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12 ARIZONA SUPERIOR COURT

13 MARICOPA COUNTY

14 Arizona Democratic Party, an Arizona political
15 party; Lisa Sanor, a qualified elector,

16 Plaintiffs,

17 v.

18 No Labels, a District of Columbia nonprofit;
19 Adrian Fontes, in his official capacity as the
20 Secretary of State of Arizona; Apache County
21 Board of Supervisors, in their official capacity;
22 Coconino County Board of Supervisors, in their
23 official capacity; Gila County Board of
24 Supervisors, in their official capacity; Graham
25 County Board of Supervisors, in their official
26 capacity; Greenlee County Board of
27 Supervisors, in their official capacity; La Paz
28 County Board of Supervisors, in their official
capacity; Maricopa County Board of
Supervisors, in their official capacity; Mohave
County Board of Supervisors, in their official
capacity; Navajo County Board of Supervisors,
in their official capacity; Pima County Board of
Supervisors, in their official capacity; Pinal
County Board of Supervisors, in their official
capacity; Santa Cruz County Board of
Supervisors, in their official capacity; Yavapai
County Board of Supervisors, in their official
capacity; Yuma County Board of Supervisors,
in their official capacity,

Defendants.

No. CV2023-004832

**DEFENDANT NO LABELS'
MOTION TO DISMISS**

(Assigned to the Honorable
Judge Katherine Cooper)

(Oral Argument Requested)

1 Defendant No Labels moves to dismiss the complaint filed by Plaintiffs Arizona
2 Democratic Party and Lisa Sanor.

3 Plaintiffs ask this Court to overturn the Secretary of State's prior determination
4 that No Labels qualified as a new political party in Arizona. Plaintiffs do not challenge
5 the number of signatures No Labels collected. Plaintiffs do not challenge the veracity of
6 those signatures. Nor do Plaintiffs claim that No Labels' petition was defective in form.
7 Thus, Plaintiffs leave unchallenged the fundamental fact that No Labels collected 41,000-
8 plus signatures—significantly more than the minimum needed under Arizona law to
9 recognize a new party—and that No Labels submitted those signatures on 7,000-plus
10 petition sheets that are correct in form.

11 Instead, to avoid competing with No Labels at the ballot box, *see* Compl. ¶¶ 12–
12 13, Plaintiffs complain not about the petition itself, but about the cover affidavits attached
13 to No Labels' petition. Plaintiffs claim the cover affidavits were flawed in two ways. First,
14 misreading the statute that requires the affidavits, Plaintiffs claim the affidavits No Labels
15 submitted—on the forms prescribed by the Secretary of State—inaccurately paraphrased
16 statutory text. Second, Plaintiffs complain that the affidavits were signed before the last
17 signatures on No Labels' petition were collected. Based on those alleged flaws in the
18 cover affidavits, Plaintiffs contend that the petition in its entirety is now void.

19 Plaintiffs' claims fail as a matter of law. No Labels' affidavits, like the petition to
20 which they were attached, comply with the statutory requirements to form new parties.
21 The affidavit language published by the Secretary of State reflects the correct reading of
22 the applicable statute—A.R.S. § 16-801(A)(1). That statute does not require the affiants
23 to verify the signatures on the petition, so it is immaterial whether the affidavits or the
24 petition sheets are signed first. A contrary reading of the statute would raise serious
25 constitutional questions that the Court should avoid.

26 No Labels' motion to dismiss should be granted, and Plaintiffs' effort to limit
27 voters' choices at the polls should be rejected.

28

1 **BACKGROUND**

2 No Labels, a District of Columbia non-profit, is the proponent of a petition to
3 recognize a new political party in Arizona, known as the No Labels Party. Compl. ¶ 13.
4 This is part of a nationwide strategy by No Labels to secure ballot access “in at least 10
5 states, with a publicly stated goal of raising at least \$76 million.” Compl. ¶ 4. No Labels
6 sponsored and organized the successful effort to obtain ballot access in Arizona.¹ *Id.*

7 Under Arizona law, a new political party may qualify for the ballot by “filing with
8 the secretary of state a petition signed by a number of qualified electors equal to not less
9 than one and one-third per cent of the total votes cast for governor at the last preceding
10 general election at which a governor was elected.” A.R.S. § 16-801(A). There is no
11 dispute that the petition has 41,663 otherwise-valid signatures, exceeding this statutory
12 minimum of 34,127. Compl. ¶ 23. The statute also requires that “at least five different
13 counties . . . be included as the county of registration among the required total of qualified
14 electors and at least ten per cent of the required total of qualified electors shall be
15 registered in counties with populations of less than five hundred thousand persons.”
16 A.R.S. § 16-801(A). The complaint does not mention and does not challenge the
17 petition’s compliance with this requirement or the Secretary of State’s determination that
18 the petition met this requirement.

