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9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF MARICOPA

11  
12  
13 ARIZONA DEMOCRATIC PARTY, et al.,

14 Plaintiffs,

15 v.

16 NO LABELS, et al.,

17 Defendants.

No. CV2023-004832

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTIONS TO  
DISMISS**

(Assigned to the Hon. Katherine  
Cooper)

(Oral Argument Requested)

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20 **INTRODUCTION**

21 The motions to dismiss confirm the accuracy of the core allegations underlying  
22 Plaintiffs' complaint. Neither No Labels nor the Secretary of State contests that signatures  
23 were added to No Labels's petition for recognition as a political party *after* the statutorily  
24 required affidavits purporting to verify the petition were executed. And neither party  
25 disputes that in the petition and accompanying affidavits, *no one* requests that they be  
26 recognized as a political party. Defendants argue that these undisputed facts are immaterial  
27 under Arizona law and that, in any event, the petition comes close enough to complying  
28 with Arizona law under a substantial compliance standard. But these facts establish clear

1 violations of core statutory requirements governing political party recognition. Defendants  
2 fall far short of meeting the exacting standard for a motion to dismiss; their motions should  
3 be denied.

4 Defendants' request for dismissal at this early stage, before any discovery has taken  
5 place, rests on a misreading of plain statutory language and arguments that are inherently  
6 contradictory. Defendants begin by asserting that although A.R.S. § 16-801(A)(1) requires  
7 a petition for political party recognition to "[b]e verified by the affidavit of ten qualified  
8 electors of the state, asking that the signers *thereof* be recognized as a new political party"  
9 (emphasis added), this provision does not mean what it says. According to their theory, the  
10 affidavit can ask that the signers of the petition, rather than the signers of the affidavit, be  
11 recognized as a new political party, despite the petition signers never having asked to join  
12 a new political party. By failing to state, as the plain language of the statute requires, that  
13 the affidavit signers be recognized as a political party, No Labels's affidavits are legally  
14 deficient.

15 Defendants also maintain that the affidavit can be executed *before* anyone has even  
16 signed the petition: "[I]t is immaterial whether the affidavits or the petition sheets are signed  
17 first." No Labels's Motion at 2. In other words, Defendants' argument is that the affidavit  
18 signers can swear that unidentified people who are completely unknown to them desire to  
19 form a political party. Just stating the argument demonstrates its absurdity. Defendants are  
20 forced to take this implausible position because they cannot dispute that the affidavits were  
21 signed before all the petition signatures were collected. Section 16-801 required the No  
22 Labels's affidavit signers to verify the *completed* petition, which they could not do until all  
23 the signatures were included in the petition.

24 Faced with these flaws on the merits, the Secretary also argues (at 5, 11) that even if  
25 there are deficiencies with the affidavit or the petition, Plaintiffs are not entitled to any relief  
26 because "the legislature declined to prescribe a mechanism permitting the challenges at bar"  
27 or because "the Secretary complied with his duties." But as shown below, this argument  
28 disregards long-standing precedent that permits Plaintiffs' requests for mandamus and for

1 declaratory and injunctive relief in the election-law context.

2 In sum, No Labels failed to verify the petition as required by statute. Despite the  
3 readily apparent defects with the petition, the Arizona Secretary of State certified the No  
4 Labels Party as a new political party, abrogating his legal obligation to give effect to the  
5 statutory requirements for creating a new party. Plaintiffs have properly stated claims  
6 against both No Labels and the Secretary, and the motions to dismiss should be denied.

## 7 BACKGROUND

### 8 I. No Labels Is Not a Political Party.

9 Despite seeking certification as a political party in Arizona, by its own admission No  
10 Labels is “not a political party.” Michael Scherer, *No Labels group raises alarms with third-*  
11 *party presidential preparations*, Wash. Post (Apr. 2, 2023),  
12 <https://www.washingtonpost.com/politics/2023/04/02/no-labels-third-party-election/>.

13 Instead, it is a nonprofit corporation organized under § 501(c)(4) of the Internal Revenue  
14 Code. Compl. ¶ 3. It does not currently comply with any of the requirements that political  
15 parties typically adhere to under applicable law when participating in federal or Arizona  
16 elections, which are intended to provide voters with critical information about the party and  
17 the interests it represents. Most significantly, while it seeks to secure ballot access for the  
18 2024 primary and general elections in Arizona, No Labels has refused to disclose its donors,  
19 leaving the sources of its funding for this effort unknown.

