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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 No Labels Party of Arizona,

10 Plaintiff,

11 v.

12 Adrian Fontes,

13 Defendant.  
14

No. CV-23-02172-PHX-JJT

**ORDER**

15 At issue is Plaintiff The No Labels Party of Arizona’s Motion for Preliminary  
16 Injunction (Doc. 6, Mot.), to which Defendant Adrian Fontes, in his official capacity as  
17 Secretary of State of Arizona, filed a Response (Doc. 16, Resp.) and Plaintiff filed a Reply  
18 (Doc. 18, Reply). The Court held a hearing on the Motion on January 5, 2024. (Doc. 20;  
19 01/05/24 Hr’g Tr.)

20 **I. BACKGROUND**

21 Plaintiff The No Labels Party of Arizona (“No Labels Arizona” or the “Party”) “is  
22 a state-level affiliate of No Labels, Inc.,” a 501(c)(4) nonprofit organization headquartered  
23 in Washington, D.C. (Doc. 6-1, Wachtel Decl. ¶ 3; Ex. A, No Labels Arizona Constitution  
24 and Bylaws (“Const. & Bylaws”) ¶ 2(a).) On February 10, 2023, No Labels, Inc. filed a  
25 petition for political party recognition with Defendant Secretary of State Adrian Fontes  
26 (the “Secretary”), and on March 7, 2023, the Secretary informed No Labels, Inc. that it  
27 “qualifies as a new party for federal, statewide, and legislative races in the 2024 Primary  
28 and General Elections under Arizona law.” (Doc. 16-1, Karlson Decl. Ex. 2.)

1           Arizonans began registering as members of No Labels Arizona in as early as April  
2 2023. (Karlson Decl. Ex. 4.) On June 2, 2023, No Labels, Inc., by way of its legal counsel,  
3 informed the Secretary that the Party “will nominate a Presidential ticket as provided in  
4 [A.R.S.] § 16-344, but it does *not* desire to have the names of any other candidates printed  
5 on the official ballot at the 2024 general election and will therefore not hold a primary  
6 election for any office.” (Wachtel Decl. Ex. B at 4 (internal quotations omitted).)<sup>1</sup> Either  
7 unaware or in disregard of the Party’s intention not to permit its registered members to run  
8 for office in Arizona under the No Labels Party insignia, on July 21, 2023, registered Party  
9 member Tyson Draper filed a Statement of Interest with the Secretary to run as a candidate  
10 for the United States Senate, seeking the nomination of No Labels Arizona in the 2024  
11 Primary Election. (Doc. 19-1, Joint Stip. Ex. 9.) Likewise, on August 6, 2023, registered  
12 Party member Richard Grayson filed a Statement of Interest with the Secretary to run for  
13 the office of Arizona Corporation Commissioner. (Joint Stip. Ex. 10.)

14           On August 11, 2023, No Labels, Inc. appointed an Arizona state committee that  
15 adopted a constitution and bylaws, forming No Labels Arizona. (Const. & Bylaws,  
16 Unanimous Written Consent at 1–3.) The same day, No Labels Arizona State Chair Gail  
17 Wachtel informed the Secretary that the Party “will not participate in the state’s 2024  
18 Presidential Preference Election”—which is within a party’s prerogative in Arizona—and  
19 reiterated that the Party “will nominate candidates only for the offices of President and Vice  
20 President, and does not desire to have the names of candidates for any other office printed  
21 on the official general-election ballot at the 2024 general election.” (Wachtel Decl. Ex. C.)  
22 When the Party became aware that certain persons had filed Statements of Interest to run for  
23 other offices in Arizona under the Party insignia, counsel for the Party sent a letter to the  
24 Secretary asking him to reject those Statements of Interest. (Wachtel Decl. Ex. D.)

