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12 *Attorneys for Defendant Arizona*
13 *Secretary of State Adrian Fontes*

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

16
17 The No Labels Party of Arizona, an Arizona
political party,

18
19 Plaintiff,

20 v.

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

23 Defendant.

Case No: 2:23-cv-02172-JJT

**ARIZONA SECRETARY OF
STATE'S RESPONSE TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

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1 Defendant Arizona Secretary of State Adrian Fontes (“Secretary”) respectfully
2 requests that this Court deny Plaintiff’s Motion for a Preliminary Injunction (“Motion”).
3 The No Labels political party is likely to fail on the legal merits, will not suffer
4 irreparable harm from having more candidates on the ballot, and the balance of hardships
5 and public interest tip sharply in the Secretary’s favor because No Labels is attempting
6 to eliminate the political rights of others. For these reasons, Plaintiff’s request for an
7 injunction should be denied.

8 INTRODUCTION

9 No Labels is an Arizona political party, and can avail itself of all the benefits that
10 this status confers. But it cannot override the constitutional and statutory framework
11 regulating elections in Arizona. As a political party, No Labels has a constitutionally-
12 protected interest in determining its nominees for the General Election, but that interest
13 ends well short of the anti-democratic, life-tenured state committee that its national
14 corporate entity, No Labels, Inc., has self-selected and can remove at will. No Labels is
15 an Arizona political party, but that does not give it and its national corporate body the
16 unilateral right to bar qualified No Labels candidates from the ballot.

17 When deciding which route to take to ballot access, No Labels, Inc. had a choice.
18 It could either:

- 19 • Create a new political party which provides its hand-picked candidates for
20 President and Vice President a “ballot line” for the 2024 General Election,
21 as well as the opportunity for others affiliated with the No Labels party to
22 seek elected office as a No Labels candidate and vote for qualified No
23 Labels candidates; or
- 24 • Run its hand-picked candidates—who would be identified on the ballot and
25 any relevant election information as “No Labels”—without sharing that
26 political identity with any other candidates, for any office.

1 No Labels, Inc. chose the former, and qualified No Labels as an Arizona political party
2 early this year. After voluntarily electing to become a political party, and indeed
3 vigorously defending that right in prior litigation, it cannot now seek to deny the rights
4 of its own members to campaign as, and vote for, No Labels candidates that are not
5 selected by No Labels, Inc.

6 No Labels is unlikely to prevail on the merits of its claim because it has wildly
7 misconstrued Arizona statutes; furthermore, its First Amendment rights cannot be used
8 as a sword to cut off the First Amendment rights of others. No Labels, Inc. rejected the
9 opportunity to run a “No Labels” candidate for President without becoming a political
10 party that others could join. And as a political party, it does not suffer irreparable harm
11 because it has candidates on the ballot. Finally, the balance of equities and public
12 interest tip sharply in the Secretary’s favor, as it is No Labels which seeks to override the
13 democratic principles foundational to our democracy.

14 The founder of No Labels, Inc. CEO Nancy Jameson, says in defense of its
15 corporate strategy to secure a ballot line that can be offered to potential presidential and
16 vice presidential candidates: “We know how the game works in politics these days.”¹
17 But our democracy is *not* a game. The Court should deny No Labels’ request for an
18 injunction.

19 **BACKGROUND**

20 In the late 1800s and early 1900s, Arizona was largely considered a progressive
21 experiment, and the state constitution embraced many progressive reforms, including
22 direct primary elections and “direct nomination” of United States Senators before the
23 adoption of the 17th Amendment. Ariz. Const. art. VII, §§ 9-10. Indeed, the architects
24 of Arizona’s early government recognized “the legislation of old States has been found
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26 ¹ NBC News, *No Labels founder says ‘we are not functioning’ as a political party:*
27 *Nancy Jacobson full interview*, (July 13, 2023) (“NBC Interview”),
28 <https://www.nbcnews.com/meet-the-press/video/no-labels-founder-says-we-are-not-functioning-as-a-political-party-nancy-jacobson-full-interview-188338245510> at 10:00-10:05.