19 A new-party petition must “[b]e captioned ‘petition for political party
20 recognition’” and must “[b]e in substantially the form prescribed by § 16-315.” *Id.* § 16-
21 801(A)(2)-(3). Section 16-315(B), in turn, requires that each petition sheet must be signed

22
23 ¹ Although Plaintiffs devote several paragraphs of their complaint to No Labels’ federal
24 tax and campaign finance registration status (Compl. ¶¶ 1, 3–5, 34), none of those
25 allegations is relevant to whether a political party can be recognized under Arizona state
26 law. In any event, courts have held that organizations seeking ballot access without a
27 specific candidate in mind need not be a political party for purposes of the Federal
28 Election Campaign Act of 1971, as amended, or Federal Election Commission
regulations. *See Unity08 v. Fed. Election Comm’n*, 596 F.3d 861, 869 (D.C. Cir. 2010)
 (“Unity08 is not subject to regulation as a political committee unless and until it selects a
 ‘clearly identified candidate.’”). That is likely why Plaintiffs seek no relief relating to No
 Labels’ tax status and Federal Election Commission registration status.

1 by a petition circulator. And the law specifies that these circulators must “verify that each
2 of the names on the petition was signed in his presence on the date indicated and that in
3 his belief each signer was a qualified elector who resides at the address given as the
4 signer’s residence.” A.R.S. § 16-321(D). Plaintiffs do not appear to challenge that No
5 Labels’ petition was properly captioned, that the signatures on the petition were collected
6 in a form substantially the same as § 16-315, or that the signatures were verified by a
7 circulator who avowed that the signatures were signed in his or her presence by a signer
8 whom the circulator believed to be a qualified elector at the address given as the signer’s
9 residence.

10 Finally, “[t]he petition shall: (1) [b]e verified by the affidavit of ten qualified
11 electors of the state, asking that the signers thereof be recognized as a new political party.
12 The status as qualified electors of the signers of the affidavit shall be certified by the
13 county record of the county in which they reside.” A.R.S. § 16-801(A)(1).

14 After signature collection is complete, the “petition for recognition of a new
15 political party shall be filed with the secretary of state . . . not less than two hundred fifty
16 days before the primary election for which the party seeks recognition.” A.R.S. § 16-
17 803(A). The Secretary of State then determines the number of signatures eligible for
18 verification by county recorders within seven business days of receipt of the petition. *Id.*
19 § 16-803(B). A sample of “twenty percent of the total signatures eligible for verification
20 by the county recorders of counties in which the persons signing the petition claim to be
21 qualified electors” is randomly selected by the Secretary within that same seven-day
22 period. *Id.* § 16-803(C). These random samples are transmitted in facsimile to the county
23 recorders and transmitted to them by personal delivery or certified mail; the county
24 recorders then have ten business days to verify the total number of valid signatures
25 collected in the sample. *Id.* § 16-803(D)-(G). The Secretary then determines the total
26 number of valid signatures by removing the number of invalid signatures identified the
27 county recorders in the random sample, and “a like percentage from those signatures
28 remaining after the subtractions.” *Id.* § 16-803(H)(2). There is no allegation of any errors

1 at any point in this process, or that No Labels’ petition was not supported by a lawful
2 number of verified signatures.

