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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
**IN AND FOR THE COUNTY OF MARICOPA**

ARIZONA DEMOCRATIC PARTY, et al.,

Plaintiffs,

v.

NO LABELS, et al.,

Defendants.

CASE No. CV2023-004832

**DEFENDANT ARIZONA  
SECRETARY OF STATE  
ADRIAN FONTES'  
MOTION TO DISMISS**

**(Oral Argument Requested)**

(Before the Hon. Katherine Cooper)

Defendant Adrian Fontes, in his official capacity as the Arizona Secretary of State (the "Secretary"), moves to dismiss Plaintiffs' Complaint pursuant to Arizona Rule of Civil Procedure 12(b)(6).<sup>1</sup>

A new political party may file a petition with the Secretary for ballot recognition, which allows parties to participate in State Primary Elections. The Secretary is required to assess a petition's compliance with Arizona law as prescribed by statute. On February 10, 2023, the No Labels Party ("No Labels") filed a petition for new party recognition with the Secretary. The Secretary assessed the petition, found it complied with the law, and certified that Arizona recognizes No Labels as a political party.

Plaintiffs do not challenge the number of signatures No Labels collected, their veracity, nor the form upon which those signatures appear. Thus, *there is no dispute* that No Labels collected more valid signatures than the minimum needed to be recognized as a

<sup>1</sup> Pursuant to Arizona Rule of Civil Procedure 12(j), a good faith consultation certificate that complies with Arizona Rule of Civil Procedure 7.1(h) accompanies this motion.

1 political party, and submitted those signatures on a petition compliant with Arizona law.  
2 Even so, Plaintiffs’ seek a Court order forcing the Secretary to rescind Arizona’s recognition  
3 of No Labels as a political party because – according to Plaintiffs – the cover affidavit  
4 attached to No Labels’ petition (1) imperfectly reworded statutory text, and (2) was signed  
5 before the last signatures on No Labels’ petition were collected. Based on those alleged  
6 flaws, Plaintiffs contend that the Secretary should not have accepted No Labels’ filing, thus  
7 voiding more than 7,000 petition sheets and more than 41,000 validated signatures.

8 Plaintiffs’ claims, however, fail as a matter of law. Plaintiffs cannot challenge the  
9 Secretary’s decision because, unlike in an election contest or nomination petition challenge,  
10 Arizona law provides no mechanism for challenging a petition to recognize a political party.  
11 This, at most, leaves Plaintiffs with seeking possible injunctive or mandamus relief. But  
12 those claims fail as a matter of law, under the facts alleged, because: (1) No Labels’ affidavit  
13 complied with the law; (2) declaratory relief is unavailable “[t]o prevent enforcement of a  
14 public statute by officers of the law for the public benefit[,]” or “[t]o prevent the exercise of  
15 a public or private office in a lawful manner by the person in possession[,]” A.R.S. § 12-  
16 1802(4), (6); and (3) mandamus is not available to challenge whether a public official  
17 “misapplied or misinterpreted” the law. *Stagecoach Trails MHC, L.L.C. v. City of Benson*,  
18 231 Ariz. 366, 370, ¶ 21 (2013); *Fields v. Elected Officials’ Ret. Plan*, 234 Ariz. 214, 222,  
19 ¶ 40 (2014) (same).

20 Thus, for the following reasons, this Court should dismiss the Complaint with  
21 prejudice.

## 22 **I. THE FACTS**

### 23 **A. HOW A NEW POLITICAL PARTY IS OFFICIALLY RECOGNIZED IN ARIZONA**

24 Obtaining recognition as a political party in Arizona requires adherence to A.R.S. §§  
25 16-801 through -804. And the Secretary determines whether a new political party has done  
26 so. *See* Compl., ¶ 14; A.R.S. §§ 16-801, -803; Ariz. Sec’y of State, 2019 Elections  
27 Procedures Manual (“2019 EPM”) at Ch. 15, § I, *available at* <https://tinyurl.com/EPMAZ>  
28 (Pages 255–263).

1 To be recognized as a political party for the 2024 primary and general elections, one  
2 must file with the Secretary “a petition” signed by at least 34,127 qualified electors. *See*  
3 A.R.S. § 16-801(A) (method to calculate required number of signatures for each election  
4 cycle); Compl., ¶ 23 (minimum number of signatures is 34,127). “[A]t least five different  
5 counties shall be included as the county of registration among the required total of qualified  
6 electors and at least [10%] of the required total of qualified electors shall be registered in  
7 counties with populations of less than [500,000] persons.” *Id.*

8 A petition must be (1) “verified by the affidavit of ten qualified electors of the state,  
9 asking that the signers thereof shall be recognized as a new political party[;]” (2) “in  
10 substantially the form prescribed by § 16-315[;]” and (3) explicitly captioned “petition for  
11 political party recognition.” A.R.S. § 16-801(A). As for its form, the Secretary provides a  
12 form on his office’s website. *See* Ariz. Sec’y of State, *Information about Recognized*  
13 *Political Parties*, <https://tinyurl.com/4e9a8ka4> (last visited April 18, 2023, hyperlinks  
14 below headings “How to Create a New Statewide Political Party” and “Resources”).  
15 Similarly, the Secretary provides a “new party affidavit.” *Id.*<sup>2</sup>

16 After a petition is filed, the Secretary assesses the petition, new party affidavit, and  
17 supporting signatures in order to determine whether they comply with the law. A.R.S. § 16-  
18 803. If they comply with the law, then the Secretary must deem the party recognized in  
19 Arizona.

