

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 8203

DATE COMPLAINT FILED: January 23, 2024

DATE OF NOTIFICATION: January 30, 2024

RESPONSES RECEIVED: April 4 & 16, 2024

DATE ACTIVATED: June 25, 2024

EXPIRATION OF SOL: Late 2026

ELECTION CYCLE: 2024

COMPLAINANTS:

End Citizens United

Tiffany Muller

RESPONDENT:

No Labels

RELEVANT STATUTES

AND REGULATIONS:

52 U.S.C. § 30101(4)(A)

52 U.S.C. § 30102

52 U.S.C. § 30103

52 U.S.C. § 30104

11 C.F.R. § 100.5

11 C.F.R. § 110.11(a)(1)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint in this matter alleges that No Labels, a 501(c)(4) nonprofit corporation, violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to register and report as a political committee.¹ Specifically, the Complaint alleges that, in 2021, No Labels “began a massive new project to secure nationwide ballot access for a third-party presidential ticket with the stated goal of ensuring that neither Joe Biden nor Donald Trump win

¹ Compl. at 1 (Jan. 23, 2024).

1 the 2024 presidential election.”² In so doing, the Complaint argues that No Labels has “focused
2 almost exclusively on federal campaign activity in opposition to two clearly identified federal
3 candidates” and made more than \$1,000 in expenditures.³ Therefore, the Complaint asserts, No
4 Labels is required but failed to register and report as a political committee.

5 No Labels denies the allegation, stating that since its inception in 2009, it has not
6 operated as a political committee within the meaning of the Act.⁴ While it acknowledges
7 involvement in a ballot access project to enable a potential “unity ticket,” it explains that it “will
8 continue to maintain its primary purpose of advocating for bipartisan, common sense policy
9 solutions, as it has since 2009.”⁵ In support of this position, No Labels provides further
10 information about its ballot access project and its other activities, and asserts that its activities are
11 consistent with the D.C. Circuit Court’s opinion in *Unity08 v. FEC*, which found that an entity
12 that had the purpose of facilitating ballot access for a potential unity ticket did not qualify as a
13 political committee under the Act.⁶ Finally, No Labels states that even since it began the project,
14 “its spending on its ballot access project has not constituted a majority of its overall spending.”⁷
15 Since the Complaint and Response were submitted, No Labels has ended its ballot access project
16 efforts and did not nominate any candidate.⁸

17 While No Labels may have met the \$1,000 expenditure threshold, considering its stated
18 purpose, its historical activities, including modest fundraising and independent expenditure

² *Id.* at 1.

³ *Id.* at 1.

⁴ Resp. at 3 (Apr. 5, 2024).

⁵ *Id.* at 4.

⁶ *Id.* at 5-7; *Unity08 v. FEC*, 596 F.3d 861 (D.C. Cir. 2010).

⁷ Resp. at 7-8, Aff. of Jerald S. Howe, Jr., Treasurer of No Labels (“Howe Aff.”).

⁸ Supp. Resp. (Apr. 17, 2024).

activities, and considering its activities relating to its ballot access project — in light of the opinion in *Unity08 v. FEC* — we conclude that the available information does not suggest that No Labels has the major purpose of nominating or electing a clearly identified federal candidate. Accordingly, we recommend that the Commission dismiss the allegations that No Labels has violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as a political committee.

II. FACTUAL BACKGROUND

No Labels is a 501(c)(4) social welfare organization created in 2009.⁹ No Labels asserts that it is “a movement of Democrats, Republicans, and everything in between, dedicated to the politics of problem solving. We stand united behind a simple proposition: We want our government to stop fighting and start fixing.”¹⁰ Several other entities appear to be related to No Labels, including: No Labels Problem Solvers PAC, a separate segregated fund supported by No Labels members;¹¹ No Labels Ballot Access (f/k/a Insurance Policy for America), a 527 political organization conducting ballot access work;¹² and No Labels 2024 (f/k/a Convention 2024), a political committee registered with the Commission that was involved in preparations for a convention relating to the No Labels bipartisan unity ticket.¹³

⁹ Resp. at 3.