25           On September 22, 2023, Colleen Connor, the State Elections Director, sent a letter  
26 to counsel for the Party stating that the Secretary “disagrees with [the Party’s] assertion  
27 that a newly recognized political party can choose to deprive its own voters of their

28 <sup>1</sup> A.R.S. § 16-344 provides for the appointment of candidates for the office of  
presidential electors.

1 constitutionally protected freedom of association,” including the right to “participate in  
2 Arizona’s Primary Election.” (Wachtel Decl. Ex. E.) The letter also stated that the  
3 Secretary “has the nondiscretionary duty to accept candidate filings such as statements of  
4 interest, nomination papers, and nomination petitions” under A.R.S. § 16-311. (Wachtel  
5 Decl. Ex. E.) Since then, at least three additional Party members have filed Statements of  
6 Interest with the Secretary to run for state offices. (Joint Stip. Exs. 11–13.)

7 No Labels Arizona filed this lawsuit on October 19, 2023, raising two claims against  
8 the Secretary based on his refusal to reject the Statements of Interest: (1) for violation of  
9 Arizona state election laws, and (2) a 42 U.S.C. § 1983 claim for violation of the First and  
10 Fourteenth Amendments of the United States Constitution. (Doc. 1, Compl.) The Party  
11 now seeks preliminary and permanent injunctive relief enjoining the Secretary from  
12 accepting Statements of Interest filed by persons intending to run as No Labels Arizona  
13 candidates in the 2024 Primary Election, and from printing or distributing ballots that  
14 include No Labels Arizona candidates for any office in the 2024 Primary Election or for  
15 any office other than President and Vice President in the 2024 General Election.

## 16 **II. LEGAL STANDARD**

17 To obtain preliminary injunctive relief, Plaintiff must show that “(1) [it is] likely to  
18 succeed on the merits, (2) [it is] likely to suffer irreparable harm in the absence of  
19 preliminary relief, (3) the balance of equities tips in [its] favor, and (4) an injunction is in  
20 the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing  
21 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 9 (2008)). The Ninth Circuit Court of  
22 Appeals, employing a sliding scale analysis, has also stated that “‘serious questions going  
23 to the merits’ and a hardship balance that tips sharply toward the [movant] can support  
24 issuance of an injunction, assuming the other two elements of the *Winter* test are also met.”  
25 *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1078 (9th Cir. 2013) *cert. denied*, 134 S.  
26 Ct. 2877 (2014) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132  
27 (9th Cir. 2011)).  
28

1 In the Ninth Circuit, a mandatory injunction—generally defined as an injunction  
2 ordering a responsible party to affirmatively take a specific action—is subject to a higher  
3 standard than a prohibitory injunction that prevents the party from taking an action, thereby  
4 preserving the status quo. *Hernandez v. Sessions*, 872 F.3d 976, 998–99 (9th Cir. 2017).  
5 “Mandatory injunctions . . . are permissible when ‘extreme or very serious damage will  
6 result’ that is not ‘capable of compensation in damages,’ and the merits of the case are not  
7 ‘doubtful.’” *Id.* at 999 (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH &*  
8 *Co.*, 571 F.3d 873, 879 (9th Cir. 2009)).

### 9 **III. ANALYSIS**

10 The determination whether Plaintiff seeks mandatory or prohibitory injunctive relief  
11 affects the standard to be applied, so the Court addresses that question first. The Ninth Circuit  
12 has highlighted the complexities of discerning between mandatory and prohibitory  
13 injunctions in many instances, referring to “the inherent contradictions underlying the  
14 somewhat artificial legal construct that cause so many to question the inquiry,” but circuit  
15 precedent requires courts to make the determination “as best we can.” *Id.* at 998. Plaintiff’s  
16 requested relief is for an order enjoining the Secretary from “accepting as valid any  
17 Statements of Interest filed by persons expressing interest to run as No Labels Arizona  
18 candidate for any 2024 primary election” as well as printing or distributing associated ballots  
19 in the Primary or General Elections. (Doc. 6-4, proposed Preliminary Injunction Order.)