3 The 2019 Election Procedures Manual provides that “[t]he new party affidavit
4 must be completed on a form prescribed by the Secretary of State,” and “[p]etitions for
5 statewide recognition must be printed on a form prescribed by the Secretary of State.”
6 Declaration of David B. Rosenbaum filed concurrently herewith (“Rosenbaum Decl.”),
7 ¶ 7 & Ex. E. No Labels used the forms prescribed by the Secretary. The Secretary’s form
8 for the petition requires each signer to provide their printed name, actual address, and date
9 of signing, and provides a verification to be signed by the circulator. *See* Rosenbaum
10 Decl., ¶ 3 & Ex. A. A separate cover affidavit form the Secretary provides for the
11 affiants states, “We, the ten undersigned qualified electors of the state of Arizona, request
12 that the signers of the attached petitions be recognized as a new political party to be called
13 [blank space for the new party’s name].” *See* Rosenbaum Decl., ¶ 4 & Ex. B. No Labels’
14 petition was supported by 16 affiants, more than the required 10. Compl. ¶ 26. A sample
15 of No Labels’ signature sheet and affidavit confirms that No Labels used these forms. *See*
16 Rosenbaum Decl., ¶¶ 5–6 & Exs. C and D.

17 No Labels’ petition contained enough signatures to qualify it as a new party in
18 Arizona and was supported by more than 10 affiants’ affidavits, as the Secretary of State
19 previously found. Yet in order to avoid competition, Compl. ¶¶ 12–13, Plaintiffs have
20 sued, under two novel theories unsupported by any case law or principles of statutory
21 interpretation. First, Plaintiffs posit that the Secretary of State’s affidavit form has the
22 wrong words on it. Second, Plaintiffs argue that because some affiants signed their cover
23 affidavits *before* some petition-signers, the entire petition for a new party was unverified
24 and defective.

25 LEGAL STANDARDS

26 “Dismissal is appropriate under Arizona Rule of Civil Procedure 12(b)(6) if, ‘as a
27 matter of law . . . plaintiffs would not be entitled to relief under any interpretation of the
28 facts susceptible of proof.’” *CVS Pharm., Inc. v. Bostwick*, 251 Ariz. 511, 515–16, ¶ 10

1 (2021) (quoting *Fid. Sec. Life Ins. Co. v. Ariz. Dep't of Ins.*, 191 Ariz. 222, 224, ¶ 4
2 (1998)). “In deciding whether to grant a Rule 12(b)(6) motion courts may consider a
3 complaint’s exhibits or public records concerning matters referenced in the complaint.”
4 *AUDIT-USA v. Maricopa Cnty.*, 525 P.3d 279, 281, ¶ 6 (Ariz. App. 2023) (citation
5 omitted).

6 ARGUMENT

7 Plaintiffs’ claims fail as a matter of law because the affidavits and new party
8 petition that No Labels submitted comply with § 16-801.

9 I. The Court must uphold the petition because no voters could be 10 confused or misled.

11 Although the affidavit requirement in § 16-801 has been on the books in Arizona
12 in substantially the same form since 1912, *see* 1912 Ariz. Sess. Law 277, No Labels is
13 aware of no case that has decided what standard of review courts must use to determine
14 whether an affidavit or petition complies with the statute. But generally, absent explicit
15 statutory language to the contrary, Arizona courts construe statutory requirements for
16 ballot access liberally. Arizona courts have used what they call the “substantial
17 compliance” standard to judge candidate petitions, *e.g.*, *Lohr v. Bolick*, 249 Ariz. 428,
18 431, ¶¶ 7–8 (2020), and initiative petitions, *e.g.*, *Kromko v. Super. Ct.*, 168 Ariz. 51, 58
19 (1991). This same liberal standard of review should apply here.

20 No Labels fully complied with the statute. But, under the “substantial compliance”
21 standard, even a “technical departure from” statutory requirements would not prevent
22 ballot access; instead, courts “focus[] on whether the omission of information could
23 confuse or mislead electors signing the petition.” *Bee v. Day*, 218 Ariz. 505, 507, ¶ 10
24 (2008) (quoting *Moreno v. Jones*, 213 Ariz. 94, 102, ¶ 42 (2006)). Only “clear
25 statement[s] from the legislature [indicating] a particular form requirement to be
26 indispensable” would turn courts away from substantial compliance. *Lohr*, 249 Ariz. at
27 431, ¶ 8 (quoting *Bee*, 218 Ariz. at 506, ¶ 10).