¹⁰ No Labels, *About Us*, <https://www.nolabels.org/about-us>; No Labels, 2022 IRS Form 990, <https://projects.propublica.org/nonprofits/organizations/271432208/202343209349304114/full>; see Resp. at 3 (stating that No Labels’s “central function has involved bringing political leaders, academics, and opinion leaders together with its members and supporters to learn about legislative initiatives, policy options, and the general political landscape”).

¹¹ See Amend. Statement of Org., No Labels Problem Solvers PAC (Aug. 7, 2023).

¹² Insurance Policy for America, Inc., Form 8871, Notice of Section 527 Status (Dec. 23, 2021), https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://forms.irs.gov/app/pod/basicSearch/downloadFile%3FformId%3D115156%26formType%3De8871&ved=2ahUKewjHg9mCPaHAX9FVkfFHYAHDLAQFnoECBoQAQ&usq=AOvVaw251_Xfo3HI0YzmGckralD2; see Compl. at 7; Resp. at 4-5.

¹³ Amend. Statement of Org., No Labels 2024 (Jan. 17, 2023). News reports have also noted a potential connection between No Labels and several independent expenditure-only political committees including: No Labels

1 Among the projects in pursuit of its mission, No Labels asserts that it “was instrumental
 2 in developing the “Problem Solvers Caucus” in the U.S. House of Representatives and a similar
 3 bipartisan group in the U.S. Senate.”¹⁴ No Labels also points to a collection of research and
 4 advocacy projects, including its 2023 “Common Sense Policy Booklet” outlining 30 policy ideas
 5 in what No Labels calls its “Common Sense Agenda.”¹⁵

6 Over the course of its existence, No Labels has engaged in some federal campaign
 7 activity. In 2014, No Labels made roughly \$6,000 in independent expenditures in support of
 8 House and Senate candidates and, in 2018, No Labels made roughly \$20,000 in independent
 9 expenditures in support of a House candidate.¹⁶ While the Complaint also asserts that No Labels
 10 has made direct contributions and bundled contributions to endorsed candidates,¹⁷ the available
 11 information suggests that the vast majority of this activity was conducted by No Labels Problem
 12 Solvers PAC, a separate segregated fund supported by No Labels members.¹⁸

Action, Forward Not Back, United Together, Govern or Go Home, Citizens for a Strong America, and United for Progress. Sam Stein & Lachlan Markay, *How No Labels Went From Preaching Unity to Practicing the Dark Arts*, DAILY BEAST (Dec. 3, 2018), <https://www.thedailybeast.com/how-no-labels-went-from-preaching-unity-to-practicing-the-dark-arts>. However, none of these separate entities are referenced by the Complaint or the Response, and they do not appear to have any bearing on the allegations at issue. All references to “No Labels” throughout this report reference the 501(c)(4) organization that is the Respondent in this matter.

¹⁴ Resp. at 3.

¹⁵ *Id.* at 3 n.9 (citing <https://www.nolabels.org/our-ideas>); No Labels, *Common Sense Policy Booklet*, (2023), https://www.commonsemajority.org/_files/ugd/9f0726_ddf18ab178e0489d8d816fd09e8607fe.pdf.

¹⁶ Compl. at 2-3; No Labels, 2014 Year-End Report of Independent Expenditures (reflecting \$1,862.43 in independent expenditures supporting congressional candidate Amerish Bera and \$3,876.94 in independent expenditures supporting senate candidate Corey Gardner); No Labels, Amend. 2018 April Quarterly Report of Independent Expenditures (FEC Form 5) (Apr. 13, 2018) (reflecting \$20,189.75 in independent expenditures supporting congressional candidate Daniel Lipinski). The Complaint also alleges that No Labels paid for “travel costs for its volunteers to assist with get-out-the-vote and voter turnout operations.” Compl. at 3 (citing Adam O’Neal, *No Labels Backs Gardner Ground Effort in Colorado*, REAL CLEAR POLITICS (Oct. 27, 2014), https://www.realclearpolitics.com/articles/2014/10/27/no_labels_backs_gardner_ground_effort_in_colorado_124453.html).

¹⁷ Compl. at 3.