20 **B. THE NO LABELS PARTY SEEKS RECOGNITION AS A POLITICAL PARTY**

21 On February 10, 2023, sixteen qualified electors (the “Electors”) filed with the  
22 Secretary a petition for recognition of a new political party (the “Petition”). Compl., ¶ 18.  
23 The Petition had 56,971 signatures. *Id.* at ¶ 18. The Petition included the Electors’ new  
24 party affidavit, was in substantially the form prescribed by A.R.S. § 16-315, and was

25 \_\_\_\_\_  
26 <sup>2</sup> This Court should take judicial notice of any facts on state websites cited in this motion  
27 because they are facts (1) not susceptible to reasonable dispute, (2) generally known within  
28 this Court’s jurisdiction, and (3) can be accurately and readily determined from sources  
whose accuracy cannot reasonably be questioned. *See* Ariz. R. Evid. 201(b), (b)(2); *see*  
*also Pedersen v. Bennett*, 230 Ariz. 556, 559, ¶ 15 (2012) (taking judicial notice of  
documents on state website).

1 captioned “petition for political party recognition.” Compl., ¶ 25 (alleging the Electors  
2 submitted new party affidavit sheets); 18–35 (no allegations related to either the signature  
3 pages’ captions or noncompliance with prescriptions in A.R.S. § 16-315); Ariz. Sec’y of  
4 State, *No Labels Party*, <https://tinyurl.com/2hvjrhd> (last visited April 18, 2023).<sup>3</sup> Likewise,  
5 the Petition and the Electors’ new party affidavit were in the form prescribed by the  
6 Secretary of State’s website. Compl., ¶¶ 18–35 (no allegations disputing this point);  
7 *compare* Ariz. Sec’y of State, *New Party – Affidavit of Ten Qualified Electors*,  
8 <https://tinyurl.com/k4ym7jma> (last visited April 18, 2023) *with Exhibit A* (using new party  
9 affidavit form from the Secretary’s website).

10 After the Secretary inspected the signatures pursuant to A.R.S. § 16-803, he  
11 “determined that the total number of valid signatures was 41,663, which exceeded the  
12 34,127 minimum signatures required.” Compl., ¶ 23. Of the valid signatures, “at least five  
13 different counties” were represented and at least 10% of the signatories were in counties  
14 with less than 500,000 people. *See id.* at ¶ 26; *see also id.* at ¶¶ 18–35 (no allegations  
15 disputing the Secretary’s decisions on these points); Ariz. Sec’y of State, *No Labels Party*,  
16 <https://tinyurl.com/2hvjrhd> (last visited April 18, 2023).

17 Based on all this, the Secretary found that the Petition complied with the law.  
18 Compl., ¶ 2. On March 7, 2023, the Secretary certified that No Labels qualified as a new  
19 political party for federal, statewide, and legislative races in the 2024 Primary and General  
20 Elections. *Id.* at ¶ 24; *see also* Ariz. Sec’y of State, *No Labels Party*,  
21 <https://tinyurl.com/2hvjrhd> (last visited April 18, 2023).

## 22 **II. LEGAL ARGUMENT**

### 23 **A. THE APPLICABLE LEGAL STANDARD**

24 When considering a motion to dismiss, the Court assumes as true only “well-pled  
25

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26 <sup>3</sup> True copies of the Electors’ new party affidavits are attached as **Exhibit A**, with the  
27 specific addresses redacted for privacy purposes. “In deciding whether to grant a Rule  
28 12(b)(6) motion courts may consider a complaint’s exhibits or public records concerning  
matters referenced in the complaint.” *AUDIT-USA v. Maricopa Cnty.*, 525 P.3d 279, 281 ¶  
6 (Ariz. App. 2023); Compl., ¶ 45 (allegation that the Electors’ new party affidavit is  
defective).

1 facts, not legal conclusions.” *Grand v. Nacchio*, 225 Ariz. 171, 175 n.1 (2010) (internal  
2 quotation marks and citation omitted). “[A] complaint that states only legal conclusions,  
3 without any supporting factual allegations, does not satisfy Arizona’s notice pleading  
4 standard under Rule 8.” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008).  
5 The Court will “not accept as true allegations consisting of conclusions of law, inferences  
6 or deductions that are not necessarily implied by well-pleaded facts, unreasonable  
7 inferences or unsupported conclusions from such facts, or legal conclusions alleged as  
8 facts.” *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005).

9 **B. PLAINTIFFS CANNOT CHALLENGE THE SECRETARY’S DECISION**

10 “When the language of a statute is clear and unambiguous, a court should not look  
11 beyond the language, but rather simply apply it without using other means of construction,  
12 assuming that the legislature has said what it means.” *City of Tucson v. Clear Channel*  
13 *Outdoor, Inc.*, 218 Ariz. 172, 178, ¶ 6 (App. 2008) (internal quotations and citation omitted).  
14 “Where a statute is silent on an issue, [the Court] will not read into it . . . nor will [the Court]  
15 inflate, stretch or extend the statute to matters not falling within its expressed provisions.”  
16 *Ponderosa Fire Dist. v. Coconino Cnty.*, 235 Ariz. 597, 604, ¶ 30 (App. 2014) (cleaned up).