### 20 II. No Labels Submits Affidavits That Neither Verify the Petition Nor 21 Truthfully State What Was Attached.

22 On February 10, 2023, No Labels filed with the Arizona Secretary of State its  
23 petition for political party recognition. Compl. ¶¶ 13, 18. The filing included 7,079 petition  
24 sheets bearing 56,971 signatures eligible for sampling and review. Compl. ¶ 18. The filing  
25 also included 12 “Affidavit of Electors” forms, sworn to collectively by 16 electors,  
26 requesting that the signers of the “attached petitions” be recognized as a new political party  
27 called the No Labels Party:  
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**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.

No Labels Mot. to Dismiss Ex. D (emphasis added).

The 16 electors signed the sworn affidavits between October 26 and December 9, 2022. But the petition sheets referenced in the affidavits bore voter signatures dated as late as January 31, 2023—over six weeks after the last of the No Labels electors signed their affidavit and months after the first. Ex. A (sample petition sheet). The petition—that is, the set of petition sheets filed with the Secretary—was thus incomplete when No Labels purported to verify it.

Moreover, despite the executed affidavits’ reference to the “attached” petition sheets, the later-dated petition sheets could not possibly have been attached to those affidavits. Indeed, it is unclear whether the affidavit signers had before them any petition sheets at all—a material fact that would plainly establish the invalidity of the affidavits and that Plaintiffs should be allowed to develop in discovery.

**III. The Petition Signers Never Asked That They Form the New Party.**

While the elector affidavits asked that the signers of the *petition sheets* be recognized as the No Labels Party, the petition signers themselves never asked that *they* constitute the new party, nor were they advised that someone else would be requesting as much on their behalf. Instead, the petition signers asked only that the No Labels Party “become eligible for recognition” and appear on the ballot, not that the petition signers be a part of it:

**Petition For Political Party Recognition**

I, the undersigned, a qualified elector in the county of [county name], state of Arizona, hereby petition that a new political party become eligible for recognition, and be represented by an official party ballot at the next ensuing regular primary election, to be held on the August 6, 2024 [sic] and accorded a column on the official ballot at the succeeding general election to be held on the 5th of November, 2024. . . . Said party shall be known as No Labels Party. . . .

No Labels Mot. to Dismiss Ex. C.



1           **I.       The Legal Standard.**

2           “Motions to dismiss for failure to state a claim are not favored under Arizona law  
3 and should not be granted unless it appears certain that the plaintiff would not be entitled to  
4 relief under any state of facts susceptible of proof under the claim stated.” *State ex rel.*  
5 *Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983) (internal quotation marks omitted) (citations  
6 omitted); *see also Swift Transp. Co. of Ariz., LLC v. Ariz. Dep’t of Revenue*, 249 Ariz. 382,  
7 385 ¶ 16 (App. 2020) (“[M]otions to dismiss are disfavored because they test the legal  
8 sufficiency of the complaint without the benefit of a fully developed factual record.”). “In  
9 considering the motion, the court must assume the truth of all of the complaint’s material  
10 allegations, accord the plaintiffs the benefit of all inferences that the complaint can  
11 reasonably support, and deny the motion unless certain that plaintiffs can prove no set of  
12 facts that will entitle them to relief upon their stated claims.” *Stauffer v. Premier Serv.*  
13 *Mortg., LLC*, 240 Ariz. 575, 577–78 ¶ 9 (App. 2016) (internal quotation marks and  
14 alterations omitted).

15           **II.     No Labels Failed to Verify the Petition as Required by Statute.**

16           A petition for political party recognition shall “[b]e verified by the affidavit of ten  
17 qualified electors of the state, asking that the signers thereof be recognized as a new political  
18 party.” A.R.S. § 16-801(A)(1). The elector affidavit accompanying a new party petition  
19 must therefore do two things: (1) verify the petition, and (2) ask that the signers of the  
20 affidavit be recognized as the new political party. The affidavits filed by No Labels did  
21 neither.

22           **A. The Affidavit Must Verify the Petition, and a Petition Cannot Be Verified**  
23 **Until It Is Complete.**

24           No Labels does not dispute that the statute required its affiants to verify the petition.  
25 *See* No Labels Mot. to Dismiss at 11. And, contrary to No Labels’s and the Secretary’s  
26 suggestion, Plaintiffs do not contend that the affiants needed to verify each individual  
27 petition signature. Rather, by requiring that “[t]he petition. . . [b]e verified” by affidavit,  
28 A.R.S. § 16-801(A)(1) obligates the affiants to verify the petition as a whole—that is, that

1 they must attest to the accuracy, completeness, and integrity of the final packet of signature  
2 sheets filed with the Secretary. Because “petition” refers to the collection of all sheets  
3 bearing petition signatures submitted to the Secretary, it follows that the petition is not  
4 complete until the last signature is collected. Given that No Labels continued to collect  
5 signatures for more than six weeks after the last of its electors signed an affidavit, the  
6 petition it filed with the Secretary was never verified by any No Labels elector.