¹⁸ *See* Resp. at 6 (stating that the “occasional efforts to raise funds for Members of Congress have entailed either the ‘internal communication’ exemption from the FEC-based definitions of ‘contribution’ and ‘expenditure,’ or the actions of the connected PAC of No Labels (No Labels Problem Solvers PAC)”). No Labels also

In late 2021, No Labels launched the “No Labels 2024 Insurance Project,” which, according to its website, is a “project to secure nationwide ballot access to enable the potential nomination of an independent Unity ticket in 2024.”¹⁹ No Labels stated that polls indicate that “voters are unhappy with the choices they are likely to have in the 2024 presidential election” and that this project would give “voters a better choice should they want it.”²⁰ Further, No Labels asserted that it would provide the ballot access it achieved to a presidential ticket “ONLY if the public clearly wants an alternative to the major party nominees and there is a viable path to outright victory for an independent Unity ticket in 2024.”²¹ No Labels stated that if it did end up offering its ballot line to an “independent Unity ticket,” it “will not help fund or run the campaign” and had no plans to offer its ballot line to candidates for any other offices.²²

Beyond collecting signatures to achieve ballot access in all 50 states and the District of Columbia, No Labels has engaged in numerous other related activities.²³ Among these activities are research, polling, and focus groups to determine the interest in and viability of such a

acknowledges that on some occasions No Labels supporters have sent candidate contribution checks to No Labels and that No Labels has acted as a conduit, forwarding those checks to the candidates. *Id.* at 6 n.9.

¹⁹ No Labels, *Unity Ticket 2024 FAQs* (“Unity Ticket FAQ”), <https://www.nolabels.org/unity-ticket-faqs> [<https://web.archive.org/web/20240501135913/www.nolabels.org/unity-ticket-faqs>]. It appears that supporting signature collection was the primary function of No Labels’s ballot access project. See No Labels, *No Labels Wins Ballot Access in Maine for 2024 Election* (Jan. 5, 2024), <https://www.nolabels.org/no-labels-wins-ballot-access-in-maine-for-2024-election> (reflecting that No Labels collected signatures of 9,423 No Labels members to achieve a place on the presidential ballot in Maine); No Labels, *Five Facts on the Battle for Ballot Access* (June 9, 2023), <https://www.nolabels.org/five-facts-on-the-battle-for-ballot-access> (reflecting that No Labels secured 41,663 valid signatures to achieve a place on the presidential ballot in Arizona and was in litigation to defend its slot on the ballot).

²⁰ Unity Ticket FAQ.

²¹ *Id.* (“We are simply clearing away the ballot access obstacles built by the major parties to create space for the potential nomination of an independent Unity ticket, if that’s what the American public wants.”); see Resp. at 3-4 (“[No Labels] is taking ballot access steps for the potential nomination of a ‘unity ticket.’”).

²² Unity Ticket FAQ (“This effort is one ticket, one time and that’s all.”).

²³ *Supra* note 19.

project.²⁴ As the Complaint notes, No Labels also publicly advocated for the need for another option on the ballot via advertisements on Facebook, op-eds written by No Labels leadership, and materials advocating the need for this project on No Labels's website; many of these communications support this additional option by explicitly or implicitly criticizing the candidacies of President Joe Biden and former President Donald Trump.²⁵ For instance, in Facebook ads, No Labels has advocated avoiding a 2024 "rematch" or "sequel."²⁶ An op-ed by No Labels Co-Executive Director Margaret White states that "Joe Biden has failed to bring the nation together" and "Donald Trump is mired in fights with virtually everyone."²⁷ In support of this unity ticket option, the op-ed concludes that "[t]he only way either of these men could get elected in 2024 is if they are the only choices on the ballot. One of them by necessity would win, but the country would lose."²⁸ Further, No Labels's website published a note by co-chairs, Sen. Joe Lieberman and Dr. Benjamin F. Chavis, Jr., titled: "Donald Trump Should Never Again Be President."²⁹

In furtherance of this ballot access project, in 2021, No Labels provided a grant of \$2,400,000 to No Labels Ballot Access (f/k/a Insurance Policy for America), which equals

²⁴ No Labels, *Memorandum: Trump/Biden Campaigns are a House of Cards* (Oct. 30, 2023), <https://www.nolabels.org/memo>, [<https://web.archive.org/web/20240310190456/https://www.nolabels.org/memo>] ("Since late 2021, No Labels has polled over 60,000 registered voters to understand the dynamics of the 2024 race"); Michael Scherer, *No Labels Preps Playbook To Select Presidential Candidates, Broaden Support*, WASH. POST (Aug. 30, 2023), <https://www.washingtonpost.com/politics/2023/08/30/no-labels-third-party-election/>.