1 unequal to the task of protecting the people from the growing, grasping, monopolizing
2 tendencies of railroads and other corporations,” and sought to eliminate from the outset
3 “sham corporations claiming special and exclusive privileges.”²

4 To enforce the direct primary provision of the constitution, Arizona law requires
5 partisan-affiliated candidates to participate in the primary election. A.R.S. § 16-301(A).
6 Failure to participate in the primary bars that candidate from using the more lenient
7 requirements for a party nomination to secure access to the general election ballot, and
8 prohibits the candidate from appearing on the general election ballot as a member of that
9 party *Id.*; A.R.S. § 16-302.

10 There are multiple ways for a presidential candidate to access the ballot in
11 Arizona. First, a candidate can be a member of a recognized political party, and file *de*
12 *minimis* nomination paperwork with the Secretary of State’s office at least one hundred
13 days before the presidential preference election (“PPE”). A.R.S. § 16-242(B).
14 Alternatively, they may run as an unaffiliated candidate by filing petitions signed by at
15 least three percent of all voters who are not registered with another political party no
16 later than 5:00 p.m. one hundred days before the general election. A.R.S. § 16-341. No
17 signatures can be collected as an unaffiliated candidate, however, until the presidential
18 candidate files a nomination paper with the Secretary. *Id.*

19 No Labels, Inc. created and controls the Plaintiff No Labels. No Labels, Inc. is a
20 501(c)(4) based in Washington, D.C., which was created in 2009 and as of 2021 reported
21 gross income of \$11,339,382. (Ex. 1, Form 990 at 1). It reported expenses of
22 \$8,226,195 for “hosting several conference calls . . . weekly emails . . . [and] engaging
23 citizens through social media and online platforms to disseminate nonpartisan
24 information around core concepts of problem solving.” (*Id.* at 2). As of 2021, No

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26 ² State of Ariz. Const. Conv., Address on Constitution for the State of Arizona at 4 (Oct.
27 2, 1891) *available at*
28 <https://azmemory.azlibrary.gov/nodes/view/135961?keywords=1891+constitution&type=all&highlights=eyJwIjoiY29uc3RpdHV0aW9uIiwiaWwiMiI6IjE4OTEifQ%3D%3D&lsk=49d94f5d6c25fccf543219ded646ab93>.

1 Labels, Inc. stated that it did not “engage in direct or indirect political campaign
2 activities on behalf of or in opposition to candidates for public office.” (*Id.* at 3).

3 No Labels, Inc. filed its petition for political party recognition with the Secretary
4 on February 10, 2023, including 56,971 signatures of purported qualified electors for
5 review. (Ex. 2, SOS Prelim. Filing Receipt to No Labels at 1). Pursuant to the 20%
6 sampling required by A.R.S. § 16-803 No Labels, Inc. was determined to have collected
7 41,663 valid signatures, exceeding the signature threshold of 34,127. (Ex. 3, No Labels
8 Receipt at 2). No Labels thus qualified for political party status on March 7, 2023. *Id.*
9 Despite successfully qualifying for the ballot, the founder of No Labels, Inc., Nancy
10 Jacobson has repeatedly stated that “we are not a party” and that the goal was to “offer
11 our ballot line” after Super Tuesday.³

12 It was not until August 11, 2023, that No Labels, Inc. appointed a state committee
13 that “accept[ed] and adopt[ed]” a constitution and bylaws. (DE 6-1 at 9). The “No
14 Labels Party” constitution and bylaws identifies it as “a state-level affiliate of No Labels,
15 Inc.” and states that No Labels, Inc. appoints its state committee members and officers
16 for life or until they are “removed” by No Labels, Inc. (*Id.* at 11-12). Any vacancy on
17 the state committee “shall be filled by No Labels[, Inc.] or by a majority . . . at a
18 Convention of Membership upon the written consent of No Labels[, Inc.]” (*Id.* at 12).
19 “The Presidential and Vice-Presidential nominees of [the No Labels state committee]
20 shall be the candidates nominated at the No Labels national nominating convention.”
21 (*Id.* at 14). The state committee “shall ensure that only one candidate may be nominated
22 for each office.” (*Id.*)

23 Since becoming a political party, many Arizonans have registered with No
24 Labels. (Ex. 4, Ariz. Voter Registration Report (Oct. 1, 2023)). However, No Labels
25 has taken the position that these No Labels members cannot run for public office as a
26 member of their new party. (*Id.* at 29) (“No Labels respectfully requests that you refuse

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28 ³ NBC Interview, *supra* note 1, at 1:50-1:52, 3:01-3:04, and 8:35-9:19.