20 The Secretary characterizes this relief as mandatory in that it requires him to  
21 affirmatively change the procedures he follows so that his office does not accept certain  
22 Statements of Interest or produce associated ballots, which would deprive Party members  
23 (who are not parties to this lawsuit) from ballot access. Plaintiff characterizes the relief  
24 sought as prohibitory because it prevents the government from following a procedure that  
25 will result in an unconstitutional disregard of Plaintiff’s right to associate under the First  
26 Amendment. Under Ninth Circuit precedent, Plaintiff has the better argument. Plaintiff  
27 seeks relief based on its argument that it is likely to succeed in showing the Secretary’s  
28 acts violate (or will violate) Arizona law and the United States Constitution. If the Court

1 agrees, the injunctive relief will merely prevent the Secretary from following a procedure  
2 that would have unconstitutional results, which the Ninth Circuit has held is a prohibitory  
3 injunction. *See id.* (“This . . . injunction prevents future constitutional violations, a classic  
4 form of prohibitory injunction.”) (citing, *e.g.*, *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d  
5 1053, 1060–61 (9th Cir. 2014)). Accordingly, the Court will apply the unaltered *Winter*  
6 factors to determine if Plaintiff is entitled to injunctive relief.

7 **A. Likelihood of Success on the Merits**

8 **1. Arizona Election Law Claim (Count 1)**

9 The Party’s first claim is that the Secretary’s acceptance of Statements of Interest  
10 from Party members intending to run in the Primary Election for office under the Party  
11 insignia is a violation of state election law. In so claiming, the Party points principally to  
12 A.R.S. § 16-301(A), which states:

13 At a primary election, each political party entitled and intending to make  
14 nominations for the ensuing general or special election, if it desires to have  
15 the names of the candidates printed on the official ballot at that general or  
16 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.

17 Emphasizing the phrases “intending to make nominations” and “if it desires to have the  
18 names of the candidates printed,” the Party argues that it has expressly stated it does not  
19 intend to make nominations for the Primary Election or desire to have the names of  
20 candidates printed for state offices, and the Secretary’s acceptance of Statements of Interest  
21 is thus in contravention of § 16-301(A).

22 The Secretary contends that § 16-301(A) must be considered in the context of the  
23 entire set of Arizona election laws and that this section simply requires that political parties  
24 nominate candidates through primary elections in lieu of any other process, such as direct  
25 nomination by a party. The Secretary argues that A.R.S. § 16-311(H) allows any person in  
26 a political party to file a Statement of Interest to run as a candidate for a state office, and  
27 from that statute arises a nondiscretionary duty on the part of the Secretary to accept  
28 properly filed Statements of Interest.

1 At base, No Labels Arizona is unlike other political parties, the structure of which  
2 likely informed the Arizona statutory framework for elections. No Labels Arizona is a party  
3 in which its registered members do not speak for the Party in the way members of other  
4 parties do; that is, among other things, No Labels Arizona does not allow its registered  
5 members to run for public office in Arizona under the Party insignia. The fact that at least  
6 five registered members of the Party are attempting to run anyway may be explained in  
7 part by the text of the Party’s petition to be recognized as a political party in Arizona, which  
8 stated that those who signed the petition were requesting that the Party “be represented by  
9 an official party ballot at the next ensuing regular primary election, to be held on the  
10 August 6, 2024.” (Doc. 19, Joint Statement of Stip. Facts & Exs. ¶ 11.) But the Party,  
11 through its bylaws, intends not to be represented by an official party ballot at the primary  
12 election. Of course, this lawsuit would have been avoided if the Party had enforced its  
13 bylaws on its members or certain registered members of the Party had complied with the  
14 Party’s bylaws. As they have not complied, No Labels Arizona asks the Court to enjoin the  
15 Secretary from accepting those members’ Statements of Interest, essentially putting the  
16 onus on the Secretary to enforce the Party’s bylaws in lieu of following the existing  
17 procedures implementing the statutory framework for elections in Arizona.