17 The law does not empower Plaintiffs to challenge the Secretary’s determination.  
18 Nowhere in the statutes governing political party recognition is there a mechanism for  
19 challenging the Secretary’s decision, or the signatures or affidavits submitted to the  
20 Secretary for review and approval. Had the legislature wanted to provide such redress, it  
21 would and could have done so. *Compare* A.R.S. §§ 16-801 through 804 (reflecting no  
22 mechanism for challenging signatures or the Secretary’s decision) *with* A.R.S. §§ 16-351  
23 through -551.01 (challenging nomination petitions) and A.R.S. §§ 16-671 through -678  
24 (challenging election results). But the legislature declined to prescribe a mechanism  
25 permitting the challenges at bar, and Plaintiffs lack the power to create such a right by  
26 judicial fiat. *See Ponderosa Fire Dist. v. Coconino Cnty.*, 235 Ariz. 597, 604, ¶ 30 (App.  
27 2014) (“Where a statute is silent on an issue, we will not read into it . . . nor will we inflate,  
28 stretch or extend the statute to matters not falling within its expressed provisions.” (cleaned

1 up)); *P.F.W., Inc. v. Superior Court*, 139 Ariz. 31, 34 (App. 1984) (“[W]e must assume that  
2 the legislature intended different consequences to flow from the use of different language.”);  
3 *Lancaster v. Ariz. Bd. Of Regents*, 143 Ariz. 451, 457 (App. 1984) (affirming trial court’s  
4 finding that the lack of a private right of action foreclosed claims for mandamus and  
5 declaratory relief).

6 For this reason alone, dismissal is required.

7 **A. EVEN IF PLAINTIFFS COULD CHALLENGE THE SECRETARY’S DECISION,**  
8 **PLAINTIFFS’ CLAIMS STILL FAIL AS A MATTER OF LAW**

9 Plaintiffs assert two claims against the Secretary: (1) declaratory and injunctive relief  
10 for alleged violations of A.R.S. §§ 16-801, -803; and (2) mandamus. Compl., at 9:22–23,  
11 10:2–3. Both claims fail as a matter of law. We will explain why, in turn.

12 **1. PLAINTIFFS’ DECLARATORY AND INJUNCTIVE RELIEF CLAIM FAILS**

13 Plaintiffs seek an order declaring that the Petition “was not properly verified by the  
14 affidavit of ten qualified electors”, and compelling the Secretary to “rescind his March 7,  
15 2023 certification” of No Labels. Compl. at Prayer for Relief, ¶¶ B, D. This relief is  
16 premised on the assumption that the Secretary misunderstood or misapplied the law. *Id.* at  
17 ¶¶ 42–43. He did not.

18 **(i) THE AFFIDAVITS COMPLIED WITH THE LAW**

19 Plaintiffs argue the Electors’ affidavit did not verify the Petition because the Electors  
20 executed their affidavit *before* all signatures in support of the Petition were ultimately  
21 collected. *Id.*, ¶¶ 26–27, 28 (alleging “no elector verified the petition that was actually  
22 filed.”). This argument fails, because the law does not have the temporal limitation  
23 Plaintiffs invoke.

24 Under A.R.S. § 16-801(A)(1), “[t]he *petition* shall: [b]e verified by the affidavit of  
25 ten qualified electors of the state, asking that the signers thereof be recognized as a new  
26 political party.” (Emphasis added). A.R.S. § 16-801 does *not* mandate a petition must be  
27 verified by affidavit *only after* all signatures in support of the petition have been collected.  
28 And more importantly, Plaintiffs cannot compel this Court to manufacture such a

1 requirement. *See Ponderosa Fire Dist.*, 235 Ariz. 597 at ¶ 30; *In re Martin M*, 223 Ariz.  
2 244, 247, ¶ 9 (Courts “cannot rewrite a statute under the guise of divining legislative  
3 intent.”).

4 Indeed, Plaintiffs’ attempt to write a temporal requirement into the statute makes no  
5 sense given what the statute’s express unambiguous language. The affidavit at issue is  
6 merely intended to verify that “the petition” seeks political party recognition, not the validity  
7 of the signatures collected in support of the petition. A.R.S. § 16-801. It is the Secretary’s  
8 job to assess the validity of the signatures collected in support of a petition. *See* A.R.S. §§  
9 16-801(A), -803; 2019 EPM at Ch. 15, § I. And it is the petition circulators – not the  
10 Electors who execute the affidavit – who are responsible for being the person “before whom  
11 the signatures” are recorded. A.R.S. § 16-321(D); 2019 EPM at Ch. 14. Under Plaintiffs’  
12 reading of the law, statutorily prescribed roles and duties are changed. It is beyond cavil  
13 that such a result cannot occur.

14 At bottom, Plaintiffs’ position conflates a petition’s purpose with that of an affidavit,  
15 adds a temporal requirement that the law does not require, and ignores (if not rewrites) the  
16 plain language of A.R.S. § 16-801(A)(1). For these reasons, Plaintiffs’ claim fails.

17 **(ii) THE ELECTORS’ AFFIDAVIT COMPLIES WITH THE LAW**

18 Plaintiffs argue that the Electors’ affidavit “asked for the wrong thing” and is false,  
19 because the Electors ask “that the signers of the attached petitions be recognized as a new  
20 political party” rather than asking “that the signers thereof be recognized as a new political  
21 party.” Compl., ¶ 31 (emphasis added). These arguments also fail to state a claim for relief.

22 First, again, the Court must apply an unambiguous statute as written without  
23 resorting to other methods of interpretation. *See City of Tucson, Inc.*, 218 Ariz. at 178, ¶ 6.  
24 There is no statutory requirement that the *affidavit* at issue use the specific words Plaintiffs  
25 demand. A.R.S. § 16-801(A)(3) states that “[t]he *petition* shall: [b]e captioned ‘petition for  
26 political party recognition.’” (Emphasis added). This subsection expressly requires *specific*  
27 wording for a *petition*’s caption. But A.R.S. § 16-801 does not mandate specific wording  
28 for an *affidavit*, although the legislature clearly could have chosen otherwise. Thus,

1 Plaintiffs’ view that A.R.S. § 16-801(A)(1) requires an affidavit to use the specific wording  
2 “that the signers thereof be recognized as a new political party” has no statutory support and  
3 we cannot assume the legislature meant to mandate a restriction not otherwise expressly  
4 stated. *See City of Tucson, Inc.*, 218 Ariz. at 178, ¶ 6.