<https://www.cnn.com/videos/politics/2023/05/27/smr-no-labels-third-party.cnn>

1 to accept Statements of Interest or nominating petitions from Mr. Draper, Mr. Grayson,
2 and any other person who would seek to use No Labels’ ballot line in contravention of
3 No Labels’ stated intentions and desire.”). Upon receiving notice from the Secretary that
4 he has a “nondiscretionary duty to accept candidate filings” pursuant to A.R.S. § 16-311,
5 No Labels brought this suit. (*Id.* at 32).

6 LEGAL ARGUMENT

7 A party seeking a preliminary injunction “must establish that he is likely to
8 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
9 preliminary relief, that the balance of equities tips in his favor, and that an injunction is
10 in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
11 Mandatory injunctions, like the one sought here, are “particularly disfavored” and should
12 be denied “unless the facts and law clearly favor the moving party.” *Garcia v. Google,*
13 *Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

14 Plaintiff also discussed the so-called “sliding scale” or “serious questions” test
15 applied to preliminary injunctions. However, since this is now a consolidated
16 proceeding pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure (DE 11),
17 the “serious questions” test—which requires only that “serious questions going to the
18 merits were raised and the balance of hardships tips sharply in plaintiff’s favor”—is
19 inappropriate. *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.
20 2011). The serious questions test means that the matter is “ripe for litigation and
21 deserving of more deliberate investigation.” *Id.* (quoting *RoDa Drilling Co. v. Siegal*,
22 552 F.3d 1203, 108-09 n.3 (10th Cir. 2009)). This Court should not use the serious
23 questions test when evaluating what has become a request for permanent injunctive
24 relief.

25 No Labels’ request for an injunction fails under either legal standard for
26 determining whether injunctive relief is warranted, so this Court should deny Plaintiff’s
27 Motion.

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1 **I. Plaintiff Cannot Succeed on the Merits.**

2 No Labels' claims are at best based on a fundamental misunderstanding of the
3 law, and at worst, intended to circumvent constitutional protections for Arizona voters.
4 Accurately construed, the injunctive request is really an injunction against any and all
5 No Labels candidates not ordained by No Labels, Inc. The assertion that Plaintiff is
6 likely to prevail on the merits is based on an incorrect reading of the statutes, and would
7 turn freedom of association on its head. No Labels' request for an injunction should fail
8 because it cannot succeed on the merits.

9 **A. The Injunction No Labels Seeks Is Mandatory, Because it Seeks to**
10 **Prohibit Candidates' Ballot Access.**

11 While No Labels presents its request as a prohibitory injunction, the relief sought
12 is mandatory in nature, and thus, Plaintiff bears a higher burden. If the Secretary is
13 prohibited from accepting nomination petitions and other papers from No Labels
14 candidates, then candidates up and down the ballot will be barred from running unless
15 they are No Labels, Inc.'s anointed Presidential and Vice Presidential candidates. This
16 relief would enjoin current and potential candidates—parties which Plaintiff has not
17 sued—from achieving ballot access in accordance with Arizona law. *See* (DE 6-1 at 29)
18 (demanding the Secretary refuse candidate paperwork from two identified No Labels
19 candidates and “any other person who would seek to use No Labels' ballot line).
20 However, orders for injunctions must state its terms with specificity and can only bind
21 the parties to the litigation. Fed. R. Civ. P. 65(d).

22 No Labels seeks a mandatory bar against the candidacies of anyone who is not
23 hand-picked by No Labels, Inc., including candidates who are not parties to the instant
24 suit. There is no basis for this remedy, which would prohibit people from seeking office
25 and voters from supporting those candidates, by pursuing an injunction against the
26 Secretary. No Labels' request for mandatory injunctive relief should be denied. *Garcia*,
27 786 F.3d at 740 (“Because [plaintiff] seeks a mandatory injunction, she must establish
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1 that the law and facts *clearly favor* her position, not simply that she is likely to
2 succeed.”).