1 Here, the statute itself points toward the lenient substantial-compliance test. It
2 provides that a new-party petition “shall . . . [b]e in *substantially* the form prescribed by
3 § 16-315.” A.R.S. § 16-801(A)(2) (emphasis added). As a logical matter, the same
4 standard should apply to the cover affidavit requirement for a new-party petition in § 16-
5 801(A)(1).

6 Moreover, the policy considerations that underlie the substantial-compliance
7 standard for candidate and initiative petitions apply with equal force here. As our
8 Supreme Court has explained, “the paramount right to propose a nominee is of such
9 gravity as to outweigh purely technical departures.” *Adams v. Bolin*, 77 Ariz. 316, 321–
10 22 (1954). Likewise, “courts must exercise restraint before imposing unreasonable
11 restrictions on the people’s legislative authority, which ‘is as great as the power of the
12 legislature to legislate.’” *Kromko*, 168 Ariz. 51 at 57 (quoting *State v. Osborn*, 16 Ariz.
13 247, 250 (1914)).²

14 The constitutionally protected right to associate through political parties implicates
15 similarly weighty interests, *see Williams v. Rhodes*, 393 U.S. 23 (1968), so statutes
16 regulating a new-party petition should receive the same liberal construction as statutes
17 regulating candidate and initiative petitions. Accordingly, this Court should review
18 whether No Labels’ petition (and the affidavits attached to the petition) substantially
19 complied with statutory requirements, and ignore technical departures, unless they
20 indicate that electors were confused or misled into signing the petition.

21 **II. The form of the affidavit complies with § 16-801.**

22 The affidavit form that No Labels used—a form prescribed by the Secretary—
23 substantially complies with § 16-801. The statute provides that a “petition shall:
24
25

26 ² Courts do not use substantial compliance when judging referendum petitions. “Because
27 this is a great power, the power of the minority to hold up the effective date of legislation
28 which may well represent the wishes of the majority, the constitution and the statute made
pursuant thereto must be strictly followed.” *Cottonwood Dev. v. Foothills Area Coal. of
Tucson, Inc.*, 134 Ariz. 46, 49 (1982). This concern does not apply here.

1 (1) Be verified by the affidavit of ten qualified electors of the state, asking
2 that the signers thereof be recognized a new political party. The status as
3 qualified electors of the signers of the affidavit shall be certified by the
4 county record of the county in which they reside.

5 (2) Be in substantially the form prescribed by § 16-315.

6 (3) Be captioned ‘petition for political party recognition’.”

7 A.R.S. § 16-801(A)(1).

8 Plaintiffs allege that “the affidavit sheets” No Labels used “asked for the wrong
9 thing and misrepresented even that,” because the affidavits stated “that the signers of the
10 *attached petitions* be recognized as a new political party,” rather than “that the signers
11 *thereof* be recognized as a new political party.” Compl. ¶ 31. On that flawed and strained
12 reading of the statute, Plaintiffs claim the affidavits are “false,” which “render[s] the
13 [petition] signatures . . . invalid.” *Id.* ¶ 32. Plaintiffs’ claim is meritless.

14 The statute does *not* ask the 10 affiants to be the party. It is the signers of the
15 petition that ask to form the party. “When reviewing a question of statutory interpretation,
16 we first begin with the plain text of the statute, as it is the most reliable indicator of its
17 meaning.” *State v. Huante*, 252 Ariz. 191, 194, ¶ 8 (App. 2021). Courts “construe statutes
18 to give effect to the legislature’s intent.” *State ex. rel. DES v. Pandola*, 243 Ariz. 418,
19 419 (2018). “If a statute, by its terms, is unambiguous, it is applied as written without
20 resorting to other rules of statutory interpretation.” *Id.* “The clear intent of the legislature
21 takes precedence as a canon of construction of all grammatical rules, and particularly of
22 the rule of last antecedent.” *Pawn Ist, L.L.C. v. City of Phx.*, 231 Ariz. 309, 312, ¶ 19
(App. 2013) (cleaned up).