7 This conclusion flows directly from the meaning of the term “petition” as used in the  
8 new political party statutes. The term refers singularly to the *packet* of signature pages  
9 bearing the requisite number of signatures and filed with the Secretary, not the individual  
10 pages or signatures that comprise it. *Compare* A.R.S. § 16-801(A) (referring to the filing of  
11 “*a* petition” signed by the requisite number of qualified electors” (emphasis added)); *id.*  
12 (referring to the requirements for “*the* petition” (emphasis added)); A.R.S. § 16-803(A)  
13 (referring to the timing of the filing of “[*a*] petition for recognition of a new political party”  
14 (emphasis added)), *with* A.R.S. § 16-803(B)(1)(c) (referring to the Secretary’s grouping  
15 together of “signature sheets”); *id.* § 16-803(B)(3)–(5) (referring to the Secretary’s culling  
16 of “petition sheets”).

17 The “petition” is thus a singular unit—the grouping of all signature sheets that are to  
18 be filed with the Secretary. A.R.S. §§ 16-801(A), 16-803(A).<sup>1</sup> It is therefore the petition *as*  
19 *a whole* that must be “verified” by affidavit before it is submitted to the Secretary. A.R.S.  
20 § 16-801(A)(1) (requiring that “the petition . . . be verified” by affidavit). That never  
21 occurred here because not a single affidavit signer had before him or her the entire petition  
22 that was eventually filed with the Secretary.

23 Moreover, it is incontestable that the affidavit signers could not have satisfied the

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25 <sup>1</sup> This is so even if one borrows the definition of a candidate “nomination petition”  
26 from A.R.S. § 16-314(B), which defines that term as consisting of “the form *or forms* used  
27 for obtaining the required number of signatures of qualified electors, which is circulated by  
28 or on behalf of the person wishing to become a candidate for a political office.” (Emphasis  
added). A candidate nomination “petition” is thus also a singular set consisting of all sheets  
bearing signatures as submitted to the filing officer. *See* A.R.S. § 16-314(A) (requiring the  
filing of “a nomination petition” by a putative candidate).

1 statutory duty to “verify” when the petition they attested to was incomplete. *Cf. Schaefer v.*  
2 *Brown*, No. CV 2016-014378, 2016 WL 6270945, at \*1 (Ariz. Super. Aug. 31, 2016)  
3 (Warner, J.) (“The word ‘verify’ means to represent the existence of facts, so the provision  
4 cannot rationally be read to authorize before-the-fact verifications.” (citing *Black’s Law*  
5 *Dictionary* (5th ed. 1979)). It is well established that “[a]bsent statutory definitions, courts  
6 generally give words their ordinary meaning and may look to dictionary definitions.” *DBT*  
7 *Yuma, LLC v. Yuma Cnty. Airport Auth.*, 238 Ariz. 394, 396 ¶ 9 (2015) (internal citations  
8 omitted). The term “verify” is not statutorily defined, but the dictionary definition accords  
9 with everyday meaning and common sense by establishing that to verify, in this context, is  
10 to confirm the petition’s accuracy, completeness, and integrity. *See Verify, Black’s Law*  
11 *Dictionary* (5th ed. 1979) (“To confirm or substantiate . . . . To prove to be true, to confirm  
12 or establish the truth or truthfulness of; to check or test the accuracy or exactness of; to  
13 confirm or establish the authenticity of; to authenticate; to maintain; to affirm; to support;  
14 second; back as a friend”). This form of verification could not have occurred here because  
15 the affidavit signers did not have before them the signatures that were later added and would  
16 ultimately form the petition. Without even knowing the identities of all the petition signers,  
17 it was impossible for the affidavit signers to verify, as they represent in their affidavits, that  
18 “the signers of the attached petitions” desire to be “recognized as a new political party.”

19         Requiring a proponent of a new political party petition to attest to its validity makes  
20 sense, given both the burden such petitions place on election officials and the need for public  
21 accountability by the proponents. The petition filing automatically and without notice  
22 requires the Secretary, within seven days, to review in detail each of the several thousands  
23 of signature sheets (here, 7,079) for sorting, culling, sampling, and transmittal to various  
24 county recorders for signature review. A.R.S. § 16-803(B)–(D). The various county  
25 recorders then have 10 days, amid their ongoing election administration and planning  
26 duties, to review the validity of each petition signature selected in the sample (here, a total  
27 of 11,278 signatures). A.R.S. § 16-803(E)–(G). And given the limits of the sampling  
28 procedure, 80 percent of the petition signatures (here, 45,109 signatures) will never receive



1 any review at all, nor will any of the circulator affidavits on the backs of petition sheets.

