24 injury.’” (citation omitted)) (*Melendres I*). Thus, the constitutional injury to No Labels
25 Arizona cannot be remedied if nothing is done to enjoin the Secretary’s actions. “And
26 once the election occurs, there can be no do-over and no redress.” *League of Women*
27 *Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

1 **C. The equities tip strongly in favor of No Labels Arizona.**

2 “[C]ourts must balance the competing claims of injury and must consider the effect
3 on each party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at
4 24 (citation and internal quotation marks omitted).

5 The equities tip overwhelmingly in No Labels Arizona’s favor. In fact, there
6 appears to be no weight at all on the Secretary’s side of the fulcrum. In his letter, the
7 Secretary invoked the public’s right to vote. Wachtel Decl. Ex. E. But no one’s right to
8 vote would be affected by the issuance of an injunction here, just as no one’s right to vote
9 has been affected by No Labels Arizona’s decision to forgo participation in an election
10 for any office other than President and Vice President. Moreover, the individuals who
11 have sought to run on a non-existent No Labels Arizona ballot line are still free to run as
12 independents or in the primary of any party that has chosen to compete in the election for
13 that office. *See, e.g., Belluso v. Poythress*, 485 F. Supp. 904, 912 (N.D. Ga. 1980) (noting
14 the candidate could seek office “independently or as the candidate of [another] political
15 party”). The Secretary cannot override No Labels Arizona’s rights just because
16 individuals profess interest in using a No Labels Arizona ballot line. *Duke v. Massey*, 87
17 F.3d 1226, 1232–33 (11th Cir. 1996) (“Although Duke is correct in identifying his First
18 and Fourteenth Amendment interests, those interests do not trump the Republican Party’s
19 right to identify its membership based on political beliefs nor the state’s interests in
20 protecting the Republican Party’s right to define itself.”).

21 When considering the competing burdens on voters, political parties, and
22 candidates, courts have protected against state-compelled participation and association.
23 For example, courts have refused to allow a state’s election ballot to create an
24 unreciprocated association between a party and a candidate. *Jones*, 530 U.S. at 581–82
25 (“We can think of no heavier burden on a political party’s associational freedom” than
26 “forced association”). Courts have also rejected a candidate’s insistence that she be
27 allowed to compete for a party’s general election nomination via direct primary. *Lopez*
28 *Torres*, 552 U.S. at 202–04; *see also Belluso*, 485 F. Supp. at 912 (candidate has no right

1 to associate “with an unwilling partner, the Republican party in Georgia,” and “to the
2 degree that rights of association are implicated, we think these rights militate in favor of
3 leaving a party free to limit access to its own primary ballot.”); *Massey*, 87 F.3d at 1234
4 (“The Republican Party has a First Amendment right to freedom of association and an
5 attendant right to identify those who constitute the party based on political beliefs.”);
6 *Cleland*, 783 F. Supp. at 602 (“there is no right whatsoever to be included on the primary
7 ballot of a party which does not, itself, extend that right.”). Courts have likewise
8 recognized that a “minor” political party’s First Amendment rights are “severely
9 burden[ed]” when a state “forces” it to run “candidates for races [it] want[s] nothing to
10 do with.” *Libertarian Party of Ill. v. Scholz*, 872 F.3d 518, 524–25 (7th Cir. 2017).

11 In sum, the equities weigh heavily in favor of No Labels Arizona because there is
12 a substantial burden on No Labels Arizona’s rights and a minimal, if any, burden on the
13 rights of voters and candidates.

14 **D. An injunction protecting constitutional rights is in the public interest.**

15 “[I]t is always in the public interest to prevent the violation of a party’s
16 constitutional rights.” *Melendres I*, 695 F.3d at 1002 (citation omitted); *accord Christian*
17 *Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) (“The loss of First Amendment
18 freedoms is presumed to constitute an irreparable injury for which money damages are
19 not adequate, and injunctions protecting First Amendment freedoms are always in the
20 public interest.”). It is also “obvious” that compliance with a statute is in the public
21 interest. *Park Vill. Apartment Tenants Ass’n v. Mortimer Howard Tr.*, 636 F.3d 1150,
22 1160 (9th Cir. 2011). Because Secretary Fontes’ actions violate both A.R.S. § 16-301(A)
23 and the First and Fourteenth Amendments, an injunction enjoining the Secretary’s actions
24 is in the public interest.

1 **V. CONCLUSION**

2 For the foregoing reasons, the Court should order Secretary Fontes to show cause,
3 and grant this motion for a preliminary injunction.

4 DATED this 19th day of October, 2023.

5 OSBORN MALEDON, P.A.

6
7 By /s/ David B. Rosenbaum
8 David B. Rosenbaum
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15 Attorneys for Plaintiff
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EXHIBIT 1



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8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 The No Labels Party of Arizona, an
Arizona political party,

12 Plaintiff,

13 vs.

14 Adrian Fontes, in his official capacity as
15 the Secretary of State of Arizona,

16 Defendant.

No.

17
18 **DECLARATION OF GAIL**
19 **KOSHLAND WACHTEL**
20 **SUPPORTING PRELIMINARY**
21 **INJUNCTION MOTION**

22 I declare under the penalty of perjury that the foregoing is true and correct.

23 1. I, Gail Koshland Wachtel, am over the age of 18, have personal knowledge
24 of the facts stated in this declaration, and can competently testify to their truth.

25 2. I am the Chair of the No Labels of Party of Arizona ("No Labels Arizona"),
26 a recognized Arizona political party.

27 3. No Labels Arizona is a state-level affiliate of No Labels, Inc., which I
28 understand is a 501(c)(4) nonprofit headquartered in Washington, D.C.

4. I am informed that No Labels, Inc. was established in 2009, with the
objective of bridging the partisan divide in Washington by advancing commonsense
reforms and convening officeholders from both major parties. No Labels, Inc. has a

1 prominent 13-year record of working across the aisle to effect change in many public
2 policy areas. No Labels Arizona's purpose is the placement of yet-to-be-identified
3 nominees for President and Vice President on the 2024 general-election ballot in Arizona,
4 which is reflected in No Labels Arizona's adopted Constitution and Bylaws. No Labels
5 Arizona envisions the potential nomination as being a unity ticket with a bipartisan person
6 fulfilling each role on the ticket.

7 5. Consistent with its Constitution and Bylaws, No Labels Arizona has no
8 intent or desire to nominate candidates for any other office to appear on the 2024 general
9 election ballot, at the state or federal level. Instead, No Labels Arizona's sole focus is on
10 the potential nomination of candidates for President and Vice President.

11 6. Attached as Exhibit A is a true and correct copy of No Labels Arizona's
12 Constitution and Bylaws, which authorize No Labels Arizona to "obtain ballot access for
13 candidates nominated by No Labels for the federal offices of President and Vice
14 President." It provides that No Labels Arizona "shall not nominate" a "candidate for a
15 state, county, municipal, school, or district office or position." Ex. A at 5. No Labels
16 Arizona, as its Constitution and Bylaws state, will not use its ballot line for an election
17 for any offices other than President and Vice President.