²⁵ Compl. at 5-7; *see* Resp. at 7.

²⁶ Resp. at 6 nn.39-41.

²⁷ Margaret White, *America Needs a New Alternative*, THE HILL (Apr. 7, 2023), <https://thehill.com/opinion/congress-blog/3939951-america-needs-a-new-alternative/>.

²⁸ *Id.*

²⁹ No Labels, *Donald Trump Should Never Again Be President* (May 1, 2023), <https://www.nolabels.org/no-labels-donald-trump-president>.

approximately 23% of No Labels's \$10,516,122 in total expenses for that year.³⁰ According to its 2022 IRS Form 990, No Labels did not provide any such grants the following year; however, the form does reflect \$3,136,213 in "political campaign activity expenditures," which No Labels describes as "[e]xpenses for ballot access in multiple states that potentially could be used by a presidential/vice-presidential campaign in 2024."³¹ This amounts to 34% of No Labels's \$9,093,757 in total expenses in 2022.³²

No Labels originally intended that this ballot access project would culminate in a nominating convention held in Dallas, Texas in April of 2024 to select a unity party candidate but later it changed those plans with the intention of conducting nominations online.³³ No Labels explains that all "expenses related to creating a structure for vetting and selecting potential and eventual 'unity ticket' candidates" have been paid by No Labels 2024 (f/k/a Convention 2024), a separate entity that is registered and reports to the Commission as a political committee.³⁴ Further the Response states that "an arrangement has been in place to assure that any resources of No Labels that are used for fundraising, event planning, meetings, and other vetting/selection steps are in fact reimbursed by No Labels 2024," a statement that is consistent with No Labels 2024's disclosure reports, which reflect reimbursements to No Labels for staff time and related expenses.³⁵

³⁰ Resp. at 5; No Labels, 2021 IRS Form 990 Lines 13 and 18, and Schedule I, <https://projects.propublica.org/nonprofits/organizations/271432208/202331939349300603/full>.

³¹ No Labels, 2022 IRS Form 990, Schedule C, <https://projects.propublica.org/nonprofits/organizations/271432208/202343209349304114/full>.

³² No Labels, 2022 IRS Form 990, Line 18.

³³ Hans Nichols, *Scoop: No Labels Abandons its In-Person Presidential Convention*, AXIOS (Nov. 29, 2023), <https://www.axios.com/2023/11/30/no-labels-presidential-convention-event-virtual>.

³⁴ Resp. at 5; No Labels 2024, Statement of Org. (Jan 17, 2023).

³⁵ Resp. at 5.

No Labels also provided an affidavit from its Treasurer, Jerald S. Howe, Jr., directly addressing the proportion of its funds expended on the ballot access project, stating:

For calendar years 2021, 2022, and 2023, I hereby verify that expenses related to the ballot access project did not and do not constitute the majority of No Labels' spending during any calendar year. For calendar year 2024, which is only about one-quarter completed, I fully expect that by year's end expenses related to the ballot access project will not constitute the majority of No Labels' spending for 2024.³⁶

On April 3, 2024, No Labels announced that it was ending its ballot access project efforts and declined to nominate any candidate, stating that: "No Labels has always said we would only offer our ballot line to a ticket if we could identify candidates with a credible path to winning the White House. No such candidates emerged, so the responsible course of action is for us to stand down."³⁷ Moving forward, No Labels stated that it would "build on the momentum we have gained over the last year to continue representing unity and giving voice to America's commonsense majority."³⁸

III. LEGAL ANALYSIS

A. Relevant Law

The Act and Commission regulations define a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of

³⁶ Howe Aff. ¶ 4.