3 **B. No Labels’ Reading of Key Statutory Provisions Is Fatally Flawed.**

4 No Labels’ entire statutory argument rests on a strained reading of A.R.S. § 16-
5 301(A),⁴ without recognizing the purpose of the law, and severing it from other relevant
6 statutes and Arizona constitutional provisions governing elections. At a time when many
7 states allowed political parties to use caucuses to select their nominees, Arizona
8 embraced direct election of party nominees by primary vote. Ariz. Const. art. VII, § 10.
9 Since statehood, this provision of the state constitution is enforced by A.R.S. §§ 16-301
10 and -302.

11 No Labels selectively emphasizes words to make it appear that the law leaves the
12 process of choosing whether to run candidates to the political party’s discretion, but that
13 selective emphasis is legal drafting sleight of hand. Arizona law specifies that:

14 At a primary election, each political party entitled and intending to
15 make nominations for the ensuing general or special election, if it
16 desires to have the names of its candidates printed on the official
17 ballot at that general or special election, shall nominate its
18 candidates for all elective, senatorial, congressional, state, judicial,
county and precinct offices to be filled at such election except as
provided in § 16-344.

19 A.R.S. § 16-301(A). With No Labels’ emphasis removed, it is clear this statute requires
20 a political party which wants to field its candidates on the general election ballot to run
21 those candidates in a direct primary. *Id.* Read in conjunction with the second half of
22 Title 16, Chapter 3, Article 1—which prohibits a candidate of an organized political
23 party from appearing on the ballot if they have not been elected in the primary—

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26 ⁴ Moreover, because Plaintiff has “chosen not to nominate candidates for any office
27 other than President and Vice President,” this statute should not matter to the Plaintiffs’
28 argument. Candidates for President and Vice President are not nominated in a primary
election, but in the Presidential Preference Election, governed by A.R.S. § 16-241, *et*
seq.

1 demonstrates these laws ensure political parties participate in direct primaries, not that
2 the party gets to decide whether a candidate can participate in an election.

3 The Secretary agrees with the Plaintiff that “if the plain meaning of [a] statute is
4 unambiguous, that meaning is controlling.” *Close v. Thomas*, 653 F.3d 970, 974 (9th
5 Cir. 2011). “Of course, statutory language must always be read in its proper context, as
6 courts must look to the design of the statute as a whole and to its object and policy, and
7 the words of a statute must be read in their context, and with a view to their place in the
8 overall statutory scheme.” *Calif. v. Trump*, 963 F.3d 926, 944 (9th Cir. 2020) (cleaned
9 up). The statutes in Title 16, Chapter 3, Article 1 effectuate the Arizona constitution’s
10 mandate that “[a] direct primary election law . . . shall provide for the nomination of
11 candidates for all elective [offices].” Ariz. Const. Art. 7, § 10. They do not stand for No
12 Label’s position, that an out-of-state corporate entity has unfettered discretion to dictate
13 to Arizonans who runs for office, whether as President or precinct committeeperson.

14 Even if No Labels’ tortured reading of A.R.S. § 16-301(A) is correct, it omits the
15 fact that becoming a new party before the PPE pursuant to A.R.S. § 16-801 secures
16 ballot access for their qualified candidates. “A political party that is eligible for the
17 presidential preference election ballot *shall be represented* on the subsequent primary
18 and general election ballots in the year of the presidential election.” A.R.S. § 16-
19 244(A)(2). While No Labels opted-out of the PPE, the party was still eligible to
20 participate in it, so ballot access for No Labels qualified candidates is guaranteed.

21 No Labels’ claim that Arizona law allows it to dictate the requirements for
22 candidates is incorrect, and its request for an injunction should be denied.

23 **C. No Labels’ Associational Rights Are Not Violated by Individuals**
24 **who Have Joined the No Labels Party Competing in a Primary**
25 **Election as No Labels Candidates.**

26 Political parties have associational rights. They may limit who can choose their
27 nominee to registered party members. *Calif. v. Jones*, 530 U.S. 567, 575 (2000). But
28 freedom of association ends where the fundamental political rights of others begin.