5 Second, even if the affidavit should have stated the language Plaintiffs demand, the  
6 affidavit nonetheless substantially complies with A.R.S. § 16-801(A)(1), and that is enough.  
7 *See Bee v. Day*, 218 Ariz. 505, 507 ¶ 10 (2008) (holding that even a “technical departure  
8 from” statutory requirements would not prevent ballot access; instead, courts “focus[] on  
9 whether the omission of information could confuse or mislead electors signing the  
10 petition.”) (quoting *Moreno v. Jones*, 213 Ariz. 94, 102 ¶ 42 (2006)).<sup>4</sup> There is no allegation  
11 here of voter confusion and the affidavit cannot sincerely be characterized as misleading  
12 since it seeks exactly what the law requires: recognition as a political party. *See Compl.*,  
13 ¶¶ 18 – 35 (merely alleging that new party affidavits did not use the right magic words and  
14 that signers should have executed their affidavits after all the signatures were collected).  
15 More critically, the Court must not infer confusion from the facts alleged, because doing so  
16 would be unreasonable. *See Jeter*, 211 Ariz. at 389, ¶ 4; *see also* Ariz. Sec’y of State,  
17 *Information about Recognized Political Parties*, <https://tinyurl.com/4e9a8ka4> (publicly  
18 available forms prescribed by the Secretary that were used by the No Labels Party).

19 Third, the affidavit is not false. The affidavit states: “We, the ten qualified electors  
20 of the state of Arizona, request that the signers of the attached petitions be recognized as a  
21 new political party, to be called No Labels Party.” **Exhibit A** (emphasis added). Again, the  
22 affidavit is not intended to verify any signatures on a petition (that is a task reserved for  
23 others). *See* A.R.S. § 16-803; 2019 EPM at Ch. 15, § I. The affidavit need only request  
24 that the signers of a petition be recognized as a new political party. A.R.S. § 16-801(A)(1).  
25 And here, the Electors’ affidavit does that. *See Exhibit A*. There is simply no basis to

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27 <sup>4</sup> No Labels makes this argument in its own Motion to Dismiss. For purposes of economy,  
28 rather than repeat that argument again here, the Secretary instead adopts and incorporates  
that argument herein by reference.



1 conclude that the Electors’ affidavit is false or misrepresented anything merely by asking  
2 that anyone who signed a petition be recognized as a new political party.

3 Fourth, as support for upending the political party recognition process in Arizona,  
4 Plaintiffs invoke cases concerning the circulation of candidate nomination or initiative  
5 petitions. *See id.*, at ¶¶ 32–33. But that process is subject to its own express statutory  
6 parameters. And that statutory scheme differs materially from the statutes governing  
7 political party recognition. Thus, Plaintiffs’ reliance on cases where “false affidavits void  
8 the signature sheets they purport to verify[]” is misplaced, because unlike in the petition  
9 circulator context where the circulator must personally witness a signature, there is no such  
10 requirement for purposes of political party recognition.

11 **(iii) INJUNCTIVE RELIEF IS BARRED BY STATUTE**

12 Arizona law explicitly provides that “[a]n injunction shall not be granted: [t]o prevent  
13 enforcement of a public statute by officers of the law for the public benefit[,]” or “[t]o  
14 prevent the exercise of a public or private office in a lawful manner by the person in  
15 possession.” A.R.S. § 12-1802(4), (6).

16 Plaintiffs seek an injunction requiring the Secretary to rescind his certification of the  
17 “Final Results of the No Labels Party of Arizona Filing.” Compl., Prayer for Relief, at ¶¶  
18 C–D. But the Secretary’s certification constitutes nothing more than his “enforcement” of  
19 the law and his lawful exercise of the public office to which he was elected (which includes  
20 the obligation to assess petitions for new political party recognition). Thus, injunctive relief  
21 is not available as matter of law.<sup>5</sup>

22 **(iv) NO LABELS’ CORPORATE STATUS IS IRRELEVANT**

23 Plaintiffs take aim at No Labels’ status as a 501(c)(4) nonprofit corporation. Compl.,  
24 ¶¶ 1–5, 34. None of this is relevant. Plaintiffs do not seek relief on the basis that No Labels

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25 <sup>5</sup> Interestingly, the Complaint does not allege that subtracting the number of signatures  
26 collected *after* the last Signer executed their affidavit puts the number of valid signatures  
27 below 34,127. *See* Compl. at ¶ 27 (only alleging that after the last Signer executed their  
28 affidavit, “No Labels continued to collect *additional* signatures for months, as late as  
January 31, 2023.” (emphasis added)). So *assuming* the Complaint’s pled facts as true,  
Plaintiffs fail to plead the petition is defective for want of enough valid signatures after the  
last Elector executed their affidavit.