23 The most natural reading of § 16-801(A)’s text is the one reflected in the
24 Secretary’s form. The statute’s three subparagraphs all refer back to the “petition” and
25 what it “shall . . . [b]e.” A.R.S. § 16-801(A)(1)–(3). It should follow that the affidavit
26 requirement in § 16-801(A)(1) likewise refers back to the petition—that is, it requires that
27 “[t]he petition shall . . . [b]e verified by that affidavit of ten qualified electors of the state,
28 asking that the signers [of the petition] be recognized as a new political party.” *See, e.g.,*

1 *BSI Holdings LLC v. Ariz. Dep't of Transp.*, 244 Ariz. 17, 19, ¶ 9 (2018) (“Words in
2 statutes should be read in context in determining their meaning.”). This is the
3 interpretation embodied by the Secretary’s form: “We, the ten undersigned qualified
4 electors of the state of Arizona, request that the signers of the attached petitions be
5 recognized as a new political party, to be called No Labels Party.” Compl. ¶ 25.

6 The correctness of this interpretation is bolstered by the next sentence of § 16-
7 801(A)(1). That sentence reads, “The status as qualified electors of the signers *of the*
8 *affidavit* shall be certified by the county record of the county in which they reside.” A.R.S.
9 § 16-801(A)(1) (emphasis added). That the Legislature used two different phrases in side-
10 by-side sentences—“the signers *thereof*” in the first sentence, and “the signers *of the*
11 *affidavit*” in the second sentence—indicates that the Legislature attached a different
12 meaning to each phrase. *P.F. West, Inc. v. Super. Ct.*, 139 Ariz. 31, 34 (App. 1984) (“[W]e
13 must assume that the legislature intended different consequences to flow from the use of
14 different language.”). And so “thereof” in the first sentence cannot mean “of the affidavit”
15 in the second sentence; it must instead mean “of the petition,” to which the whole
16 subparagraph refers back.

17 Even setting aside the rules of statutory construction, common sense dictates this
18 conclusion. Nothing in § 16-801 suggests the signers of the petition have any idea who
19 will be the ten affiants verifying the petition. The affiants are not required to be disclosed
20 to the petition signers, there is no space for the affiants to be identified in the form of
21 petition prescribed by A.R.S. § 16-315, and the affiants have no relationship to the
22 signatories of the petition. The more sensible reading of § 16-801 is that persons signing
23 a petition to a create a new party intend to constitute the party they are helping to create.
24 This is the reading the Court should adopt, just as four Secretaries of State have done for
25 at least a decade.

26 Finally, even if the Plaintiffs were somehow right that “the signers thereof” in
27 § 16-801 means the affiants for new-party recognition on their own behalf, that would not
28 affect the validity of the petition. No elector was required to be shown the affidavit when

1 considering whether to sign No Labels’ petition, so no elector could have been “confused
2 or misle[d]” by the alleged error in the affidavit. *Bee*, 218 Ariz. at 507, ¶ 10. Throwing
3 out a petition signed by tens of thousands of Arizona citizens would be grossly unfair and
4 contrary to this State’s election law precedent. A technical flaw in the cover affidavits, if
5 there was any (and there was not), cannot support a claim to also invalidate the entirety
6 of the separate petition to which the affidavits were attached. There would be substantial
7 compliance despite such a technical flaw. To rule otherwise would impose unreasonable
8 restrictions on the people’s right to access the ballot, *Kromko*, 168 Ariz. at 57, and impose
9 unlawful constraints on voters’ constitutional rights to form a party of their choice.
10 *Williams*, 393 U.S. at 25, 34. The Court should therefore hold that No Labels substantially
11 complied with the statute even if the language on the Secretary’s affidavit form had some
12 technical defect.

13 **III. That additional signatures were collected after the affiants signed their**
14 **affidavits is immaterial, because the affiants had no role in verifying**
petition signatures.

15 Plaintiffs also contend that because the affidavits were signed before signature
16 collection was completed, the affiants could not “verify” the petition, and so the affidavits
17 were “false.” Compl. ¶¶ 30, 32. The Plaintiffs apparently presume that “be verified”
18 commits the affiants to some unclear role in verifying individual petition signatures. But
19 the statute simply does not support that reading. Were the Plaintiffs correct, each affiant
20 would be *personally* responsible for the mammoth task of verifying *all* the petition
21 signatures. That is inconceivable, given that the law assigns a mere *sampling* of the
22 petition signatures to the county recorders *collectively* as to their status as actual electors,
23 and to the circulators for the validity of their collection. While Plaintiffs offer no hints at
24 what the affiants would be adding to this process of signature verification, the statute
25 nowhere describes a process or standard an affiant should use to evaluate a petition
26 signature and make any consequential decision, which stands in contrast to the detailed
27 procedures laid out for the circulators and election officials who actually are responsible
28 for verifying individual petition signatures.