18 7. No Labels Arizona has structured itself this way because it has determined
19 this is the best way to pursue its associational goals. The animating purpose of No Labels
20 Arizona is to ensure that Arizonans have a potential alternative in the 2024 general
21 election to the Presidential candidates who will be nominated by the major political
22 parties. I believe that this is the central reason individuals have associated with No Labels
23 Arizona to date. Any detour away from this mission threatens to fracture or repel the
24 broad coalition that No Labels Arizona must attract. And any diversion of time, resources,
25 and/or attention will jeopardize No Labels Arizona's ability to achieve its core
26 organization objective.

27 8. Attached as Exhibit B is a true and correct copy of a June 2, 2023 letter to
28 the General Counsel for the Arizona Secretary of State explaining that as of that date "the

1 No Labels Party will nominate a Presidential ticket 'as provided in § 16-344,' but it does
2 *not* desire to have the names of any other candidates printed on the official ballot at the
3 2024 general election and will therefore not hold a primary election for any office." Ex.
4 B at 4.

5 9. Attached as Exhibit C is a true and correct copy of a letter I sent to the
6 Arizona Secretary of State on August 11, 2023. In my letter I informed the Secretary
7 that No Labels Arizona will not participate in the state's 2024 Presidential Preference
8 Election. I reiterated that "the No Labels Party will nominate candidates only for the
9 offices of President and Vice President, and does not desire to have the names of
10 candidates for any other office printed on the official general-election ballot at the 2024
11 general election." Ex. C.

12 10. Attached as Exhibit D is a true and correct copy an August 14, 2023 letter
13 to the Arizona Secretary of State. The letter informed the Secretary again that No Labels
14 Arizona "does not intend to make nominations for any public office other than President
15 and Vice President in 2024, and it would violate both Arizona law and the United States
16 Constitution to force No Labels to participate in an election for any other public office
17 against its will." Ex. D at 1.

18 11. Attached as Exhibit E is a true and correct copy a September 22, 2023 letter
19 from the Secretary of State's Elections Director. The letter states that, contrary to No
20 Labels Arizona's stated intentions, candidates will be permitted to participate in
21 Arizona's primary election under a No Labels Arizona ballot line and that the "candidate
22 who receives the highest number of votes in the Primary Election will be the political
23 party nominee and appear on the General Election ballot." Ex. E.

24 12. I believe that the Secretary of State, through the Secretary of State's
25 Elections Director, is violating No Labels Arizona's constitutional and statutory rights to
26 make its own determinations regarding the offices it chooses to pursue.

27 ...

28 ...

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Dated October 17, 2023.

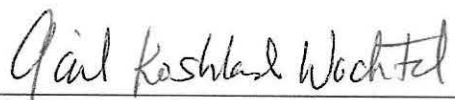

Gail Koshland Wachtel

EXHIBIT A

**UNANIMOUS WRITTEN CONSENT
OF THE STATE COMMITTEE
OF
THE NO LABELS PARTY - ARIZONA
(UNDER ARIZ. REV. STAT. § 16-821 ET SEQ.)
AUGUST 2023**

The undersigned, being all of the members of the State Committee of The No Labels Party (the “**Affiliate**”), a recognized political party that is the state-level affiliate of No Labels, Inc. in Arizona, hereby adopt the following recitals and resolutions by unanimous written consent (this “**Consent**”):

Adoption of Constitution and Bylaws

Resolved: that the initial members of the State Committee that have been appointed by No Labels, Inc. hereby accept and adopt the Constitution and Bylaws in the form attached hereto as **Exhibit A**, as the Constitution and Bylaws of the Affiliate.

Authority

Resolved: that each officer and member of the State Committee of the Affiliate is hereby authorized and directed to make such filings and applications to execute and deliver such documents and instruments and to do such acts and things as they deem necessary in order to obtain such authorizations and approvals as are necessary or desirable to implement the above-described authorizations and transactions.

This Consent may be signed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one instrument. This Consent shall be filed with the minutes of the proceedings of the State Committee.

[Signatures on next page.]

Each of the undersigned has executed this Consent as of the date set forth next to such person's name.

State Committee Members

Gail Koshland Wachtel
Gail Koshland Wachtel (Aug 11, 2023 09:07 PDT)

Name: Gail Koshland Wachtel (Chair)

Date: 08/11/2023

Joel Smyth
Joel Smyth (Aug 10, 2023 13:45 PDT)

Name: Joel Smyth (Vice Chair)

Date: 08/10/2023

Sentari Minor
Sentari Minor (Aug 11, 2023 09:25 PDT)

Name: Sentari Minor (Secretary/Treasurer)

Date: 08/11/2023

Exhibit A
CONSTITUTION AND BYLAWS

(attached)

THE NO LABELS PARTY – ARIZONA

CONSTITUTION AND BYLAWS

(UNDER ARIZ. REV. STAT. § 16-821 ET SEQ.)

1. Name and Governance.

The No Labels Party, a recognized political party in Arizona (hereinafter “NLAZ”), shall be governed by this document, the Constitution and Bylaws, which shall serve as NLAZ’s constitution, charter, bylaws, rules, and regulations for purposes of Arizona state election law.

2. Purpose, Authorized Activities, and Structure.

- a. Purpose. NLAZ is a state-level affiliate of No Labels, Inc. (“No Labels”) in Arizona that has secured recognition as a political party pursuant to Ariz. Rev. Stat. § 16-801.
- b. Authorized Activities. NLAZ is authorized by No Labels to conduct the following activities in Arizona: (i) select delegates to participate in the national nominating convention of No Labels; (ii) obtain ballot access for candidates nominated by No Labels for the federal offices of President and Vice President; (iii) designate eligible individuals for Presidential and Vice-Presidential Elector; (iv) raise and expend funds, as necessary, to carry out authorized activities; and (v) perform other tasks necessary or legally required to carry out authorized activities. NLAZ is not authorized and shall not nominate, support, or oppose any candidate for a state, county, municipal, school, or district office or position.
- c. Structure. NLAZ shall consist of its Membership and the State Committee, as described in the Constitution and Bylaws. After such time as NLAZ is declared by the Arizona Secretary of State to have qualified for continued statewide representation on the ballot pursuant to Ariz. Rev. Stat. § 16-804, NLAZ shall provide for the election of precinct committeemen and establish county committees in the various counties under Ariz. Rev. Stat. § 16-821 *et seq.* NLAZ chooses not to establish a district party committee for any legislative district.

3. Membership.

- a. Eligibility and Qualification. An individual is an NLAZ Member if they are: (i) a U.S. citizen who resides in Arizona; (ii) 18 years of age or older; and (iii) a recognized and current member in good standing of No Labels.
- b. Rights. All NLAZ Members are entitled to actively participate in NLAZ’s activities, as authorized and described in the Constitution and Bylaws.