1 is a nonprofit corporation. *See id.* at ¶¶ 36 – 53, Prayer for Relief, ¶¶ A–G. And even  
2 assuming that No Labels is “the proponent” of the Petition, that does not invalidate the  
3 Electors’ affidavit or any signature collected. *Id.* at ¶ 13; A.R.S. §§ 16-801, -803. Indeed,  
4 neither statute nor the EPM require the Secretary to ignore a petition because its chief  
5 proponent is a nonprofit entity. *See id.*; **Exhibit A** (affidavits executed by the Electors, not  
6 No Labels); *cf. also Leach v. Reagan*, 245 Ariz. 430, 436–37 (2018) (lack of express  
7 statutory authority to challenge statement of organization was a basis to dismiss the  
8 plaintiff’s claim). Thus, No Labels’ corporate status for campaign finance purposes has no  
9 bearing on whether No Labels qualifies for ballot recognition in Arizona.

10 **B. PLAINTIFFS’ MANDAMUS CLAIM FAILS**

11 Plaintiffs next seeks mandamus relief forcing the Secretary to annul or rescind his  
12 “recognition that No Labels ‘qualifies as a new party for federal, statewide, and legislative  
13 races in the 2024 Primary and General Elections under Arizona law,’ and direct[s] the  
14 Secretary to determine and certify that the No Labels Party would not be recognized as a  
15 political party in Arizona. Compl., Prayer for Relief, ¶ A. But Plaintiffs cannot use  
16 mandamus to challenge the Secretary’s recognition of No Labels.

17 “Mandamus is an extraordinary remedy issued by a court to compel a public officer  
18 to perform an act which the law specifically imposes as a duty.” *Sensing v. Harris*, 217  
19 Ariz. 261, 263, ¶ 6 (App. 2007). Such relief is not available unless the public officer is  
20 required to perform an act specifically imposed by the law. *Sears v. Hull*, 192 Ariz. 65, 68,  
21 ¶ 11 (1998). “Mandamus may compel the performance of a ministerial duty or compel the  
22 officer to act in a matter involving discretion, *but not designate how that discretion shall be*  
23 *exercised.*” *Kahn v. Thompson*, 185 Ariz. 408, 411 (App. 1995) (emphasis added). A  
24 ministerial act permits a public officer “only one course of action on an admitted state of  
25 facts.” *Blankenbaker v. Marks*, 231 Ariz. 575, 577, ¶ 7 (App. 2013). And mandamus is not  
26 available to challenge whether a public official “misapplied or misinterpreted” the law.  
27 *Stagecoach Trails MHC, L.L.C.*, 231 Ariz. at 370, ¶ 21; *Fields*, 234 Ariz. at 222, ¶ 40 (same).

28 Plaintiffs seek mandamus relief under A.R.S. § 12-2021. Compl., ¶ 16. Mandamus

1 is available under A.R.S. § 12-2021 only if Plaintiffs plead and prove two elements. First,  
2 that Plaintiffs lack a “plain, adequate, and speedy remedy at law.” *Id.* Second, that the  
3 Secretary did not “perform[] . . . an act which the law specially imposes as a duty . . . .” *Id.*  
4 Plaintiffs cannot plead, let alone prove, the second element as a matter of law.

5 First, Plaintiffs fail to identify any law that “specifically imposes” on the Secretary a  
6 duty to assess the Petition as Plaintiffs desire. *Sensing*, 217 Ariz. at 263, ¶ 6 (mandamus  
7 lies only if there is a law “specifically” imposing the alleged duty). And again, no law  
8 requires the Secretary to process a petition only if all supporting signatures are collected  
9 before the new party affidavit is executed. *See Ponderosa Fire*, 235 Ariz. at 604, ¶ 30  
10 (Mandamus is inappropriate where a statute is “silent on an issue,” and courts will not read  
11 into that law something that is not there. Courts will not “inflate, expand, stretch or extend  
12 the statute to matters not falling within its expressed provisions.” (cleaned up)).

13 Second, Plaintiffs allegation that the Secretary “has a nondiscretionary legal duty *to*  
14 *determine*” the petition at issue is deficient also falls short. Compl., ¶ 41 (emphasis added).  
15 Mandamus is not available to challenge whether a public official allegedly “misapplied or  
16 misinterpreted” the law. *Stagecoach*, 231 Ariz. at 370, ¶ 21; *Transp. Infrastructure Moving*  
17 *Ariz.’s Econ. v. Brewer*, 219 Ariz. 207, 213, ¶ 32 (2008) (expressing skepticism to requested  
18 mandamus relief where plaintiff’s “claim is not that the Secretary refused to perform her  
19 statutory duties . . . but rather that she erred in performing them.”). To illustrate, in  
20 *Stagecoach*, a zoning administrator assessed and ultimately denied a permit application, and  
21 the plaintiff sought mandamus to compel the administrator to process his application or  
22 issue a permit. *Stagecoach*, 231 Ariz. at 370, ¶ 20. The plaintiff did “not challenge an  
23 officer’s failure to act, but instead contends he either misapplied or misinterpreted the  
24 regulations.” *Id.* But the administrator complied with his “duty by considering and acting  
25 on” the application. *Id.* Thus, Mandamus was not available. *Id.* at ¶ 21.

26 Likewise, in our case, Plaintiffs assert the Secretary misapplied the law in his  
27 assessment of the Petition. Compl., ¶¶ 31, 42. But the Secretary complied with his duties  
28 under A.R.S. §§ 16-801, -803 and the 2019 EPM. He assessed the petition, affidavits and

1 supporting signatures, and then concluded that No Labels qualified for ballot recognition in  
2 Arizona. Therefore, Mandamus is not available here. 231 Ariz. at 370, ¶ 21.