1 Could the Secretary be enjoined from taking *any* candidate filings in the crowded
2 Republican-party primary for Congressional District 8 or a similarly-crowded
3 Democratic-party primary in Pima County? Of course not, because the right to vote is
4 fundamental, and preservative of all rights. *E.g., Harper v. Va. Bd. of Elections*, 383
5 U.S. 663, 667 (1966). Likewise, this Court should not enjoin the Secretary from taking
6 nomination paperwork from No Labels candidates who are running without the blessing
7 of No Labels, Inc.

8 **1. The State Has a Significant Interest in Ensuring Fair and**
9 **Orderly Elections that Overrides No Labels' Nomination-**
10 **By-Fiat Preference.**

11 A political party's rights are properly circumscribed by its role in our democracy.
12 People have asserted the right of association in furtherance of some truly abominable
13 ideas. For example, *Smith v. Allwright*, charts the state of Texas' repeated attempts to
14 block Black voters from participating in primary elections. 321 U.S. 649 (1944). No
15 Labels, Inc., has not yet publicly named its candidates. But the assertion that No Labels,
16 Inc. alone can determine who can be a candidate while it is acting as a political party
17 empowered by the State with specific benefits sets the same dangerous precedent as that
18 rejected in *Allwright*.

19 Additionally, none of the cases cited by No Labels support its unfettered vision of
20 political party associational freedom. By splicing quotes and cherry-picking citations,
21 No Labels asserts that a political party's "decision to accept or reject state
22 'circumscription' and its attendant consequences is, by its nature, entirely private and
23 internal to the party and cannot be overridden." (DE 6 at 10). The incredible
24 overbreadth of that statement is a dead giveaway that this argument is not true.

25 The rules governing ballot access and freedom of association have been well-
26 settled for decades. Political parties have the opportunity to exercise their freedom of
27 association by determining who chooses their nominee for the general election. *Jones*,
28 530 U.S. at 575. However, that does not give them unfettered discretion to determine

1 who can run, or how. *Ariz. Libertarian Party v. Hobbs*, 925 F.3d 1085, 1092 (9th Cir.
2 2019) (“A political party cannot manipulate its internal preferences and processes to
3 transform a constitutional statute into an unconstitutional one.”); *Alaskan Independence*
4 *Party v. Alaska*, 545 F.3d 1173, 1177 (9th Cir. 2008) (“AIP”). When the burden on
5 association is reasonable and nondiscriminatory, the State’s important interests are
6 generally sufficient to justify restrictions on the right to associate. *Burdick v. Takushi*,
7 504 U.S. 428, 434-35 (1992). Contrary to No Labels’ suggestion, the United States
8 Supreme Court has upheld significant restrictions on a political party’s freedom of
9 association when they are supported by important state interests. *See Storer v. Brown*,
10 415 U.S. 724, 733 (upholding candidate disqualification if that candidate had been a
11 member of another party within the last year).

12 Arizona law does not violate No Labels’ freedom of association by allowing
13 citizens affiliated with the No Labels party to run as a candidate. In *AIP*, a third party
14 sought a declaratory judgment that the political party had the sole right to determine how
15 its candidates were chosen. 545 F.3d at 1176. But courts have long held that states have
16 a compelling interest in “eliminating the fraud and corruption that frequently
17 accompanied party-run nominating conventions” that withstands even strict scrutiny. *Id.*
18 at 1180. The issues and relief sought by No Labels in this suit are nearly
19 indistinguishable from those at issue in *AIP*, in which the court easily found against the
20 political party because “the state’s goals would clearly be impeded if party leaders could
21 either opt out of the primary altogether or interfere with the democratic process by
22 exercising veto power over the candidates that might seek nomination.” *Id.* at 1177.