18 But nothing in the statutory framework or the Secretary’s procedures implementing  
19 that framework provides for the rejection of Statements of Interest properly filed by  
20 registered members of a political party in Arizona. The Court agrees with the Secretary  
21 that, considered within the statutory framework as a whole, § 16-301(A) merely requires  
22 parties to nominate candidates through the primary election process and not in another way.  
23 A Statement of Interest filed by a registered member of a political party is a form of  
24 expressing that party’s intent to nominate a candidate for the general election. Indeed, for  
25 its part, § 16-311(H) allows any registered member of a political party to file a Statement  
26 of Interest to run as a candidate for a state office and does not subject those Statements of  
27 Interest to a review by the Secretary to determine if they comply with the party’s bylaws.  
28 In this respect, the Secretary’s acts in accepting or intending to accept the Statements of

1 Interest are not so much “forcing” No Labels Arizona to run candidates, as characterized  
2 by the Party, as those acts are in compliance with ordinary election practices in Arizona  
3 under the relevant statutes. Accordingly, the Court finds the Secretary’s acts did not violate,  
4 but rather complied with, Arizona election law, and the Party’s first claim fails.

## 5 **2. Constitutional Claim (Count 2)**

6 The greater question—that which the parties spent most of their time discussing in  
7 the hearing—is whether the Secretary’s acts are an infringement of No Labels Arizona’s  
8 freedom to associate under the First Amendment, which the Party brings as a § 1983 claim.  
9 To state a § 1983 claim, a plaintiff “must allege the violation of a right secured by the  
10 Constitution and laws of the United States,” committed by “a person acting under color of  
11 state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988). The First Amendment protects the right  
12 to associate with others to exercise the freedom of speech expressly protected by the text  
13 of the First Amendment, including “the freedom to join together in furtherance of common  
14 political beliefs.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000) (quoting  
15 *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214–15 (1986)). And this right is  
16 “protected by the Fourteenth Amendment from infringement by any State.” *Democratic*  
17 *Party of U.S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 121 (1981).

18 The parties do not dispute that the Secretary is acting under color of state law or that  
19 No Labels Arizona has a First Amendment right to associate in furtherance of common  
20 political beliefs. But the Secretary argues—and the Party strongly disagrees in this  
21 context—that the Party’s “freedom of association ends where the fundamental political  
22 rights of others begin,” including “the right to vote,” which “is fundamental.” (Resp. at  
23 8-9.) The Secretary contends that the state’s interest in ensuring fair elections outweighs  
24 the Party’s “nomination-by-fiat preference.” (Resp. at 9.)

25 In support of his argument, the Secretary relies on *Alaskan Independence Party v.*  
26 *Alaska*, 545 F.3d 1173 (9th Cir. 2008). There, the Alaskan Independence Party and Alaskan  
27 Libertarian Party (the “third parties”) challenged Alaska’s mandatory direct primary  
28 system—similar to that of Arizona—for the selection of candidates for the state’s general

1 election ballot. *Id.* at 1175. The third parties argued that they had the associational right “to  
2 determine how their candidates to appear on Alaska election ballots are to be selected, and  
3 the State of Alaska must allow a political party to select its candidates for the general  
4 election ballot in a manner acceptable to the political party.” *Id.* at 1176.

5 In denying the third parties’ request for injunctive relief, the Ninth Circuit weighed  
6 Alaska’s interest in its state-run mandatory primary system against the third parties’  
7 associational rights. *Id.* at 1176–77. The court recognized Alaska’s interest in “remov[ing]  
8 party nominating decisions from the infamous ‘smoked-filled rooms’ and plac[ing] them  
9 instead in the hands of the party’s rank-and-file,” and the court looked to Supreme Court  
10 precedent providing that “it is ‘too plain for argument’ that ‘a State may require parties to  
11 use the primary format for selecting their nominees, in order to assure that intraparty  
12 competition is resolved in a democratic fashion.’” *Id.* at 1177 (quoting *Jones*, 530 U.S. at  
13 572). Those interests outweighed the claimed burden on the third parties’ associational  
14 rights in the form of not permitting the third parties’ leaders to pre-select or screen their  
15 candidates on the primary ballot; that claimed burden was not severe because the third  
16 parties’ nominees were still “selected democratically by registered party voters . . . from a  
17 slate of all qualified, affiliated candidates who seek the nomination.” *Id.* at 1179–80.