3 **III. CONCLUSION**

4 This Court should dismiss the Complaint with prejudice.

5 RESPECTFULLY SUBMITTED: April 19, 2023.

6 SHERMAN & HOWARD L.L.C.

7 By /s/ Craig A. Morgan

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28 245 West 1st South  
St. Johns, Arizona 85936  
[crobertson@apachelaw.net](mailto:crobertson@apachelaw.net)

1 *Attorneys for Defendant Apache County Board of Supervisors*

2 Christine J. Roberts  
Paul Correa  
3 Cochise County Attorney's Office  
PO Drawer CA  
4 Bisbee, AZ 85603  
[CRoberts@cochise.az.gov](mailto:CRoberts@cochise.az.gov)  
5 [PCorrea@cochise.az.gov](mailto:PCorrea@cochise.az.gov)

*Attorneys for Defendant Cochise County Board of Supervisors*

6 William Ring  
7 Monique Coady  
Heather Mosher  
8 Lindsay Daley  
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9 110 East Cherry Avenue  
Flagstaff, Arizona 86001  
10 [WRing@coconino.az.gov](mailto:WRing@coconino.az.gov)  
[MCoady@coconino.az.gov](mailto:MCoady@coconino.az.gov)  
11 [HMosher@coconino.az.gov](mailto:HMosher@coconino.az.gov)  
[LDaley@coconino.az.gov](mailto:LDaley@coconino.az.gov)

*Attorneys for Defendant Coconino County Board of Supervisors*

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Safford, Arizona 85546  
15 [JRoof@graham.az.gov](mailto:JRoof@graham.az.gov)  
*Attorneys for Defendant Graham County Board of Supervisors*

16 Gary Griffith  
Greenlee County Attorney's Office  
17 PO Box 1717  
18 Clifton, Arizona 85533  
[GGriffith@greenlee.az.gov](mailto:GGriffith@greenlee.az.gov)  
19 *Attorneys for Defendant Greenlee County Board of Supervisors*

20 Ryan H. Esplin  
21 William Davis  
Mohave County Attorney's Office  
22 PO Box 7000  
Kingman, AZ 86402  
23 [EspliR@mohave.gov](mailto:EspliR@mohave.gov)  
[DavisW@mohave.gov](mailto:DavisW@mohave.gov)  
24 *Attorneys for Defendant Mohave County Board of Supervisors*

25 Jason S. Moore  
Navajo County Attorney's Office  
26 PO Box 668  
Holbrook, AZ 86025  
27 [Jason.Moore@navajocountyaz.gov](mailto:Jason.Moore@navajocountyaz.gov)  
*Attorneys for Defendant Navajo County Board of Supervisors*

28

1 Daniel Jurkowitz  
Pima County Attorney's Office  
2 32 North Stone Avenue, Suite 2100  
Tucson, Arizona 85701  
3 [Daniel.Jurkowitz@pcao.pima.gov](mailto:Daniel.Jurkowitz@pcao.pima.gov)  
*Attorneys for Defendant Pima County Board of Supervisors*

4 Craig Cameron  
5 Pinal County Attorney's Office  
PO Box 887  
6 Florence, Arizona 85132  
[Craig.cameron@pinal.gov](mailto:Craig.cameron@pinal.gov)  
7 *Attorneys for Defendant Pinal County Board of Supervisors*

8 Thomas M. Stoxen  
9 [Thomas.Stoxen@yavapaiaz.gov](mailto:Thomas.Stoxen@yavapaiaz.gov)  
Yavapai County Attorney's Office  
10 255 East Gurley Street  
Prescott, Arizona 86301  
11 *Attorneys for Defendant Yavapai County Board of Supervisors*

12 /s/ Ella Meshke  
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**GOOD FAITH CONSULTATION CERTIFICATE**

The Secretary’s counsel spoke with Plaintiffs’ counsel by phone on whether there is a way to resolve the issues among these parties giving rise to this motion. After that consultation, which was professional and cordial, it remains undersigned counsel’s belief that this motion to dismiss is necessary.

Dated: April 19, 2022

SHERMAN & HOWARD L.L.C.

/s/ Craig A. Morgan  
Craig A. Morgan  
Shayna Stuart  
Jake Tyler Rapp  
*Attorneys for Defendant Arizona  
Secretary of State Adrian Fontes*

**Exhibit A**

**Exhibit A**



### Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

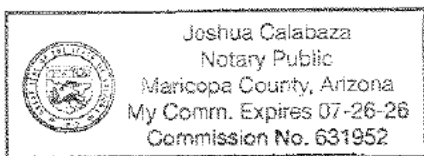
Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. <i>Michael Lawson</i>	Michael Lawson	[REDACTED]	11-7-2022
2. <i>[Signature]</i>	<i>[Signature]</i>	X	X
3. <i>[Signature]</i>	<i>[Signature]</i>		
4. <i>[Signature]</i>	<i>[Signature]</i>		
5. <i>[Signature]</i>	<i>[Signature]</i>		
6. <i>[Signature]</i>	<i>[Signature]</i>		
7. <i>[Signature]</i>	<i>[Signature]</i>		
8. <i>[Signature]</i>	<i>[Signature]</i>		
9. <i>[Signature]</i>	<i>[Signature]</i>		
10. <i>[Signature]</i>	<i>[Signature]</i>		

STATE OF ARIZONA

COUNTY OF MARICOPA

SUBSCRIBED AND SWORN TO (Affirmed) before me on the 7<sup>th</sup> of NOVEMBER, 2022

7-26-2024  
My Commission Expires



(affix seal)