4. State Committee.

- a. Powers and Duties. The State Committee (“Committee”) directs and administrates NLAZ authorized activities. The Committee also performs other tasks as described in the Constitution and Bylaws.
- b. Composition, Appointment, Qualifications, and Terms of Service.
 - i. The Committee consists of no fewer than three individuals, each of whom must be an NLAZ Member.
 - ii. The initial members of the Committee shall be appointed by No Labels. Each initial member of the Committee serves a term that lasts until the Committee member dies, resigns, becomes ineligible, or is removed by No Labels. If a vacancy occurs among the initial members of the Committee, the vacancy shall be filled by No Labels or by a majority of NLAZ Members at a Convention of Membership upon the written consent of No Labels.
 - iii. After such time as NLAZ is declared by the Arizona Secretary of State to have qualified for continued statewide representation on the ballot pursuant to Ariz. Rev. Stat. § 16-804, additional members of the Committee shall be chosen from among the several county committees at a county committee meeting pursuant to Ariz. Rev. Stat. § 16-825. If a vacancy occurs among these additional members of the Committee, that vacancy shall be filled as described in Ariz. Rev. Stat. § 16-825.01.
 - iv. Additionally, after such time as NLAZ is declared by the Arizona Secretary of State to have qualified for continued statewide representation on the ballot pursuant to Ariz. Rev. Stat. § 16-804, the Committee shall organize and convene to take up such business as the Committee sees fit to assign a State Executive Committee consisting of the Committee’s members, the national committeeman and committeewoman (if any), the county chairmen and vice chairmen from each county committee, and three members at large from each congressional district in the state.
- c. Officers.
 - i. The Committee shall elect from among its members a Chair, Vice Chair, Secretary, and Treasurer. No individual may hold more than one office, other than the offices of Secretary and Treasurer. Each officer shall serve a term that lasts until the officer dies, resigns, or is removed from such officer position by the procedure of a vote of no less than two-thirds of the Committee’s other members or by the procedure of a written notification from No Labels. The Committee shall notify the Arizona Secretary of State within fourteen (14) days of any change to NLAZ officer positions.
 - ii. The Chair shall serve as NLAZ’s chief executive officer, act as the liaison with the Secretary of State’s office with respect to all

NLAZ matters, authorize in writing any fundraising or spending by NLAZ, consider requests to use NLAZ's name or symbols, preside over all meetings or gatherings convened to conduct NLAZ business, and communicate or select a designee to communicate on behalf of NLAZ.

- iii. The Vice Chair shall perform such duties as delegated by the Committee.
 - iv. The Secretary shall issue all notices required under the Constitution and Bylaws and ensure that NLAZ records are available to all NLAZ Members, as appropriate. In the absence or disability of the Chair, the Secretary shall act as the liaison with the Secretary of State's office with respect to all NLAZ matters.
 - v. The Treasurer shall authorize in writing the raising of contributions to NLAZ, ensure the timely deposit of any contributions to NLAZ into NLAZ's designated bank depository account, oversee all audits of NLAZ's financial transactions, and authorize in writing the expenditure of NLAZ funds according to a budget set forth by the Committee. The Treasurer shall periodically report to the Committee on NLAZ's financial activity, including an accounting of all authorized fundraising efforts, deposits, and authorized expenditures. The Treasurer shall have custody of any funds and financial records of NLAZ, ensure NLAZ funds are maintained, disbursed, and reported properly in a lawful manner and perform any other duties required by Arizona law.
- d. Meetings. Meetings of the Committee shall be held no later than the fourth Saturday in January following a general election to elect NLAZ officers and for the transaction of other NLAZ business. Either the Committee's Chair or a majority of the Committee's members may call for a meeting at any other time. Notice of a meeting must be distributed to all members of the Committee at least ten (10) days prior to the meeting and provide the meeting's purpose, time, place (if any), and method to attend via telephone and/or videoconference. The Committee's members may participate in a meeting through use of telephone, videoconference, or similar communications equipment, so long as all members of the Committee participating in the meeting can hear one another. A quorum for the transaction of business at a meeting consists of a majority of the Committee's members. The Committee takes action at a meeting through an affirmative vote of the majority of the Committee's members who are present at a duly held meeting. All meetings of the Committee shall be conducted according to Robert's Rules of Order or other generally accepted parliamentary practices.
- e. Action Outside a Meeting. Any action that may be taken during a meeting of the Committee may be taken without such a meeting, if authorized in writing (including via email or other electronic method) by a majority of all members of the Committee.

5. Convention of Membership.

- a. Purpose. NLAZ may hold a Convention of its Members during each Presidential election year for the purpose of selecting delegates and alternate delegates to participate in the national nominating convention of No Labels. During the Convention, NLAZ Members may raise for discussion other matters related to NLAZ's authorized activities.
- b. Timing and Notice. The Committee shall set the time, date, and place of the Convention, timely notify NLAZ Members of the Convention, and timely publish public notice of the Convention on NLAZ's website and in other publications. The Committee may choose to facilitate NLAZ Members' participation and/or observation of the Convention through use of telephone, videoconference, or similar communications equipment.
- c. Convention Procedures. The Chair shall preside at the Convention. The Convention shall be conducted according to Robert's Rules of Order or other generally accepted parliamentary practices. A quorum for the transaction of business at the Convention consists of a majority of NLAZ's Members. Delegates and alternate delegates to the national nominating convention of No Labels may be selected by NLAZ's Members at the Convention according to the procedures set forth by No Labels for delegate and alternate delegate selection. The Chair shall promptly make public the names of delegates and alternate delegates, as well as a description of all other Convention business, on NLAZ's website and through other publications as necessary.

6. Nominees for President and Vice President.

The Presidential and Vice-Presidential nominees of NLAZ shall be the candidates nominated at the No Labels national nominating convention. The Committee shall ensure that only one candidate may be nominated for each office. The Committee shall timely undertake all necessary and legally required actions for the nominees of No Labels for the federal offices of President and Vice President to appear on the general election ballot in Arizona.

7. Selection of Presidential and Vice-Presidential Electors.

The Committee shall timely undertake all necessary and legally required actions to select, designate, and qualify eligible individuals to serve as Presidential and Vice-Presidential Electors. Presidential and Vice-Presidential Electors must sign the No Labels Conditions of Appointment or Nomination prior to formal selection, designation, or qualification. The Committee shall also designate, as necessary, alternates to serve as Electors in the event that an Elector dies, resigns, is legally disqualified or incapacitated, refuses to act,

fails to attend the Elector meeting, or fails to abide by the No Labels Conditions of Appointment or Nomination.

8. Adoption of Constitution and Bylaws; Amendments to Constitution and Bylaws.

The Constitution and Bylaws may be adopted by a majority of the Committee. The Constitution and Bylaws may be amended or repealed by a majority of the Committee or by a majority of NLAZ Members at a Convention of Membership, upon the written consent of No Labels. The Committee shall file an amended certificate of existence with the Arizona Secretary of State reflecting any amendments to the Constitution and Bylaws no later than fourteen (14) days after such amendments are adopted.