1 The Plaintiffs’ contention fails as a matter of law because the affiants were
2 required to verify only the *petition*, not the petition *signatures*. What the affiants were
3 verifying was that the petition sought recognition of a new political party, the No Labels
4 Party, not representing that the signatures were on the petition were valid. And because
5 the affiants were not required to verify or certify the validity of the petition signatures, it
6 is immaterial whether the affidavits were executed before or after all signatures on the
7 petition were collected.

8 **A. The affiants properly verified the petition, as § 16-801 requires.**

9 Turning back to the text, the statute requires that a “petition shall . . . [b]e verified
10 by the affidavit of ten qualified electors of the state, asking that the signers thereof be
11 recognized a new political party.” A.R.S. § 16-801(A)(1). The statute does not define
12 “[p]etition.” But it does require that the petition “[b]e in substantially the form prescribed
13 by § 16-315” for nomination petitions. A.R.S. § 16-801(A)(2). And under § 16-314,
14 “[f]or purposes of this title [16], ‘nomination petition’ means *the form or forms* used for
15 obtaining the required number of signatures of qualified electors which is circulated by
16 or on behalf of the person wishing to become a candidate for a political office.” A.R.S.
17 § 16-314 (emphasis added).

18 Reading these statutes together, “petition” as used in § 16-801 means the *form* of
19 the document electors sign, not the *signatures* on the forms. This comports with how
20 “petition” is used throughout § 16-801—the petition is “signed by a number of qualified
21 electors”; the signatures themselves are not the petition. This also comports with how
22 “petition” is used in § 16-803, which details the signature verification process. Section
23 16-803 uses the terms “verification” or “verified” thirteen times. Each time the term
24 “verification” or “verified” is used, § 16-803 expressly provides that it is the *signatures*
25 on the petition that are subject to such verification.³ This demonstrates that the Legislature

26 ³ A.R.S. § 16-803(B)(2) (“Remove the following signatures that are not eligible for
27 verification”); (B)(3) (“count the number of signatures for verification”);
28 (B)(4) (“Number the remaining petition sheets that . . . contain signatures eligible for
verification”); (B)(5) (“Count all remaining petition sheets and signatures not previously

1 distinguished been the petition and the signatures contained on the petition, and where it
2 intended to require verification of signatures it did so expressly.

3 None of the cases cited in Plaintiffs' Complaint leads to a different conclusion. *See*
4 Compl. ¶¶ 32–33. *Brousseau v. Fitzgerald*, 138 Ariz. 453 (1984), and *Parker v. City of*
5 *Tucson*, 233 Ariz. 422 (App. 2013), both involved false certifications by petition
6 circulators. In *Brousseau*, a candidate's "petitions were verified as circulated by persons
7 other than those who actually circulated the petitions and obtained the signatures," 138
8 Ariz. at 454, while in *Parker*, a circulator avowed that "each signer wrote his or her own
9 address" even though certain sheets lacked any signature, 233 Ariz. at 438, ¶ 48. Here, in
10 contrast, nothing in No Labels' affidavits is false, and the affiants were not required to
11 verify signatures on any particular signature sheet.

12 *Kennedy v. Lodge*, 230 Ariz. 548 (2012), is similarly inapposite. That case dealt
13 with nominating petitions that failed to state the "office for which the candidate was
14 running," which prevented signers from "know[ing] from the face of the petitions for
15 which office [the candidate was] running." *Kennedy*, 230 Ariz. at 550. No such confusion
16 occurred here. *Compare Moreno*, 213 Ariz. at 102, ¶ 44 (concluding that a petition that
17 "omitt[ed] the particular day and month of the 2006 primary" did not "create[] a
18 significant danger that electors would be confused or misled").