2 It thus follows that a proponent should at least have to represent that its petition is  
3 true and correct before asking that elections officials and voters trust their effort to place a  
4 new political party on the ballot. *See Adams v. Bolin*, 77 Ariz. 316, 320 (1954) (explaining  
5 that the purpose of ballot access requirements is to provide “a mechanism which in some  
6 measure weeds out the cranks, the publicity seekers, the frivolous candidates who have no  
7 intention of going through with the campaign, and those who will run for office as a lark if  
8 there is no difficulty in being placed on the ballot”); *Ariz. Libertarian Party v. Schmerl*, 200  
9 Ariz. 486, 492 ¶ 20 (App. 2001) (emphasizing “the critical role played by political parties  
10 in the process of selecting and electing candidates for state and national office” and how  
11 that role justifies “[t]he State’s interest in ensuring that this process is conducted in a fair  
12 and orderly fashion” (quoting *Marchioro v. Chaney*, 442 U.S. 191, 195–97 (1979))).

13 Here, No Labels’s elector affidavits made *no* representations as to the accuracy or  
14 integrity of its petition. Nor could it, as its petition was not complete when its electors signed  
15 their affidavits. *See Schaefer*, 2016 WL 6270945, at \*1. This fundamental failure to comply  
16 with one of the basic requirements for new political party petitions renders its petition  
17 incomplete and invalid. *See* A.R.S. § 16-801(A)(1).

18 **B. The Affidavit Must Request That the Signers of the Affidavit, Not the**  
19 **Petition, Be Recognized as the New Political Party.**

20 In addition to failing to verify the petition, No Labels’s affidavits also asked for the  
21 wrong thing. Recall that A.R.S. § 16-801(A)(1) requires that the affidavit both verify the  
22 petition and request that its signers be recognized as the new party. The full command of  
23 the statute is:

24 The petition shall be verified by the affidavit of ten qualified electors of the  
25 state, asking that the signers thereof be recognized as a new political party.  
26 The status as qualified electors of the signers of the affidavit shall be certified  
by the county recorder of the county in which they reside.

27 A.R.S. § 16-801(A)(1) (alterations omitted). Read in context, “the signers thereof” refers to  
28 the signers of the affidavit. This is because the adverb “thereof” relates to the “affidavit,”

1 the nearest noun in the sentence. This reading is consistent with the function of the statute.  
2 Requiring the county recorders to verify the registration status of the affidavit signers makes  
3 sense only if it is they who will comprise the new political party. It would make little sense  
4 to make recorders verify the registration of someone whose sole role is, as No Labels  
5 maintains, to ask that someone *else* form the new party.

6 No Labels argues that the express use of “signers of the affidavit” in the second  
7 sentence means that “signers thereof” in the first sentence must refer to something else, or  
8 else the legislature could have used “of the affidavit” in lieu of “thereof.” No Labels Mot.  
9 to Dismiss at 8. But that inference cuts both ways: the legislature also clearly knew how to  
10 refer to “the petition” and could have just as easily used that term in the first sentence. No  
11 Labels’s reading would also mean that the affidavit signers play no role except to ask that  
12 *other people* form the new party. The Court should reject this nonsensical reading of plain  
13 statutory text.

#### 14 **C. The Affidavit Forms Were False on Their Own Terms.**

15 No Labels’s affidavits, in addition to failing to verify the petition and ask that the  
16 affidavit signers form the new party, were also false on their own terms. Although the  
17 affidavits ask that the signers of “the attached petitions” be recognized as the No Labels  
18 Party (No Labels Mot. to Dismiss, Ex. D), because No Labels submitted petition sheets  
19 signed well after any of its electors signed their affidavits, at least those petition sheets could  
20 not possibly have been “attached” to the affidavits purporting to speak to them. And  
21 Plaintiffs are entitled to inquire in discovery whether the electors had *any* petition sheets  
22 attached to their affidavits or otherwise before them at the time of signing.