EXHIBIT B



David B. Rosenbaum
Direct: 602-640-9345
Office: 602-640-9000
drosenbaum@omlaw.com

2929 North Central Avenue
Suite 2000
Phoenix, Arizona 85012
omlaw.com

June 2, 2023

VIA ELECTRONIC MAIL

Ms. Amy Chan
General Counsel
Arizona Secretary of State
1700 W Washington St. – Floor 7
Phoenix, AZ 85007

Dear Ms. Chan:

As you know, No Labels, Inc. (“No Labels”) was the proponent of a recent successful petition to recognize a new political party in Arizona, known as the No Labels Party, that will nominate candidates for President and Vice President in the state. No Labels was informed that the Secretary might make an enforcement referral in the future due to its not having registered under Arizona’s state campaign finance law. After having heard this, we appreciated the opportunity last week to share additional information about this effort and explain our considered view that none of the activities undertaken to date fall within the scope of Arizona’s state campaign finance law. We also appreciated you accepting our offer to provide a written explanation of this position, which is the purpose of this letter.

No Labels has been clear from the outset that its ballot-access efforts across the country relate exclusively to the federal offices of President and Vice President and not to any state or local office. We understand from our conversation last week that you may have been unaware of this intent, so please consider this letter formal notice that: (1) No Labels’ activities in Arizona pertain only to the federal offices of President and Vice President; and (2) the No Labels Party will nominate candidates only for federal office and not for any state or local office in Arizona. For this and other reasons explained below, we submit that any activities undertaken to date do not trigger the registration and reporting obligations set forth under Arizona’s state campaign finance law.

I. No Labels Has Not Engaged in Activity Within the Scope of Arizona’s State Campaign Finance Law

Arizona law requires state-level registration and reporting from an entity that qualifies as a “political action committee” under both parts of a two-part test: (A) the “entity knowingly receives contributions or makes expenditures ... in connection with any election”; *and* (B) the

“entity is organized for the primary purpose of influencing the results of an election.”¹ No Labels does not meet either part of this two-part test.

A. No Labels Has Not “Knowingly Receive[d] Contributions or [Made] Expenditures ... in Connection with Any Election”

No Labels is not a “political action committee” under Arizona state law because it has not knowingly received any “contributions” or made any “expenditures” in connection with any “election.”² Arizona’s state campaign finance law makes plain that “election” refers only to “any candidate election ... for any office in this state *other than a federal office*.”³ And because “contribution” and “expenditure” are both defined in terms of being “for the purpose of influencing an election,” a receipt or disbursement is a “contribution” or “expenditure” only if it is made for the purpose of influencing the election of a candidate for an office *other than a federal office*. Activity that relates to a candidate’s election to a federal office cannot be considered a “contribution” or “expenditure” made “in connection with any election.”⁴

Even if this exception for activity related to a federal office were not so explicitly stated in Arizona statute, any potential application of state law would still be superseded and preempted by federal law “with respect to election to Federal office.”⁵ Congress intended this federal preemption to be sweeping in its scope, stating that it was enacted “to make certain that the Federal law is construed to *occupy the field* with respect to elections to Federal office and that the Federal law will be the *sole authority* under which such elections will be regulated.”⁶ Put differently, “the central aim of the clause is to provide a comprehensive, uniform Federal scheme that is the sole source of regulation of campaign financing . . . for election to Federal office.”⁷ Congress was “particularly emphatic”⁸ regarding the preemption of state campaign finance disclosure requirements, noting that federal reporting requirements would be “the only reporting

¹ Ariz. Rev. Stat. § 16-905(C).

² Ariz. Rev. Stat. § 16-905(C)(2).

³ Ariz. Rev. Stat. § 16-901(17) (emphasis added).

⁴ See, e.g., Adams v. Comm’n on App. Ct. Appointments, 254 P.3d 367, 373 (2011) (stating that “although Arizona law broadly requires campaign finance disclosures for candidates for public office, candidates for federal office are specifically excluded”). See also Ariz. Sec. of State, *Campaign Finance Filing Information* (2022) (noting that a PAC must register under state law only after “contributing to a state candidate committee (non-federal candidate) seeking state, legislative, or local office”), available at <https://azsos.gov/elections/campaign-finance/filing-information#pac>.

⁵ 52 U.S.C.A. § 30143.

⁶ H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974) (emphasis added). See also H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974) (stating the intent of conferees that all state laws related “to registration, reporting and disclosure requirements for Federal elections are preempted and superseded by Federal law immediately upon enactment of this legislation”).

⁷ Fed. Election Comm’n Adv. Op. 1988-21 at 2.

⁸ Fed. Election Comm’n Adv. Op. 1999-12 at 6 (“The Commission notes that, with respect to disclosure requirements, including the reporting of receipts and expenditures and, by implication, the registration of political committees, Congress was particularly emphatic.”).

requirements” with respect to federal elections.⁹ This broad form of federal preemption, known as “field preemption,” means that Congress meant for only federal law (and not state law) to regulate the raising and spending of money related to elections for federal office.¹⁰ Because No Labels’ ballot-access work relates only to the potential nomination of candidates for federal offices, its spending for that purpose can be potentially subject only to federal campaign finance laws.

Arizona’s express statutory exception and federal field preemption for activity related to federal offices are not mere technicalities. Millions of dollars are spent on candidate elections for federal offices (i.e. President, Vice President, U.S. Senate, U.S. House of Representatives) in Arizona each election cycle. To our knowledge, the Secretary’s office has never considered that activity to constitute “contributions” and/or “expenditures” made “in connection with any election,” subject to state disclaimer requirements, disclosure rules, and contributions limits. No Labels expects only to be treated by the Secretary like all other entities that engage exclusively in activity related to federal offices.

Last week, you raised the prospect that a rogue candidate for a down-ballot state or local office could appear on Arizona’s general-election ballot as a No Labels Party nominee against the Party’s wishes, despite the fact that the No Labels Party will nominate candidates only for President and Vice President. You suggested that the *potential* for such a future attempt to hijack the No Labels Party line for an unauthorized down-ballot office could mean that No Labels “knowingly receive[d] contributions or [made] expenditures ... in connection with any election” when it was the proponent of a petition for new party recognition. No Labels disagrees with this view for at least three reasons:

⁹ H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974).

¹⁰ See, e.g., Teperv. Miller, 82 F.3d 989, 993-994 (11th Cir. 1996) (finding a state-law campaign finance restriction was superseded due to the broad and express language in federal law). Consistent with congressional intent, the Federal Election Commission has underscored that federal law “supersede[s] and preempt[s] any provision of State law with respect to election to Federal office,” specifically stating in a rule that federal law preempts state law concerning the registration of political committees supporting federal candidates, the disclosure of federal receipts and expenditures, and the limitation of federal contributions and expenditures. 11 C.F.R. § 108.7(a)-(b). Additionally, the Commission has repeatedly concluded without exception in Advisory Opinions issued to specific parties that state-law disclosure requirements and contribution restrictions were preempted by federal law, where those parties focused exclusively on elections for federal office. See, e.g., Fed. Election Comm’n Adv. Op. 2012-10 (stating that federal law superseded state-level “push poll” disclosure requirements); Fed. Election Comm’n Adv. Op. 1999-12 (concluding that entity that solicited and expended funds related to federal elections was not subject to state registration and reporting requirements because the state-level requirements were superseded by federal campaign finance laws); Fed. Election Comm’n Adv. Op. 1995-41 at 2 (finding that federal law superseded state-law requirement to disclose polls and polling expenses, even when state regulator said that the reporting requirement applied to federal candidates); Fed. Election Comm’n Adv. Op. 1993-14 (“The imposition of Rhode Island registration and reporting requirements on a committee engaged in Federal activity only would be an encroachment upon the sole authority of the Act and regulations as to these areas. The Act thus preempts Rhode Island law, and the Federal Account needs to comply only with the Federal registration and reporting requirements.”). See also Fed. Election Comm’n Adv. Ops. 1989-25, 1986-27, 1978-54, 1978-50 (concluding that federal law supersedes and preempts state law with respect to various state-level reporting requirements for entities engaged only in federal-level activity). Fed. Election Comm’n Adv. Op. 2000-23 at 4 (concluding that “under the broad preemptive powers of the [Federal Election Campaign] Act, only Federal law could limit the ability of a State party committee to make contributions to Federal candidates”).