18 As No Labels Arizona argues, that case differs significantly from the present one.  
19 There, the court addressed whether a political party *that intended to run a candidate for an*  
20 *office* could pre-select its candidates for the primary election in contravention of the  
21 mandatory primary system, weighing Alaska’s interest in eliminating potential corruption  
22 and considering that associational rights were not significantly burdened by a system  
23 allowing party members to select a candidate from a slate of fellow party members. Here,  
24 neither of those considerations are at play. The state does not have an interest in eliminating  
25 corruption in a primary election (or in a party’s selection of its primary candidates) where  
26 the party is not running any candidates. Likewise, the Party members and voters do not  
27 have rights, associational or otherwise, in selecting a nominee for an office the Party is not  
28 seeking.



1 In arguing that its associational rights are infringed where the Secretary places  
2 candidates on the primary ballot in contravention of its intention not to run any candidates  
3 in the primary as expressed in its constitution and bylaws, the Party cites among other cases  
4 *Tashjian*, 479 U.S. at 210–11, in which the Supreme Court examined whether  
5 Connecticut’s closed primary system—allowing only registered members of a political  
6 party to vote in that party’s primary election—infringed on the Republican Party of  
7 Connecticut’s associational rights where the party adopted a rule allowing independent  
8 voters—those not affiliated with any political party—to vote in Republican primaries. The  
9 Supreme Court ruled in favor of the Republican Party, holding that a political party’s  
10 “determination of the boundaries of its own association, and of the structure which best  
11 allows it to pursue its political goals, is protected by the Constitution.” *Id.* at 224. In the face  
12 of the state’s argument “that its statute is well designed to save the Republican Party from  
13 undertaking a course of conduct destructive of its own interests,” the Supreme Court held  
14 that “a State, or court, may not constitutionally substitute its own judgment for that of the  
15 Party.” *Id.* That is, “as is true of all expressions of First Amendment freedoms, the courts  
16 may not interfere on the ground that they view a particular expression as unwise or  
17 irrational.” *Id.*

18 The Party also points to *Libertarian Party of Illinois v. Scholz*, 872 F.3d 518, 521-22  
19 (7th Cir. 2017), in which the Seventh Circuit examined whether Illinois’s full-slate  
20 requirement—that a political party “must submit a full slate of candidates, one for each  
21 race in the relevant political subdivision”—violated the Libertarian Party of Illinois’s  
22 associational rights where the party wanted to run only a candidate for county auditor under  
23 the party insignia. Although *Scholz* was in the context of whether the party had ballot access  
24 under its party insignia, which is not at issue here, that court found that the full-slate  
25 requirement “severely burdens the First Amendment rights” of the Libertarian Party in  
26 forcing it to run “candidates for races they want nothing to do with,” including by requiring  
27 the party “to devote to each candidate the funding and other resources necessary to operate  
28 a full-fledged campaign.” *Id.* at 524.

1           In a case such as this, the Court must weigh “the character and magnitude of the  
2 asserted injury to the rights protected by the First and Fourteenth Amendments that the  
3 plaintiff seeks to vindicate against the precise interests put forward by the State as  
4 justifications for the burden imposed by the rule.” *Id.* at 523 (internal quotations omitted).  
5 The Court finds that Arizona’s interests are minimal in this context, whereas the burden on  
6 the Party is substantial. As discussed above and contrary to the Secretary’s arguments, this  
7 case does not implicate the interests at issue in *Alaskan Independence Party* of eliminating  
8 corruption in a party’s selection of its primary candidates because the Party intends not to  
9 run *any* candidates in the primary. Moreover, Arizona voters do not have the right to select  
10 a nominee for an office the Party is not seeking.