*[Signature]*  
Notary Public

### Affidavit of Electors

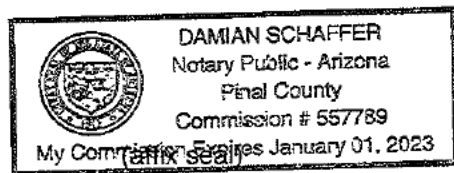
We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. <i>Gail Kosland Wachtel</i>	GAIL KOSHLAND WACHTEL	[REDACTED]	11/7/2022
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STATE OF ARIZONA  
 COUNTY OF Pima

SUBSCRIBED AND SWORN TO (Affirmed) before me on the 7 of November, 2022

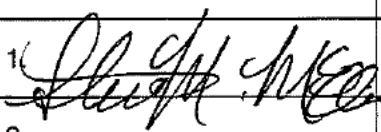
01-01-2023  
 My Commission Expires



*Damian Schaffer*  
 Notary Public

### Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

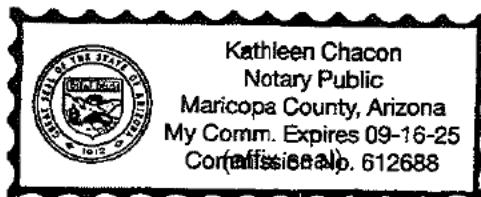
Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. 	STEVEN M. MCCLAIN	[REDACTED]	11/8/2022
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STATE OF ARIZONA

COUNTY OF Maricopa

SUBSCRIBED AND SWORN TO (Affirmed) before me on the 8<sup>th</sup> of November, 2022

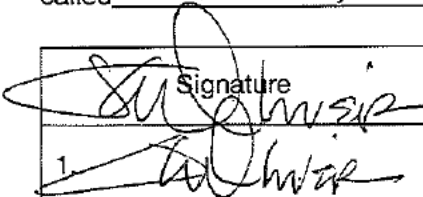
9-16-2025  
My Commission Expires



  
Notary Public

### Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

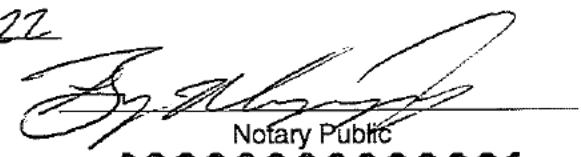
#	Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1.		Jerry A. Oliver	[REDACTED]	
2.	N/A	N/A	N/A	
3.	N/A	N/A	N/A	
4.	N/A	N/A	N/A	
5.	N/A	N/A	N/A	
6.	N/A	N/A	N/A	
7.	N/A	N/A	N/A	
8.	N/A	N/A	N/A	
9.	N/A	N/A	N/A	
10.	N/A	N/A	N/A	

STATE OF ARIZONA

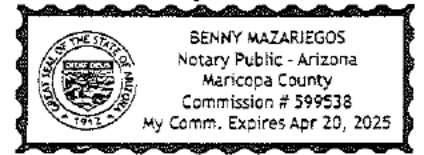
COUNTY OF Maricopa

SUBSCRIBED AND SWORN TO (Affirmed) before me on the 08 of November, 2022

April 20, 2025  
My Commission Expires

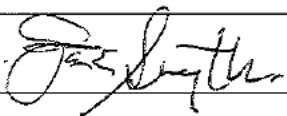
  
Notary Public

(affix seal)



## Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. 	Joe Smyth	<div style="background-color: black; width: 100%; height: 1.2em;"></div>	10/26/22
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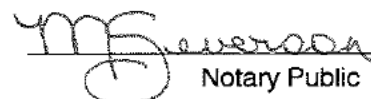
STATE OF ARIZONA

COUNTY OF Maricopa

**SUBSCRIBED AND SWORN TO** (Affirmed) before me on the 26<sup>th</sup> of October, 2022

07/07/2024  
My Commission Expires



  
Notary Public

## Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. <i>Terrence P. Woods</i>	Terrence P. Woods	[REDACTED]	27 Oct 22
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STATE OF ARIZONA

COUNTY OF Maricopa

SUBSCRIBED AND SWORN TO (Affirmed) before me on the 27<sup>th</sup> of October, 2022

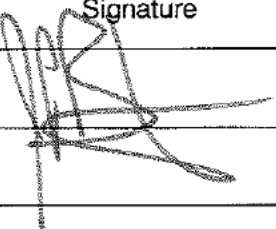
September 21, 2024  
My Commission Expires



*Carrie J. Grant*  
Notary Public

### Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

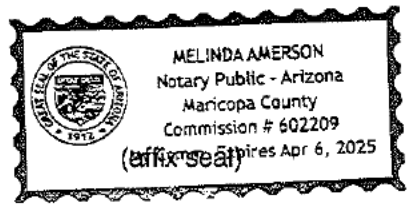
Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
	Jerome P. Barnier Jr.	[REDACTED]	10/27/22


STATE OF ARIZONA

COUNTY OF Maricopa

SUBSCRIBED AND SWORN TO (Affirmed) before me on the 27<sup>th</sup> of October, 2022


06 April 2025  
My Commission Expires



  
Notary Public

## Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. 	Julie Johnson	[REDACTED]	10/27/22
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STATE OF ARIZONA

COUNTY OF Maricopa

**SUBSCRIBED AND SWORN TO** (Affirmed) before me on the 11<sup>th</sup> of October, 2022

06 April 2025  
My Commission Expires

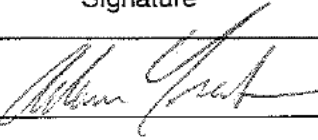


  
Notary Public



### Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. 	Adam Trenk	[REDACTED]	10-31-22
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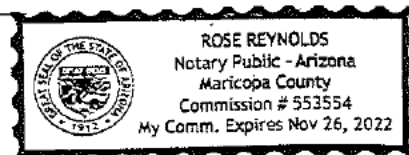
STATE OF ARIZONA