1. The No Labels Party has the right to choose the public offices for which it wants to put forward a nominee to appear on the general-election ballot. Arizona's state election law makes this plain: "At a primary election, each political party entitled and intending to make nominations for the ensuing general or special election, *if it desires to have the names of its candidates printed on the official ballot at that general or special election*, shall nominate its candidates for all elective, senatorial, congressional, state, judicial, county and precinct offices to be filled at such election except as provided in § 16-344."¹¹ The No Labels Party must hold a primary election if and only "if it desires to have the names of its candidates printed on the official ballot at [a] general or special election." As stated above, the No Labels Party will nominate a Presidential ticket "as provided in § 16-344," but it does *not* desire to have the names of any other candidates printed on the official ballot at the 2024 general election and will therefore not hold a primary election for any office. Thus, Arizona law prohibits the inclusion of a No Labels Party nominee for any down-ballot state or local office on the ballot. In this regard, Arizona law comports with the U.S. Constitution. The No Labels Party has a fundamental constitutional right to define its own association that it would actively and successfully protect. Courts have repeatedly and "vigorously affirm[ed] the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party 'select[s] a standard bearer who best represents the party's ideologies and preferences,'"¹² holding that a state may not substitute its own judgment for that of an organization in determining "the structure which best allows it to pursue its political goals."¹³ This "special protection" that allows an organization to "choose a candidate-selection process that will in its view produce the nominee who best represents its political platform" can be "circumscribed" only if the organization chooses to avail itself of "the right to have their candidates appear with party endorsement on the general-election ballot."¹⁴ At a fundamental level, an organization has a core right and ability to choose for itself the public offices for which it will put forward a nominee to appear on the general-election ballot and thereby accept or reject "circumscription" from the state. The No Labels Party's specially protected associational right to "choose a candidate-selection process"—and even its own private and internal decision *not* to choose a candidate or a candidate-selection process for down-ballot offices at all—cannot be overridden by the Secretary.¹⁵ Separate and apart

¹¹ Ariz. Rev. Stat. § 16-301(A) (emphasis added).

¹² California Democratic Party v. Jones, 530 U.S. 567, 575 (2000)

¹³ Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 224 (1986) ("The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.").

¹⁴ New York State Bd. of Elections v. Lopez Torres, 552 U.S. 196, 202-203 (2008).

¹⁵ Courts have actively protected against state-compelled participation and association, for example, by refusing to require that a state's election ballot create an unreciprocated association between a party and a candidate and by rejecting a candidate's appeal to mandate that she be allowed to compete for a party's general-election nomination via direct primary. See, e.g., New York State Bd. of Elections v. Lopez Torres, 552 U.S. 196, 202 (2008); California Democratic Party v. Jones, 530 U.S. 567, 582, 120 S. Ct. 2402, 2412, 147 L. Ed. 2d 502 (2000) ("We can think of no heavier burden on a political party's associational freedom" than "forced association"); Pac. Gas & Elec. Co. v. Pub.

from the plain language of Arizona election law, then, the No Labels Party clearly has a sufficient level of constitutionally protected associational autonomy to simply *decline to participate in an election* by opting not to have any down-ballot offices appear with party endorsement on the general-election ballot.¹⁶ Indeed, no court to date has required an organization, against its will and expressed associational interests, to provide nominations for public offices to appear with party endorsement on the general-election ballot. The No Labels Party gets to decide whether it wants to participate in an election.

2. Even if this rogue down-ballot candidate scenario could somehow occur in the future in contravention of state law and constitutional protections, an unrelated person's possible future action has nothing to do with whether No Labels itself has "knowingly receive[d] contributions or [made] expenditures ... in connection with any election." No Labels has, again, been clear that its ballot-access efforts relate exclusively to the federal offices of President and Vice President and not to any state or local office. The No Labels Party will nominate candidates only for federal office and would actively oppose any potential attempt by the Secretary to place a candidate on the general-election ballot for any down-ballot office. No Labels did not and does not intend to affect "any candidate election ... for any office in this state other than a federal office" and therefore cannot be said to have "knowingly received contributions or make[] expenditures ... in connection with any election" as the proponent of a new-party petition. Only No Labels can engage in activities that alter this intent. No Labels' intent cannot be changed and the organization cannot be subjected to Arizona state law by the prospective actions of an unrelated person.
3. Support of generic "party-building" is not a "contribution" or an "expenditure." To be a "contribution" or an "expenditure," a transaction must be for the purpose of influencing a "candidate election ... for any office in this state other than a federal

Utilities Comm'n of California, 475 U.S. 1, 9 (1986) ("Compelled access like that ordered in this case both penalizes the expression of particular points of view and forces speakers to alter their speech to conform with an agenda they do not set."); Timmons v. Twin Cities Area New Party, 520 U.S. 351, 360 (1997). *See also* Belluso v. Poythress, 485 F. Supp. 904, 912 (N.D. Ga. 1980) ("Belluso asserts no group's interest in advancing his candidacy. His claimed need to "associate" with an unwilling partner, the Republican party in Georgia, is not a first amendment right. Indeed, to the degree that rights of association are implicated, we think these rights militate in favor of leaving a party free to limit access to its own primary ballot."); Duke v. Cleland, 783 F. Supp. 600, 602 (N.D. Ga. 1992) ("Likewise, plaintiffs have failed to show the court that a first amendment right exists which guarantees access to a party's primary ballot in direct contravention of the party's stated desires."); Duke v. Massey, 87 F.3d 1226, 1234 (11th Cir. 1996) ("The Republican Party has a First Amendment right to freedom of association and an attendant right to identify those who constitute the party based on political beliefs.").

¹⁶ The U.S. Court of Appeals for the Seventh Circuit, in fact, had "little difficulty" invalidating a prior Illinois law that contained a so-called "full slate requirement," which stipulated that an organization must submit a full slate of candidates for public office in the state to qualify as a political party. The Seventh Circuit concluded that this state mandate "severely burden[ed] the First Amendment rights of minor parties" because the requirement forced new and minor parties to participate in "races they want[ed] nothing to do with." Libertarian Party of Illinois v. Scholz, 872 F.3d 518, 524 (7th Cir. 2017).

office.”¹⁷ Generic party-related activity without reference to a candidate is not a “contribution” or an “expenditure.” Arizona state law underscores that point with specific exemptions from the “contribution” and “expenditure” definitions for “payment[s] by any person to defray a political party’s operating expenses or party-building activities.”¹⁸ If payment for “party-building activities” of a recognized political party would not qualify as a “contribution” or “expenditure” per these exemptions, any No Labels payment related to a petition to qualify a new political party could certainly not do so when a new-party qualification effort is all the more removed from influencing a candidate election.