11           The Secretary also raises the idea that registered members of the Party, as individual  
12 citizens, have the right to appear on a ballot as the Party’s candidate, but that idea is  
13 unsupported in the case law. *See N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196,  
14 203–204 (2008) (stating that the associational rights of a political party did not confer  
15 associational right on an individual candidate); *Wash. State Grange v. Wash. State*  
16 *Republican Party*, 552 U.S. 442, 453 n.7 (2008) (noting that even political parties do not  
17 have the “right to have their nominees designated as such on the ballot”). To the extent an  
18 individual citizen has the right to appear on the ballot at all, the citizen can appear on the  
19 ballot without party affiliation (or in the primary of another political party) after meeting  
20 the state’s requirements to do so. At the hearing, the Secretary also raised concerns that No  
21 Labels Arizona voters might expect to receive primary ballots and will be confused when  
22 they do not receive them, and that such confusion could lead to threats against election  
23 workers. But the Secretary provided no evidentiary or legal support for these suggested  
24 interests.

25           On the other hand, as noted above, the Party has First Amendment rights to define  
26 the boundaries and structure of its association, including what offices it intends to seek.  
27 *See Tashjian*, 479 U.S. at 224. The Secretary’s acts leading to placement of candidates on  
28 the primary election ballot under the Party insignia for offices the Party does not intend to

1 seek infringes on the Party’s associational rights to structure itself, choose a standard bearer  
2 who speaks for the Party, and decide where to devote its resources. *See id.*; *Scholz*, 872  
3 F.3d at 524 (requiring a party to run candidates for offices it does not want burdens the  
4 party’s allocation of resources and “the right of a candidate to run as the standard bearer  
5 for his party”). Simply because the state may disagree with the Party’s choices in  
6 structuring or setting boundaries for itself does not entitle the state to constitutionally  
7 substitute its judgment for the Party’s judgment. *See Tashjian*, 479 U.S. at 224. Weighing  
8 the state’s minimal interests against the substantial burden on the Party, the Court  
9 concludes that the Secretary’s acts in furtherance of placing Party candidates on the  
10 primary ballot infringe on the Party’s First and Fourteenth Amendment rights.

11 **B. The Other *Winter* Factors**

12 The Court agrees with No Labels Arizona that it is likely to suffer irreparable harm  
13 by way of the loss of its First Amendment rights in the absence of injunctive relief. *See*  
14 *Elrod v. Burn*, 427 U.S. 347, 373 (1976).

15 Because the state opposes injunctive relief, examination of the balance of equities  
16 and the public interest merge in this case. *Nken v. Holder*, 556 U.S. 418, 435 (2009). As  
17 detailed above, Arizona and its voters have minimal interest in candidates running for  
18 offices under the Party insignia that the Party does intend to seek. The Party has substantial  
19 First Amendment rights to structure itself, speak through a standard bearer, and allocate its  
20 resources. The balance of equities thus tips in favor of the Party.

21 For all of these reasons, the Court finds that No Labels Arizona succeeds on the  
22 merits of its claim that the Secretary’s conduct infringes and will infringe on its First  
23 Amendment rights (Count 2) and that it is entitled to the preliminary and permanent  
24 injunctive relief requested.<sup>2</sup> With the exception of its prayer for attorneys’ fees and costs,  
25 the Party sought only injunctive relief in the Complaint (Doc. 1), so the Court will enter  
26 judgment in favor of the Party on Count 2 of the Complaint.

27 \_\_\_\_\_  
28 <sup>2</sup> The parties acknowledge that the Party’s request for a preliminary injunction  
became a request for a permanent injunction, with the January 5, 2024 hearing acting as a  
trial on the merits. (Resp. at 5; Reply at 2.)