23 Under the flexible standard used to reconcile the tension between the freedom of
24 association and the state’s interest in regulating elections, No Labels’ quest to restrict the
25 rights of candidates and voters. Indisputably, No Labels has benefitted by its status as a
26 political party. For example, No Labels has ensured a much easier avenue for ballot
27 access for its presidential slate in the 2024 General Election than unaffiliated candidates
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1 face. As a new political party, No Labels’ ballot access, and their voters’ right to vote
2 for qualified No Labels candidates in Arizona’s 2024 primary election, is secure. No
3 Labels’ associational rights are also protected under this system. For example, the
4 party’s presidential and vice presidential candidates can be chosen pursuant to its
5 bylaws. A.R.S. § 16-243(A). Another benefit secured by No Labels as a political party
6 is that does not need to compete for signatures during a crowded and expensive 2024
7 election cycle, because it secured party status in March of 2023. If No Labels were not a
8 recognized party, it would have had to collect more signatures, and its presidential
9 candidate would have had to file nomination paperwork with the Secretary before
10 nomination signatures could be collected. A.R.S. § 16-341. Given that No Labels, Inc.
11 has not yet publicly identified a presidential candidate, party status confers a distinct
12 advantage upon No Labels.

13 The Ninth Circuit and the United States Supreme Court have upheld primary laws
14 like Arizona’s as not infringing on political party associational rights. *AIP*, 545 F.3d at
15 1180; *see also Jones*, 530 U.S. at 575 (distinguishing unconstitutional blanket primary
16 from a closed primary). Plaintiff’s requested relief would up-end the legislative balance
17 that ensures an opportunity to participate in the political process for all. Such a precious
18 right cannot be unilaterally usurped by corporate bylaws; the right to associate does not
19 flow only from the party boss down to the voter, but also flows from the voters to party
20 leadership and the candidates. No Labels’ request for an injunction should be denied.

21 **2. No Labels Chose to Become a Political Party Instead of**
22 **Fielding an Exclusively “No Labels” Presidential and Vice**
23 **Presidential Candidate.**

24 No Labels asserts that “No Labels Arizona would object if the Arizona equivalent
25 of Mother Teresa were to file a statement of interest,” to demonstrate its resolute
26 objection to associating with any candidate other than its hand-picked choice. (DE 6 at
27 4). Of course, No Labels could have achieved its stated objective by availing itself of
28 Arizona’s procedure for unaffiliated candidates to run for election, with “up to three

1 words” describing their affiliation. A.R.S. § 16-341. This would have allowed No
2 Labels, Inc. to field a presidential and vice presidential candidate under the “No Labels”
3 banner without sharing that identity with anyone else. A.R.S. § 16-341(D), (G); *Bd. of*
4 *Supervisors v. Harrington*, 85 Ariz. 163, 168 (1958) (holding that candidates could not
5 avoid the Republican primary, then run as an unaffiliated candidate with the
6 “Republican” label). However, this would have sacrificed many benefits associated with
7 political party status.

8 Instead, No Labels, Inc. chose to create a political party, and now seeks to clear
9 the field of anyone that it and its Arizona subsidiary do not specifically endorse. This is
10 not how political parties function. *See Colo. Republican Fed. Campaign Comm. v. Fed.*
11 *Election Comm’n*, 518 U.S. 604, 615-16, 618 (1996) (explaining the “important and
12 legitimate role for political parties in American elections” which “seeks to convince
13 others to join those members in a practical democratic task, the task of creating a
14 government that voters can instruct and hold responsible . . .”). Political parties are an
15 “organization of voters formed to influence the government’s conduct and policies by
16 nominating and electing candidates to public office.” Black’s Law Dictionary (11th ed.
17 2019) (defining “political party”).⁵ As No Labels admitted in previous litigation
18 defending its position as a political party, “persons signing a petition to a (*sic*) create a
19 new party intend to constitute the party they are helping create. This is the reading the
20 Court should adopt . . .” (Ex. 5, No Labels Mot. to Dismiss, CV2023-004832 at 9).

21 No Labels, Inc. had the right to choose to either: 1) run an unaffiliated candidate,
22 identified as the “No Labels” candidate without sharing that political identity with any
23 other candidates for any other office; or 2) to create a new political party that ensured
24 their candidates a spot on the ballot, but left open the possibility that the people who
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26 ⁵ The definition of “political party” in A.R.S. 16-901(42) is a definition that is only
27 useful in the campaign finance context. *Id.* (“Political party” means a committee that
28 meets the requirement for recognition as a political party pursuant to chapter 5 of this
title.”).