Because No Labels intends for its efforts to relate only to federal offices and has at most supported mere generic party-building work related to federal offices, the organization has not “knowingly receive[d] contributions or [made] expenditures ... in connection with any election.” No Labels is therefore not subject to Arizona’s state-level registration and reporting obligations.

B. No Labels Is Not “Organized for the Primary Purpose of Influencing the Results of an Election”

No Labels is not a “political action committee” under Arizona state law because it was not “organized for the primary purpose of influencing the result of an election.”¹⁹ Under Arizona’s state campaign finance law, an organization’s “primary purpose” is “influencing the result of an election” only if that is its “predominant purpose.”²⁰ A related provision stipulates that an entity that is tax-exempt under Section 501(a) of the Internal Revenue Code and in good standing with the Internal Revenue Service cannot in the ordinary course be compelled to register as a “political action committee,” report private information, or produce evidence regarding an alleged campaign finance violation.²¹

No Labels was established in 2010 to bridge the partisan divide in Washington by advancing commonsense reforms and convening officeholders from both major parties. The organization has a prominent 13-year record of working across the aisle to effect change across many public policy areas. No Labels was manifestly *not* organized “for the primary purpose of influencing the results of an election,” which again is defined as a “candidate election ... for any office in [Arizona] other than a federal office.”²² No Labels is not even organized for the primary purpose of influencing elections generally, since its status as a “social welfare organization” that is tax-exempt under Section 501(a) of the Internal Revenue Code precludes the organization from

¹⁷ Ariz. Rev. Stat. § 16-901(11), (17), (25).

¹⁸ Ariz. Rev. Stat. §§ 16-911(B)(5), 16-921(B)(3).

¹⁹ Ariz. Rev. Stat. § 16-905(C)(1).

²⁰ Ariz. Rev. Stat. § 16-901(43).

²¹ Ariz. Rev. Stat. § 16-905(E). *See also* Ariz. Rev. Stat. § 16-901(43)(a)-(d) (stating that an entity is “not organized for the primary purpose of influencing an election” *per se* if it is tax-exempt under Section 501(a) of the Internal Revenue Code and in good standing);

²² Ariz. Rev. Stat. § 16-901(17).

making electioneering its primary or predominant purpose.²³ No Labels is therefore not subject to Arizona's state-level registration and reporting obligations.

II. The No Labels Party Has Not Engaged in Any Activity to Date and Does Not Intend Receive Any "Contributions" or Make Any "Expenditures" Moving Forward

The No Labels Party has not filed a registration under Arizona's state campaign finance law because it has not raised or spent any funds to date. The No Labels Party has not yet, in fact, even established a bank account. In any event, the No Labels Party does not intend moving forward to receive any "contributions" or make any "expenditures" given that it will nominate candidates only for federal office and not for any state or local office in Arizona.

The No Labels Party is aware that Americans Elect Arizona, which is the most recent group to qualify as a political party in Arizona as a result of a similar ballot-access project in the state, decided to file at its option a state campaign finance registration out of an abundance of caution in 2011 and then submitted zero-activity reports until termination.²⁴ The No Labels Party could potentially take a similarly precautionary action, despite our view that it is not required, but it is not apparent that the Secretary (or any other official) would be an appropriate "filing officer"²⁵ for such a registration or that the registration would serve any purpose since it would immediately be eligible for termination.²⁶

III. Conclusion

Based on a fully considered and good-faith interpretation of the law, we believe that none of the activities undertaken by No Labels and the No Labels Party to date trigger the registration and reporting obligations set forth under Arizona's state campaign finance law. We appreciate the opportunity to share this position informally in writing. We understand from our earlier communication that the Secretary could make an enforcement referral if he ultimately disagrees with this position. We believe such an action would be unwarranted. If the Secretary, having reviewed this letter, is still considering taking such an action, we understand that the Secretary must present a written "reasoned decision explaining the basis for [his] determination" and provide No Labels and the No Labels Party a "reasonable opportunity to respond" more fully.²⁷ We would expect to avail ourselves of that "reasonable opportunity" should it become necessary.

²³ 26 U.S.C. § 501(c)(4)(A); 26 C.F.R. § 1.501(c)(4)-1(a)(2).

²⁴ Americans Elect Arizona Registration (2011), available at <https://seethemoney.az.gov/Reporting/Explore#JurisdictionId=0|Page=11|startYear=2002|endYear=2024|IsLessActive=false|ShowOfficeHolder=false|View=Detail|Name=3~201200225|TablePage=1|TableLength=10>.

²⁵ Ariz. Rev. Stat. § 16-928. The fact that Section 16-928 fails to identify a filing officer for federal elections underscores the inapplicability of Arizona campaign finance law to efforts related to elections for federal office.

²⁶ Ariz. Rev. Stat. § 16-934(B).

²⁷ Ariz. Rev. Stat. § 16-938(C); Election Procedures Manual at 270 (2019), available at https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf.

Ms. Amy Chan - Arizona Secretary of State

June 2, 2023

Page 8

Please contact either one of us if you wish to discuss this matter further.

Respectfully,

A handwritten signature in black ink, appearing to read "David B. Rosenbaum".

David B. Rosenbaum

Partner

Osborn Maledon, P.A.

A handwritten signature in blue ink, appearing to read "Matthew T. Sanderson".

Matthew T. Sanderson

Member

Caplin & Drysdale, Chartered

DBR/ale

cc: Craig Morgan, Sherman & Howard LLC

EXHIBIT C

August 11, 2023

VIA ELECTRONIC MAIL

The Honorable Adrian Fontes
Secretary of State
State of Arizona
1700 W Washington St. – Floor 7
Phoenix, AZ 85007

Re: The No Labels Party of Arizona

Dear Secretary Fontes:

This letter is to inform you that the No Labels Party, a recognized political party in Arizona, will not participate in the state's 2024 Presidential Preference Election.

Additionally, as you are already aware, the No Labels Party will nominate candidates only for the offices of President and Vice President, and does not desire to have the names of candidates for any other office printed on the official general-election ballot at the 2024 general election. *See* Ariz. Rev. Stat. § 16-301(A).