19
20
21 removed and issue a receipt to the applicant of this total number eligible for verification");
22 (C) ("shall select, at random, twenty percent of the total signatures eligible for verification
23 The random sample of signatures to be verified shall be drawn in such a manner that
24 every signature eligible for verification has an equal chance"); (C)(2) ("If a signature line
25 selected for the random sample is found to be blank or was removed from the verification
26 process If the next eligible line is already being used in the random sample, the
27 secretary of state shall proceed . . . to the next previous signature line eligible for
28 verification The secretary of state shall use this process . . . until a signature eligible
for verification and not already included in the random sample can be selected");
(D) ("signatures marked for verification" . . . "whose signature was selected for
verification as part of the random sample"); (F)(2) ("The total number of signatures
selected for the random sample and transmitted to the county recorder for verification").

1 **B. Plaintiffs’ interpretation would raise constitutional concerns.**

2 To the extent Plaintiffs contend that § 16-801 requires affiants to verify all the
3 signatures on a new-party petition, that contention not only finds no support in the
4 statutory text, it also raises serious constitutional concerns. As both the United States
5 Supreme Court and Arizona Supreme Court have recognized, “[b]allot access restrictions
6 implicate the right to vote and the related right to associate with others to advance shared
7 political beliefs.” *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249
8 Ariz. 396, 408, ¶ 41 (2020) (citing *Moore v. Ogilvie*, 394 U.S. 814, 818 (1969)). In
9 Arizona, ballot access restrictions are governed by the “*Anderson/Burdick* framework,
10 under which the “severity of the burden on a plaintiff’s First and Fourteenth Amendment
11 rights [] determine[s] the level of scrutiny to apply.” *AZ Petition Partners LLC v.*
12 *Thompson*, 253 Ariz. 223, 230–31 (App. 2022) (internal quotation omitted and citing
13 *Anderson v. Celebrezze*, 460 U.S. 780, 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428,
14 432-33 (1992)). Additionally, it is firmly established that restrictions that make it
15 “virtually impossible” for a new party to qualify for the ballot constitute “invidious
16 discrimination, in violation of the Equal Protection Clause.” *Williams*, 393 U.S. at 25, 34.

17 Under Plaintiffs’ reading of A.R.S. § 16-1801, the ten affiants who verify the
18 petition by asking for political party recognition would *each* be responsible for verifying
19 tens of thousands of signatures. No one individual could do that, particularly in the
20 absence of any statutory standards or process for evaluating petition signatures. And such
21 a requirement would serve no state interest, because signatures are *already* subject to
22 verification by (1) the circulators when they are collected, and (2) the county recorders
23 by means of the random sample. A.R.S. §§ 16-321(D) & 16-803(C)–(G). Such a
24 burdensome, standardless, redundant requirement could not pass constitutional muster.

25 This Court, however, need not reach this thorny issue because, as described above,
26 there is a more straightforward way to read A.R.S. § 16-801, and “where alternate
27 constructions are available, we should choose that which avoids constitutional difficulty.”
28 *Slayton v. Shumway*, 166 Ariz. 87, 92 (1990).

1 **CONCLUSION**

2 No Labels has been duly authorized to appear as a political party under A.R.S.
3 § 16-801 after a thorough statutory process under which circulators and election officials
4 reviewed signatures on No Labels’ petition. There is no allegation in Plaintiffs’ Complaint
5 that any elector was tricked or deceived into signing No Labels’ petition. Plaintiffs’ fears
6 that voters may prefer a No Labels candidate to one of their own may be legitimate, but
7 they do not justify this attempt to stifle democracy. The Complaint should be dismissed
8 in full. No Labels requests its attorneys’ fees and costs under A.R.S. §§ 12-341, 12-
9 348(A)(4), and 12-1840, and Rule 4(g) of the Arizona Rules of Procedure for Special
10 Actions.

11 **GOOD FAITH CONSULTATION CERTIFICATION**

12 Pursuant to Rule 12(j) of the Arizona Rules of Civil Procedure, No Labels’ counsel
13 certifies that, on April 13, 2023, he conferred in good faith with Plaintiffs’ counsel
14 regarding this Motion but could not resolve the issues.

15 DATED this 19th day of April, 2023.

16 OSBORN MALEDON, P.A.

17
18 By /s/ David B. Rosenbaum

19 David B. Rosenbaum

20 Andrew G. Pappas

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