1 helped them achieve party status may also seek to be candidates representing their party
2 and desire to vote in a No Labels Primary Election in 2024. No Labels chose to avail
3 itself of the benefits of political party status, including a later nomination date and a
4 lower qualifying threshold. For example, an unaffiliated “No Labels” candidate would
5 need to gather at least ten thousand more signatures to achieve ballot access than No
6 Labels the political party did. *Compare* A.R.S. § 16-801(A) (requiring petitions signed
7 by 1 1/3% of total votes cast for governor in most recent gubernatorial election) *with*
8 A.R.S. § 16-341(E) (requiring petitions signed by 3% of all non-affiliated voters to
9 achieve ballot access). And that unaffiliated candidate can only begin collecting
10 signatures for ballot access after the candidate has announced. A.R.S. § 16-341(G).

11 In short, Arizona law provided No Labels, Inc. alternative routes to ballot access,
12 including one that would provide exactly the outcome No Labels purports to seek
13 through this action, but it chose the other route—to become a political party. No Labels
14 cannot now shield itself and enjoin others from all that being a political party entails.
15 Pursuant to Arizona law, as a new party, No Labels *shall* have the opportunity to be
16 represented on the primary and general election ballots in 2024. A.R.S. § 16-244(A)(2).
17 For these reasons, No Labels’ request for an injunction should be denied.

18 **II. Plaintiff Will Not Suffer Irreparable Harm.**

19 Plaintiff claims it will suffer irreparable harm because a constitutional violation
20 “constitutes irreparable injury.” (DE 6 at 11). It is a circular argument that assumes No
21 Labels succeeds on the merits, in essence merging likelihood of success on the merits
22 and irreparable harm. No Labels is unlikely to succeed on the merits, but even if
23 successful, it is so difficult to articulate an actual *harm* that their requested injunction
24 would prevent, No Labels does not even try. (*Id.*)

25 No Labels will not suffer harm absent an injunction, but candidates and voters
26 would. If Plaintiff prevails, No Labels voters will have no option to vote for federal,
27 statewide, or legislative candidates in the 2024 Primary Election because they are only
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1 eligible to vote in their own party's primary. A.R.S. § 16-467. Similarly, a candidate
2 running for office as a member of a party must be registered with that party under
3 Arizona law. A.R.S. § 16-311(A). And by its own admission, No Labels would object
4 to even "ideal candidates" or the "Arizona equivalent of Mother Teresa" as No Labels
5 candidates. (DE 6 at 4). While the leaders of No Labels, Inc. disavow party status,⁶ it is
6 indeed a political party in Arizona. As a political party, No Labels cannot show that it
7 suffers irreparable harm because No Labels members want to participate as candidates.
8 However, voters and candidates would certainly suffer irreparable harm should No
9 Labels prevail here.

10 **III. The Balance of Equities and Public Interest Favors the Secretary.**

11 The balance of equities and public interest merge when the State is the opposing
12 party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The public interest at issue here was
13 repeatedly re-affirmed during Arizona's decades-long struggle for statehood, resulting in
14 a constitutional mandate that nominees of political parties be chosen by direct primary.
15 Ariz. Const. art. VII, § 10. Concerning this constitutional provision, the leading treatise
16 on Arizona's constitution wrote: "This section's requirement of a direct primary to
17 select candidates for all elective offices was a distinctly progressive innovation in 1910,
18 recognizing that general elections could be made meaningless if political machines hand-
19 picked the candidates." JOHN D. LESHY, *THE ARIZ. STATE CONST.* 239 (Oxford 2nd ed.
20 2013). No Labels is just the sort of political machine that the framers of the Arizona
21 constitution faced and took pains to prevent re-asserting control of Arizona's
22 government.

23 No Labels seeks to bar anyone from running because it is a corporate subsidiary,
24 uninterested in being a true political party. The Chair of the No Labels Party of Arizona
25 knows that her party is "a state-level affiliate of No Labels, Inc.," but appears to have no
26 direct, personal knowledge of much else about No Labels, Inc., having instead only an
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28 ⁶ NBC Interview, *supra* note 1.