Finally, the No Labels Party asks that you please update the contact information listed on your website to:

Phone: (602) 688-9671

Email: ArizonaNoLabels@nolabels.org

Address: P.O. Box 64301
Desert Foothills
1700 E River Rd
Tucson, AZ 85718-9998

Sincerely,


[Gail Koshland Wachtel \(Aug 11, 2023 11:53 PDT\)](#)

Gail Koshland Wachtel
Arizona State Chair
The No Labels Party

Cc: Ms. Amy Chan, General Counsel, Arizona Secretary of State
Mr. Nicholas Connors, National Director of Ballot Access, No Labels

EXHIBIT D



David B. Rosenbaum
Direct: 602-640-9345
Office: 602-640-9000
drosenbaum@omlaw.com

2929 North Central Avenue
Suite 2000
Phoenix, Arizona 85012
omlaw.com

August 14, 2023

VIA ELECTRONIC MAIL

The Honorable Adrian Fontes
Secretary of State
1700 W Washington St.—Floor 7
Phoenix, AZ 85007

Re: Disclaimer of Statement of Interests for Unauthorized Public Offices

Dear Secretary Fontes:

We represent a recently recognized political party, the No Labels Party of Arizona (“No Labels”). It has come to our attention that certain persons have filed Statements of Interest to run for political offices in 2024 on a No Labels party line, specifically, as of this writing, Tyson Draper for United States Senator, and Richard Grayson, for Corporation Commissioner. These Statements of Interest are for public offices that are not authorized by No Labels. As you know, No Labels does not intend to make nominations for any public office other than President and Vice President in 2024, and it would violate both Arizona law and the United States Constitution to force No Labels to participate in an election for any other public office against its will. No Labels disclaims and rejects these attempts, and asks that you promptly reject these Statements of Interest.¹

I. Arizona law makes clear that a primary election for a public office is held only if No Labels intends and desires to have the name of a candidate for that office printed on the general-election ballot.

Arizona law provides that “[a]t a primary election, each political party entitled and *intending* to make nominations for the ensuing general or special election, *if it desires* to have the names of its candidates printed on the official ballot at that general or special election, shall nominate its candidates for all elective, senatorial, congressional, state, judicial, county and precinct offices to be filled at such election except as provided in § 16-344.” A.R.S. § 16-301(A) (emphasis added). This language is plain and unambiguous, and it twice makes clear that it is not enough for a party to be entitled to use a ballot line for a public office; a party must “intend[]” and “desire” to make a nomination for that public office and have the name of the party’s nominee for that office printed on the general-election ballot. Beyond the plain language of the words “intend[]” and “desire[],” Arizona statutes are presumed to avoid “mere surplusage, and instead give meaning to each word, phrase, clause, and sentence so that no part of the statute will be void, inert, redundant, or trivial.” *Ariz. State Univ. Bd. of Regents v. Ariz. State Ret. Sys.*, 242 Ariz. 387, 389, ¶ 7 (App. 2017) (cleaned up). To ignore the requirements in A.R.S. § 16-301(A) that a

¹ Of note, Richard Grayson has publicly expressed his intent to hijack the party to punish “the No Labels fat cats.” <https://ballot-access.org/2023/08/09/no-labels-party-wins-arizona-ballot-access-lawsuit/>.

political party must both intend and desire to have candidates for a public office appear as its nominees on the general-election ballot would render this language mere surplusage.

No Labels has stated in prior communications with your office, and reiterates here, in accordance with A.R.S. § 16-301(A), that it neither intends nor desires to nominate candidates for any congressional, state, judicial, county, or precinct office, including United States Senator and Corporation Commissioner. No Labels respectfully requests that you refuse to accept Statements of Interest or nominating petitions for Mr. Draper, Mr. Grayson, and any other person who would seek to use No Labels' ballot line in contravention of No Labels' stated intentions and desire.

II. Forcing No Labels to participate in an election against its intentions and desires would be unconstitutional.

Arizona law comports with the United States Constitution, which likewise prohibits Arizona from forcing No Labels to participate in an election for a public office against its will.

Courts have repeatedly and “vigorously affirm[ed] the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party ‘select[s] a standard bearer who best represents the party’s ideologies and preferences,’”² holding that a state may not substitute its own judgment for that of an organization in determining “the structure which best allows it to pursue its political goals.”³ This “special protection” allows an organization to “choose a candidate-selection process that will in its view produce the nominee who best represents its political platform.”⁴ It can be “circumscribed” only if the organization chooses to avail itself of “the right to have their candidates appear with party endorsement on the general-election ballot.”⁵ At a fundamental level, an organization has a core right and ability to choose for itself the public offices for which it will put forward a nominee to appear on the general-election ballot and thereby accept or reject “circumscription” from the state. No Labels’ specially protected associational right to “choose a candidate-selection process”—and even its own private and internal decision *not* to choose a candidate or a candidate-selection process for down-ballot offices at all—cannot be overridden.⁶

² *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000) (quoting *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989)).

³ *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224 (1986) (“The Party’s determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.”).

⁴ *N.Y. State Bd. of Elections v. López Torres*, 552 U.S. 196, 202 (2008).

⁵ *Id.* at 203.

⁶ Courts have actively protected against state-compelled participation and association, for example, by refusing to require that a state’s election ballot create an unreciprocated association between a party and a candidate, *see Jones*, 530 U.S. at 582 (“We can think of no heavier burden on a political party’s associational freedom” than “forced association”), and by rejecting a candidate’s insistence that she be allowed to compete for a party’s general-election nomination via direct primary, *see López Torres*, 552 U.S. at 202–04. *See also Belluso v. Poythress*, 485 F. Supp. 904, 912 (N.D. Ga. 1980) (“Belluso asserts no group’s interest in advancing his candidacy.

No Labels' efforts in Arizona relate exclusively to the federal offices of President and Vice President and not to any state or local office. No Labels is making this effort in order to ensure Americans have potential options other than the candidates who may be selected at the Democratic and Republican conventions.

No Labels has determined that its policies and goals are not served by nominating any candidate for any office other than President and Vice President in 2024. No Labels disclaims the candidacies of Mr. Grayson and Mr. Draper, since they seek offices for which No Labels does not intend to make nominations, and requests that you reject their Statements of Interest and any candidate nomination petitions they or others may file. No Labels further requests that you reject any further Statements of Interest and candidate nomination petitions you may receive from any person or entity other than No Labels itself.

Please contact either one of us if you wish to discuss this matter further.

Respectfully,



David B. Rosenbaum
Partner
Osborn Maledon, P.A.



Matthew T. Sanderson
Member
Caplin & Drysdale, Chartered

His claimed need to 'associate' with an unwilling partner, the Republican party in Georgia, is not a first amendment right. Indeed, to the degree that rights of association are implicated, we think these rights militate in favor of leaving a party free to limit access to its own primary ballot."); *Duke v. Cleland*, 783 F. Supp. 600, 602 (N.D. Ga. 1992) ("Likewise, plaintiffs have failed to show the court that a first amendment right exists which guarantees access to a party's primary ballot (in direct contravention of the party's stated desires)."); *Duke v. Massey*, 87 F.3d 1226, 1234 (11th Cir. 1996) ("The Republican Party has a First Amendment right to freedom of association and an attendant right to identify those who constitute the party based on political beliefs.").

EXHIBIT E



September 22, 2023

Mr. David B. Rosenbaum
Osborn Maledon
2929 N. Central Ave., Ste. 2000
Phoenix AZ 85012
drosenbaum@omlaw.com

Re: No Labels' Participation in Arizona's Primary and General Elections

Dear Mr. Rosenbaum:

I am writing in response to your August 14, 2023 letter in which you explain that No Labels does not intend to participate in the 2024 Primary and General Elections. The Arizona Secretary of State disagrees with your assertion that a newly recognized political party can choose to deprive its own voters of their constitutionally protected freedom of association.