23 The affidavits also misrepresented what the petition signers actually requested. The  
24 affidavits request that the petition signers “be recognized as a new political party, to be  
25 called No Labels Party.” No Labels Mot. to Dismiss Ex. D. And No Labels maintains even  
26 now that “[i]t is the signers of the petition that ask to form the party.” *Id.* at 8. But the  
27 petition signers never asked that *they* form the party or otherwise constitute its membership.  
28 They petitioned instead only “that a new political party become eligible for recognition”

1 and be afforded ballot access. No Labels Mot. to Dismiss Ex. C. Nothing in the form of the  
2 petition provided its signers with notice that, by signing, they would become members of  
3 the new party. Accordingly, there is literally no one—neither the petition signers nor the  
4 affidavit signers—who has requested to be included in the new political party.

5 **D. A Deficient Verification Results in Invalidation of Petition Signatures.**

6 The law is well settled that, even under a substantial compliance standard, a false  
7 verification affidavit voids the signatures on the petition sheets it purports to verify. *See*  
8 *Brousseau v. Fitzgerald*, 138 Ariz. 453, 456 (1984) (“[P]etitions containing false  
9 certifications by circulators are void, and the signatures on such petitions may not be  
10 considered in determining the sufficiency of the number of signatures to qualify for  
11 placement on the ballot.”); *Moreno v. Jones*, 213 Ariz. 94, 103 ¶ 47 (2006) (“Falsely  
12 certifying a petition is a serious matter involving more than a technicality. Accordingly, . .  
13 . petitions that are improperly certified are void.” (internal quotation marks and citation  
14 omitted)); *Parker v. City of Tucson*, 233 Ariz. 422, 438 ¶ 48 (App. 2013) (holding that a  
15 “necessarily false” affidavit “rendered the signature sheets void”). This is so even if the  
16 underlying signatures would otherwise be valid. *See Brousseau*, 138 Ariz. at 456 (holding  
17 that allowing false certification to be cured by showing that the signatures are otherwise  
18 authentic would render the verification requirement meaningless); *Kennedy v. Lodge*, 230  
19 Ariz. 548, 550 ¶ 9 (2012) (“[S]ignatures on defective petitions are themselves invalid.”).  
20 The *Brousseau* principle—that an improper certification voids the signature sheets it  
21 purports to verify—does not depend on voter confusion, as that standard applies only where  
22 petition forms are presented to signers without required language. *See Moreno*, 213 Ariz. at  
23 102 ¶ 42 (“In determining whether a nomination petition form substantially complies with  
24 the statutory requirements, this court has focused on whether the omission of information  
25 could confuse or mislead electors signing the petition.”). In arguing otherwise, Defendants  
26 misread *Brousseau*. *Cf. Schaefer*, 2016 WL 6270945, at \*1 (“[T]he verification requirement  
27 is not designed to assist electors. It is designed to ensure the petition’s validity. The court  
28 cannot consider failure to properly verify signatures as a technical violation; rather, it goes

1 to the reliability of the petitions.”).

2 It is also of no moment that No Labels relied on the form language provided by the  
3 Secretary of State, because what governs are the requirements of the statute. *See Leibsohn*  
4 *v. Hobbs*, 254 Ariz. 1, 8 ¶ 29 (2022) (noting that “bad advice by the Secretary’s Office”  
5 would not have excused “noncompliance” by political action committee in collecting  
6 initiative petitions); *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 431 (1991) (“[The  
7 defendant] cannot rely on the Secretary of State’s sample form any more than they can rely  
8 on a statute that conflicts with the constitution.”); *Ross v. Bennett*, 228 Ariz. 174, 180 n.7  
9 (2011) (“[C]ompliance . . . with a government-supplied sample form does not guarantee  
10 validity . . .”). Nor is the Secretary’s Elections Procedures Manual (“EPM”) of any force  
11 in this area, as the statute governing the EPM does not authorize rulemaking regarding  
12 procedures for new political party petitions. *See* A.R.S. § 16-452(A) (authorizing EPM  
13 rulemaking with respect to “procedures for early voting and voting, and of producing,  
14 distributing, collecting, counting, tabulating and storing ballots”); *Leach v. Hobbs*, 250  
15 Ariz. 572, 576 ¶ 21 (2021) (“[A]n EPM regulation that exceeds the scope of its statutory  
16 authorization or contravenes an election statute’s purpose does not have the force of law.”);  
17 *Mckenna v. Soto*, 250 Ariz. 469, 473 ¶ 20 (2021) (rejecting candidate’s reliance on EPM  
18 because “the statute that authorizes the EPM does not authorize rulemaking pertaining to  
19 candidate nomination petitions”).