1 “understand[ing that it] is a 501(c)(4) nonprofit headquartered in Washington, D.C.,” and
2 has been “informed” about various alleged activities of No Labels, Inc. (DE 6-1 at 2-3,
3 ¶¶ 3-4). While she is clear that No Labels AZ’s role is to do the bidding of No Labels,
4 Inc. in supporting the corporate nominees, those persons are *still unidentified*. (*Id.* at ¶
5 4). In other words, the state party chair has sworn the party’s allegiance to unknown
6 candidates that will be chosen by No Labels, Inc.

7 No Labels pushes an absolutist freedom of association right beyond the bounds of
8 reason. The initial members of the No Labels Arizona state committee “have been
9 appointed by No Labels, Inc.” (DE 6-1 at 7). No Labels state committee members are
10 directly beholden, not to voters committed to the same purpose, but No Labels, Inc. (*Id.*
11 at 11, ¶ 2.b.). Each of the three state committee members, who were appointed by No
12 Labels, Inc., “serves a term that lasts until the Committee member dies, resigns, becomes
13 ineligible, or is removed by No Labels.” (*Id.* at 12, ¶ 4.b.ii.) Likewise, the officers of
14 No Labels serve for life or until No Labels, Inc. chooses to unseat them. (*Id.* at ¶ 4.c.i).
15 Action may be taken by the state committee at a properly-noticed meeting—or outside of
16 any meeting—at the sole discretion of a majority of the three life-term No Labels, Inc.
17 appointees. (*Id.* at 13, ¶ 4.d.-e.). The Constitution and Bylaws of this so-called political
18 party can be “amended or repealed by a majority of the Committee or by a majority of
19 [the party’s] Members at a Convention of Membership,” but *only* “upon the written
20 consent of No Labels.” (*Id.* at 15, ¶ 8). No Labels, Inc. has directed its state political
21 party to further limit party structure and voter-involvement by not seating any legislative
22 district leadership. (*Id.* at 11, ¶ 2.c). Finally, it is not the No Labels state party
23 organizations that nominate candidates for President and Vice President; the candidates
24 are chosen by No Labels, Inc. and rubber-stamped by the state parties. (*Id.* at 14, ¶ 6).

25 The No Labels political party’s constitution and by-laws makes it clear that it
26 seeks to elevate its own First Amendment rights over all others—via the electoral
27 mechanism of the state—all to the detriment of the very people it relied upon to ensure a
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1 direct route to the 2024 General Election ballot. As of October 2023, there are 18,799
2 voters registered with the No Labels party in Arizona. (Ex. 4). This is quite remarkable,
3 as even a year ago No Labels did not exist. By way of comparison, there are 33,713
4 voters registered with the Libertarian party as of the same date, and it has been
5 recognized as a political party in Arizona for decades. *Id.* And the Green Party, which
6 perennially achieves “new party” status, had just 6,463 registered voters in Arizona the
7 last time it had candidates on the ballot in 2018. (Ex. 6, Ariz. Voter Registration Rep.
8 (Nov. 6, 2018)).

9 In determining the balance of equities and the public interest, this Court is
10 directed to weigh not just the interests of the parties, but the nearly 19,000 voters who
11 left their prior affiliation to join cause with No Labels as a political party. This Court
12 should also compare the principles that animate the direct primary law, with the secrecy
13 and top-down control with which No Labels is attempting to wield power. Considering
14 all the benefits No Labels has received by becoming a political party, including a later
15 deadline to publicly identify a nominee, along with the fact that there was an alternative
16 route for No Labels to get the exact relief they seek here, the balance of equities and
17 public interest tip sharply in favor of the Secretary. For these reasons, Plaintiff’s request
18 for an injunction barring the Secretary from allowing qualified candidates to stand for
19 election, and thus disenfranchising No Labels primary voters, should be denied.

20 CONCLUSION

21 No Labels has not met the heavy burden required to entitle it to an injunction, and
22 its request for relief should be denied. No Labels cannot be treated as both a serious
23 political party that fields hand-picked candidates for select offices, and an out-of-state
24 corporate body which can block ballot access for all others. Our elections are not a
25 “game.” No Labels’ request for an injunction should be denied.

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Respectfully submitted this 20th day of November, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2023 I filed the forgoing document electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing

/s/Monica Quinonez