As of July 2023, there were a total of 8,505 voters in Arizona who were registered with the No Labels Party. These registered voters have the right to associate with the political party of their choice and the right to seek ballot access. "The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 214 (1986)(internal citations omitted). To that end, any qualified candidate of a recognized political party will be permitted to participate in Arizona's Primary Election. The candidate who receives the highest number of votes in the Primary Election will be the political party nominee and appear on the General Election ballot.

As the filing officer for federal, state, and legislative offices, the Secretary of State has the nondiscretionary duty to accept candidate filings such as statements of interest, nomination papers, and nomination petitions. A.R.S. § 16-311. Therefore, the Arizona Secretary of State will continue to accept statements of interest or nominating petitions for any eligible voter who seeks to use No Labels' ballot line in the 2024 election.

Sincerely,

Colleen Connor

Colleen Connor
State Elections Director
Arizona Secretary of State

EXHIBIT 2

STATE OF ARIZONA
Candidate Statement of Interest
A.R.S. § 16-311, A.R.S. § 16-341

You are hereby notified that I, the undersigned, hereby declare my interest to run as a candidate for the office of **U.S. Senator**, seeking the nomination of the **No Labels** Party, at the **2024 Primary Election** to be held on **Tuesday, August 6, 2024**.

By submitting this document, I understand that any nomination petition signatures collected before the date of this Statement of Interest are invalid and may be subject to challenge, pursuant to A.R.S. § 16-351.

Draper

LAST NAME

Tyson

FIRST NAME

Friday, July 21, 2023
/S/ Tyson Draper

STATE OF ARIZONA
Candidate Statement of Interest
A.R.S. § 16-311, A.R.S. § 16-341

You are hereby notified that I, the undersigned, hereby declare my interest to run as a candidate for the office of **Corporation Commissioner**, seeking the nomination of the **No Labels** Party, at the **2024 Primary Election** to be held on **Tuesday, August 6, 2024**.

By submitting this document, I understand that any nomination petition signatures collected before the date of this Statement of Interest are invalid and may be subject to challenge, pursuant to A.R.S. § 16-351.

Grayson

LAST NAME

Richard

FIRST NAME

Wednesday, August 9, 2023
/S/ Richard Grayson

EXHIBIT 3

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The No Labels Party of Arizona,

Plaintiff,

vs.

Adrian Fontes,

Defendant.

No.

[PROPOSED] ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE

Plaintiff The No Labels Party of Arizona (“Plaintiff”) has moved for the issuance of a preliminary injunction against Defendant Adrian Fontes.

IT IS HEREBY ORDERED that a hearing will be held on Plaintiff’s Motion for Preliminary Injunction before Judge _____, Sandra Day O’Connor Courthouse, 401 West Jefferson, Phoenix, Arizona 85003, Courtroom _____, on October _____, 2023, at _____m. Defendant is ordered to appear at this hearing and show cause why the preliminary injunction should not issue.

EXHIBIT 4

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 The No Labels Party of Arizona,

9 Plaintiff,

10 vs.

11 Adrian Fontes,

12 Defendant.

No.

[PROPOSED] PRELIMINARY
INJUNCTION

13
14
15 This matter comes before the Court on Plaintiff The No Labels Party of Arizona's
16 ("No Labels Arizona") Motion for Preliminary Injunction and Order to Show Cause. No
17 Labels Arizona moves for a Preliminary Injunction against Defendant Adrian Fontes in
18 his official capacity as the Secretary of State of Arizona (the "Secretary"). The Court held
19 a hearing on _____.

20 After consideration of the parties' briefing, and the arguments and evidence
21 presented at the hearing, the Court **FINDS** a follows:

22 1. Plaintiff is likely to succeed on the merits of both Count I and Count II of
23 the Complaint. As to Count I, the language in A.R.S. § 16-301(A) is clear and
24 unambiguous. Because No Labels Arizona does not intend or desire to participate in any
25 election other than for President and Vice President, the Secretary's actions likely violate
26 A.R.S. § 16-301(A). As to Count II, a political party has a First Amendment right to
27 determine the "boundaries of its association [and] the structure which best allows it to
28 pursue its political goals." *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224

1 (1986). Indeed, political parties are largely “autonomous in their extension of the right to
2 represent their party.” *Duke v. Cleland*, 783 F. Supp. 600, 602 (N.D. Ga.), *aff’d*, 954 F.2d
3 1526 (11th Cir. 1992). Plaintiff exercised these rights when it determined that its
4 association would best be served by participating in only the election of President and
5 Vice President. The Secretary’s actions also likely violate the First Amendment.

6 2. In the absence of an injunction, Plaintiff is likely to suffer irreparable harm
7 because the deprivation of constitutional rights, “for even minimal periods of time,
8 unquestionably constitutes irreparable injury.” *Elrod v. Burn*, 427 U.S. 347, 373 (1976).

9 3. The equities tip heavily in favor of Plaintiff. To the extent the rights of the
10 voters and candidates are implicated, those rights simply cannot override Plaintiff’s
11 rights. *See e.g., Duke v. Massey*, 87 F.3d 1226, 1232 (11th Cir. 1996) (“Although Duke
12 is correct in identifying his First and Fourteenth Amendment interests, those interests do
13 not trump the Republican Party’s right to identify its membership based on political
14 beliefs nor the state’s interests in protecting the Republican Party’s right to define itself.”).
15 No voter’s right to vote will be impaired by an injunction, and potential candidates remain
16 free to seek office as independents or by running in primary elections on other party ballot
17 lines.

18 4. It is in the public interest to issue an injunction to prevent the Secretary
19 from violating Plaintiff’s constitutional and statutory rights. *Melendres v. Arpaio*, 695
20 F.3d 990, 1002 (9th Cir. 2012) (“[I]t is always in the public interest to prevent the
21 violation of a party’s constitutional rights.”); *see also Park Vill. Apartment Tenants Ass’n*
22 *v. Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th Cir. 2011) (noting it is “obvious” that
23 compliance with a statute is in the public interest).

24 **IT IS THEREFORE ORDERED GRANTING** Plaintiff’s Motion for a
25 Preliminary Injunction.

26 **IT IS FINALLY ORDERED** that the Secretary, in his official capacity, and his
27 officers, agents, servants, employees, are **ENJOINED** from engaging in, committing, or
28 performing, directly or indirectly, by any means whatsoever, any of the following acts:

1 1. Accepting as valid any Statements of Interest filed by persons expressing
2 interest to run as No Labels Arizona candidates for any 2024 primary election;

3 2. Printing or distributing, or causing or assisting in the printing or
4 distribution of, ballots that include No Labels Arizona candidates for any office in the
5 2024 primary election; and

6 3. Printing or distributing, or causing or assisting in the printing or
7 distribution of, ballots that include No Labels Arizona candidates for any office in the
8 2024 general election except for the offices of President and Vice President should No
9 Labels Arizona nominate candidates for those offices.