### 20 **III. Plaintiffs Have Procedural Mechanisms for Relief Against the Secretary.**

21 As set forth in the Complaint, Plaintiffs assert claims against the Secretary for  
22 mandamus and for declaratory and injunctive relief for violating Arizona statutes related to  
23 new political parties. *See* Compl. ¶¶ 36–53. Both claims are procedurally proper under well-  
24 established Arizona law, which permits such claims in the election-law context. *See, e.g.,*  
25 *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 61 ¶ 4 (2020) (granting relief on mandamus  
26 claim and noting that “[e]lection laws play an important role in protecting the integrity of  
27 the electoral process”); *Chavez v. Brewer*, 222 Ariz. 309, 313–14 ¶¶ 8–9, 318 ¶ 28 (App.  
28 2009) (permitting claims for “declaratory, injunctive, and mandamus relief” challenging the

1 Secretary’s compliance with election statutes related to certifying voting machines).

2 In attempting to avoid the merits of Plaintiffs’ claims, the Secretary argues (at 5, 11)  
3 that this Court cannot adjudicate some unspecified part of this case either because “the  
4 legislature declined to prescribe a mechanism permitting the challenges at bar” or because  
5 “the Secretary complied with his duties.” But the Secretary fails to provide analysis or  
6 support for these suggestions and fails to grapple with the precedent discussed above that  
7 is directly on point in establishing that mandamus and injunctive and declaratory relief are  
8 the proper vehicles for Plaintiffs’ claims. Indeed, the Secretary all but concedes (at 2) that  
9 Plaintiffs may “seek[] possible injunctive or mandamus relief.”<sup>2</sup>

10 The Complaint adequately pleads both claims, and the Secretary’s arguments to the  
11 contrary fail.

12 **A. Plaintiffs State a Claim in the Nature of Mandamus.**

13 First, Plaintiffs have adequately pleaded a claim for special action relief in the nature  
14 of mandamus. *See* Ariz. R. P. Spec. Act. 3. The Secretary’s motion does not establish  
15 otherwise.

16 It is well established that courts may issue a writ of mandamus to a public official  
17 “to compel, when there is not a plain, adequate and speedy remedy at law, performance of  
18 an act which the law specially imposes as a duty resulting from an office.” A.R.S. § 12-  
19 2021; *see also* Ariz. R. P. Spec. Act. 6 (permitting the court to “annul,” “confirm,” or  
20 “modify” “a determination or order of a body or officer” on review via special action, and  
21 to “direct, order, or prohibit specified action by the defendant”). The mandamus statute  
22 “reflects the Legislature’s desire to broadly afford standing to members of the public to  
23 bring lawsuits to compel officials to perform their public duties.” *Ariz. Pub. Integrity All.*,  
24 250 Ariz. at 62 ¶ 11 (quoting *Ariz. Dep’t of Water Resources v. McClennen*, 238 Ariz. 371,  
25 377 ¶ 32 (2015)).

26 The Arizona Supreme Court has emphasized the broad, remedial nature of

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28 <sup>2</sup> Notably, No Labels does not contest that Plaintiffs may properly seek declaratory  
and injunctive relief against it.

1 mandamus specifically in the election-law context. When voters seek to “compel [an  
2 election official] to perform [a] non-discretionary duty” or to enjoin an election official  
3 from acts “that are beyond his power” under the election laws, mandamus is proper. *Id.* at  
4 62 ¶¶ 12, 14; *see also Chavez*, 222 Ariz. at 315 ¶ 11 (noting that mandamus is available  
5 where official “acted in an arbitrary and capricious manner” in performing duty). That is  
6 precisely what Plaintiffs claim against the Secretary here. *See* Compl. ¶¶ 36–42 (asserting  
7 a claim for mandamus because the Secretary “had a nondiscretionary legal duty” to evaluate  
8 No Labels’ compliance with the statute and determine the petition was facially deficient,  
9 and because the Secretary “exceeded his legal authority and abused his discretion” by  
10 certifying No Labels would be recognized).

11 In contending that the Court should not reach the merits of the mandamus claim, the  
12 Secretary argues (at 10–11) that “Plaintiffs cannot use mandamus” as a vehicle to assert  
13 their substantive challenge because no law “‘specifically imposes’ on the Secretary a duty  
14 to assess the Petition as Plaintiffs desire.” But this argument conflates the *merits* of  
15 Plaintiffs’ claim with the availability of mandamus *procedures*. Mandamus is available as  
16 a procedural mechanism here because Plaintiffs allege that the Secretary had a  
17 nondiscretionary duty to reject the No Labels petition and thus exceeded his legal authority  
18 and abused his discretion in certifying No Labels under the applicable statutes. *See* Compl.  
19 ¶¶ 40–42.