COUNTY OF MARICOPA

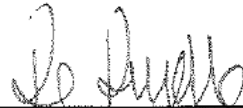
**SUBSCRIBED AND SWORN TO** (Affirmed) before me on the 31<sup>st</sup> of OCTOBER, 2022

NOVEMBER 26, 2022

My Commission Expires



(affix seal)



Notary Public

### Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party

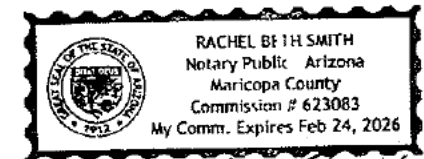
Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. <i>F. B. Starnes</i>	Frederic Bryan Starnes	[REDACTED]	11/29/22 <i>FB</i>
2. <i>Jana F. Garner</i>	Jana F. Garner	[REDACTED]	11/29/22
3. <i>R. Bailey</i>	Rachel V. Bailey	[REDACTED]	11/29/22
4. <i>Cohen R. Plummer</i>	Cohen R. Plummer	[REDACTED]	11/29/22
5. <i>Frank Lanford</i>	FRANK LANFORD	[REDACTED]	11/29/22 <i>AL</i>
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STATE OF ARIZONA

COUNTY OF Maricopa

SUBSCRIBED AND SWORN TO (Affirmed) before me on the 29<sup>th</sup> of November, 2022

02/24/2026  
My Commission Expires

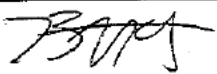


*Rachel Beth Smith*  
Notary Public

(affix seal)

### Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party.

Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. 	Thomas McIntyre	[REDACTED]	12/9/22
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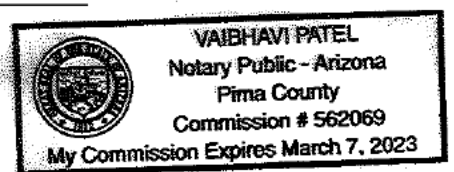
STATE OF ARIZONA

COUNTY OF Pima

SUBSCRIBED AND SWORN TO (Affirmed) before me on the 9<sup>th</sup> of December, 2022

03/07/2023  
My Commission Expires

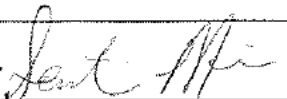
Vaibhavi Patel  
Notary Public



(affix seal)

### Affidavit of Electors

We, the ten undersigned qualified electors of the state of Arizona, request that the signers of the attached petitions be recognized as a new political party, to be called No Labels Party.

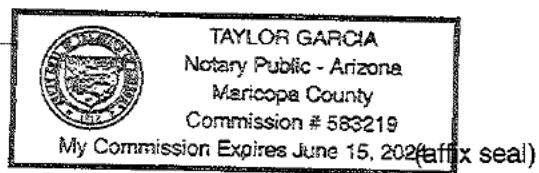
Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1. 	SENTARI MEVOR	[REDACTED]	12/1/22
2.			
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STATE OF ARIZONA

COUNTY OF Maricopa

SUBSCRIBED AND SWORN TO (Affirmed) before me on the 1<sup>st</sup> of December, 2022

06/15/2024  
My Commission Expires



  
Notary Public

## Meshke, Ella

---

**From:** TurboCourt Customer Service <CustomerService@TurboCourt.com>  
**Sent:** Wednesday, April 19, 2023 4:26 PM  
**To:** Morgan, Craig; Mota, Raymundo; Meshke, Ella  
**Subject:** AZTurboCourt E-Filing Courtesy Notification

**EXTERNAL EMAIL WARNING: Do not click links or open UNKNOWN attachments.**

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #7897357 has been delivered to Maricopa County - Superior Court.

You will be notified when these documents have been processed by the court.

Here are the filing details:

Case Number: CV2023004832 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)

Filed By: Raymundo Mota

AZTurboCourt Form Set: #7897357

Delivery Date and Time: Apr 19, 2023 4:25 PM MST

Forms:

Attached Documents:

Motion to Dismiss: Defendant Arizona Secretary of State Adrian Fontes' Motion to Dismiss Exhibit/Attachment (Supporting): Exhibit A

E-Service notification was sent to the following recipient(s):

Andrew Pappas at apappas@omlaw.com  
Austin Marshall at austin@ha-firm.com  
Celeste Robertson at crobertson@apachecountyaz.gov  
Christine Roberts at croberts@cochise.az.gov  
Craig Cameron at craig.cameron@pinal.gov  
Daniel Arellano at daniel@ha-firm.com  
Daniel Jurkowitz at daniel.jurkowitz@pcao.pima.gov  
David Rosenbaum at drosenbaum@omlaw.com  
Emma Cone-Roddy at econe-rodny@omlaw.com  
Gary Griffith at ggriffith@greenlee.az.gov  
Heather Mosher at hmosher@coconino.az.gov  
Jason Moore at jason.moore@navajocountyaz.gov

Jean Roof at jroof@graham.az.gov  
Jillian Andrews at jillian@ha-firm.com  
Lindsay Daley at ldaley@coconino.az.gov  
Monique Coady at mcoady@coconino.az.gov  
Paul Correa at pcorrea@cochise.az.gov  
Roy Herrera at roy@ha-firm.com  
Ryan Esplin at eplir@mohave.gov  
Thomas Stoxen at thomas.stoxen@yavapai.az.gov  
William Davis at davisw@mohave.gov  
William Ring at wring@coconino.az.gov