20 In any event, the Secretary had the statutory duty to assess whether No Labels’s  
21 petition complied with Arizona law. He concedes (at 1–2) that he “is required to assess a  
22 [new political party] petition’s compliance with Arizona law as prescribed by statute,” and  
23 to “determine whether a new political party has” complied with “A.R.S. §§ 16-801 through  
24 -804.” The Secretary further concedes that he has a duty under § 16-803 to “assess[] the  
25 petition”—including the “new party affidavit”—in order “to determine whether they  
26 comply with the law,” and to “deem the party recognized in Arizona” only “[i]f they comply  
27 with the law[.]” Mot. at 3 (emphasis added).

28 Plaintiffs’ Complaint alleges that the Secretary failed to perform these acts, as

1 explicitly required by statute, and seeks to compel the Secretary to do so. *See* Compl. ¶¶  
2 40–42. Mandamus is the proper vehicle to assert that claim. *See Ariz. Pub. Integrity All.*,  
3 250 Ariz. at 64 ¶ 25 & 65 ¶ 31 (granting relief on special action petition for mandamus and  
4 “enjoin[ing]” the county recorder where he had taken action that “[did] not comply with  
5 Arizona [election] law”).

6 **B. The Complaint Independently States a Claim for Injunctive and**  
7 **Declaratory Relief.**

8 Second, even setting aside that Plaintiffs’ challenge is properly asserted as a special  
9 action in the nature of mandamus, the Complaint also states an independently sufficient  
10 claim for declaratory and injunctive relief for violation of A.R.S. § 16-801 and -803. *See*  
11 Compl. ¶¶ 43–53. In evaluating similar claims for violations of election statutes, the Arizona  
12 Supreme Court has emphasized that “the judiciary has the authority to construe . . . statutory  
13 scheme[s] involving [election requirements] and declare what the law requires,” particularly  
14 when, as here, a plaintiff alleges that an election official has “improperly” determined that  
15 statutory requirements “enacted by the legislature” and impacting voters have been met.  
16 *Chavez*, 222 Ariz. at 316 ¶ 18; *see also Green v. Osborne*, 157 Ariz. 363, 366 (1988) (“It  
17 has long been recognized in this state that the judiciary has the constitutional authority to  
18 intervene and prevent the holding of an election which is proceeding in violation of law.”).  
19 That is exactly what the Complaint alleges here. *See* Compl. ¶ 53 (alleging the Secretary  
20 improperly certified No Labels as a recognized party when No Labels patently failed to  
21 meet the requirements under A.R.S. §§ 16-801, -803); *see also id.* ¶ 48 (alleging the new  
22 party statutes are intended “to protect the integrity of the electoral system and the process  
23 of giving effect to the will of voters”).

24 Moreover, this Court has specific statutory authority to grant injunctions, *see* A.R.S.  
25 § 12-1801, and to issue declaratory relief, *see* A.R.S. § 12-1831, and the Secretary does not  
26 dispute that an actual controversy exists between it and Plaintiffs (along with the other  
27 Defendants). *See Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 310  
28 (1972) (noting that the declaratory judgment act’s purpose is remedial, and a plaintiff need

1 only “set forth sufficient facts to establish that there is a justiciable controversy”). Nor does  
2 the Secretary dispute that declaratory and injunctive relief would resolve the controversy.

3 In a string cite, the Secretary cites several cases, including *Lancaster v. Arizona*  
4 *Board of Regents*, 143 Ariz. 451, 457 (App. 1984), for the proposition that injunctive relief  
5 claims may be foreclosed under some circumstances where a plaintiff cannot demonstrate  
6 a right of action under the relevant statute. But the Secretary fails to acknowledge *Chavez*,  
7 which was decided two decades later and is directly on point. Here, like in *Chavez*, the  
8 “legislature neither expressly granted nor prohibited a private right of action in the statutory  
9 scheme governing [new political party petitions].” 222 Ariz. at 318 ¶ 25. A right of action  
10 exists, however, because “the overall purpose of the . . . statutes is to ensure the  
11 administration of fair and accurate elections”; “the focus of the[] statutes is protecting the  
12 rights of individuals”; and Plaintiffs, as voters and a political party, are “members of ‘the  
13 class for whose especial benefit’ the statutes were adopted.” *Id.* ¶ 28; *see also Lubin v.*  
14 *Panish*, 415 U.S. 709, 714 (1974) (noting the purpose of statutes setting requirements for  
15 new party qualification is to protect “the integrity of the electoral system from the  
16 recognized dangers of ballots listing so many candidates as to undermine the process of  
17 giving expression to the will of the majority”).

18 The Secretary also argues (at 9 (citing A.R.S. § 12-1802(4) & (6)), that “injunctive  
19 relief is not available as [a] matter of law” because the Secretary’s certification of No Labels  
20 “constitutes nothing more than his ‘enforcement’ of the law and his lawful exercise of [his]  
21 public office.” But it is this Court, not the Secretary, who must determine whether the  
22 certification complied with the law. If it did not, this Court may grant injunctive or  
23 mandamus relief. *See Chavez*, 222 Ariz. at 318 ¶ 28; *Ariz. Pub. Integrity All.*, 250 Ariz. at  
24 65 ¶ 31. Even the Secretary seems to acknowledge this (at 2), admitting that Plaintiffs “at  
25 most” may “seek[] possible injunctive or mandamus relief.”

26 Finally, if this Court were to adopt the Secretary’s view—that no one can ever  
27 challenge the Secretary’s certification of a new political party—this “would deprive  
28 citizens” of any “means” or “opportunity” to “challenge[] the legal sufficiency of” the



1 inclusion of a new party on their ballots. *Kromko v. Superior Court*, 168 Ariz. 51, 56 (1991),  
2 *holding modified on other grounds by Molera v. Hobbs*, 250 Ariz. 13 (2020). Such a holding  
3 would contravene the courts’ fundamental “duty of ensuring that the constitutional and  
4 statutory provisions protecting the electoral process (*i.e.*, the manner in which an election  
5 is held) are not violated.” *Tilson v. Mofford*, 153 Ariz. 468, 470 (1987); *see also Storer v.*  
6 *Brown*, 415 U.S. 724, 730 (1974) (“[A]s a practical matter, there must be a substantial  
7 regulation of elections if they are to be fair and honest and if some sort of order, rather than  
8 chaos, is to accompany the democratic processes.”). And it would undermine the important  
9 purposes served by the new political party statutes, in which Plaintiffs here have a  
10 significant interest. *See* Compl. ¶¶ 10–12, 48.

11 In the end, there are multiple procedural mechanisms to address Plaintiffs’ claims.  
12 The Secretary’s suggestions to the contrary should be rejected.

### 13 CONCLUSION

14 For the foregoing reasons, the Court should deny Defendants’ Motions to Dismiss  
15 and allow the case to proceed in the ordinary course.

16  
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18  
19 Dated: May 8, 2023

Respectfully submitted,

20 /s/ Daniel A. Arellano

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2 I hereby certify that on this 8th day of May, 2023, I electronically submitted a PDF  
3 version of this document to the Office of the Clerk of the Superior Court, Maricopa County,  
4 for filing using the AZTurboCourt system. I further certify that a copy of the foregoing was  
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/s/ Daniel A. Arellano

# Exhibit A

(Sample Petition Sheet)

Petition For Political Party Recognition

I, the undersigned, a qualified elector in the county of Maricopa state of Arizona, hereby petition that a new political party become eligible for recognition, and be represented by an official party ballot at the next ensuing regular primary election, to be held on the August 6, 2024 and accorded a column on the official ballot at the succeeding general election to be held on the 5th of November, 2024. A new political party is entitled to representation as a political party on the official ballot through the next two regularly scheduled general elections for federal office immediately following recognition of the political party. Said party shall be known as No Labels Party. I further declare that if I choose to use a post office box address on this petition, my residence address has not changed since I last reported it to the county recorder for purposes of updating my voter registration file.

	Signature	Printed name	Actual residence address, description of place of residence, or Arizona post office box address, city or town	Date of signing
1.		DAPHNE WEBER	12022 N 78 DR PEORIA AZ	1/31/23
2.		Joanna Furst	100 E. Fillmore St. Phoenix, AZ	1/3/23
3.		Rachel Kaplan	4600 N 24th St Unit 314 Phoenix, AZ	1/3/23
4.		Nicole Baker	5803 N 8th Pl Phoenix, AZ 85014	1/31/2023
5.		Ian Dahl	20268 E Laveado Road, Queen Creek	1/31/2023
6.		Chris Wadliger	16171 N. 87th Dr. Peoria, AZ 85382	1/31/23
7.		Sophie Hase	230 W. McKinley St. Phoenix, AZ 85003	1/31/23
8.		Zuzany Siguer	7992 W. Sun Dr, Phoenix, AZ 85383	1/31/23
9.		Sandra Furt	106 E Cambridge Tempe, AZ	1/31/23
10.		Arrivana Fernandez	413 E Harmony Ave Mesa AZ 85204	1/31/2023