³⁷ No Labels, Press Release (April 3, 2024), <https://www.nolabels.org/no-labels-2024-ballot-project>. Following the ending of its ballot access efforts, No Labels submitted a supplemental Response in this matter stating that considering the discontinuing of these ballot access efforts, No Labels could confirm that even if its ballot access expenses were attributed to a major purpose of influencing federal elections, "No Labels easily will establish that its major purpose spending for 2024 is for programming tied to its traditional 'social welfare' functions." Supp. Resp. at 1. Relatedly, on June 14, 2024, No Labels 2024 terminated its committee status, having contributed its remaining funds (\$352,694.99) to a separate independent expenditure-only political committee, New Leaders 2024, two days prior. No Labels 2024, Termination Report (June 14, 2024).

³⁸ No Labels, Press Release (April 3, 2024), <https://www.nolabels.org/no-labels-2024-ballot-project>.

\$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.”³⁹ In *Buckley v. Valeo*, the Supreme Court held that defining political committee status “only in terms of [the] amount of annual ‘contributions’ and ‘expenditures’” might be overbroad, reaching “groups engaged purely in issue discussion.”⁴⁰ To cure that infirmity, the Court concluded that the term “political committee” “need only encompass organizations that are under the control of a candidate or the *major purpose of which is the nomination or election of a candidate*.”⁴¹ Accordingly, under the statute as thus construed, an organization that is not controlled by a candidate must register as a political committee only if (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election of federal candidates.

After *Buckley*, the Commission adopted a policy of determining on a case-by-case basis whether an organization is a political committee, including whether its major purpose is the nomination or election of federal candidates.⁴² In 2016, the United States District Court for the District of Columbia in *Citizens for Responsibility and Ethics in Washington v. FEC* instructed the Commission, when examining an organization’s major purpose, to look beyond express advocacy and consider whether other communications at issue indicate a “campaign-related

³⁹ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

⁴⁰ 424 U.S. 1, 79 (1976) (*per curiam*).

⁴¹ *Id.* (emphasis added).

⁴² See, e.g., *Real Truth About Abortion, Inc. v. FEC* (formerly *Real Truth About Obama v. FEC*), 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 568 U.S. 1114 (Jan. 7, 2013) (No. 12-311) (“*RTAA*”) (“Although *Buckley* did create the major purpose test, it did not mandate a particular methodology for determining an organization’s major purpose.”). The Commission concluded that determining an organization’s major purpose “requires the flexibility of a case-by-case analysis of an organization’s conduct that is incompatible with a one-size-fits-all rule,” and that “any list of factors developed by the Commission would not likely be exhaustive in any event, as evidenced by the multitude of fact patterns at issue in the Commission’s enforcement actions considering the political committee status of various entities.” Political Committee Status, 72 Fed. Reg. 5,595, 5,602 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”); see also Factual & Legal Analysis (“F&LA”) at 13, MUR 6538R (Americans for Job Security).

purpose.”⁴³ The court also held that the Commission’s analysis of the relevant time period for evaluating a group’s spending must retain the flexibility to account for changes in an organization’s major purpose over time.⁴⁴

Thus, to determine an entity’s “major purpose,” the Commission considers a group’s “overall conduct,” including, among other factors, public statements about its mission, organizational documents, government filings (*e.g.*, IRS notices), and the proportion of spending related to “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).”⁴⁵ The Commission has stated that it compares how much of an organization’s spending is for “federal campaign activity” relative to “activities that [a]re not campaign related.”⁴⁶

Political committees must comply with certain organizational and reporting requirements set forth in the Act. They must register with the Commission, file periodic reports for disclosure to the public, appoint a treasurer who maintains its records, and identify themselves through “disclaimers” on all of their political advertising, on their websites, and in mass emails.⁴⁷

⁴³ 209 F. Supp. 3d 77, 92-93 (D.D.C. 2016) (“*CREW I*”). The same District Court later held that electioneering communications “*presumptively* have an election-related purpose,” but the analysis by that Court in *CREW I* and its subsequent decision refers generally to all speech that is campaign-related but does not contain express advocacy. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 299 F. Supp. 3d 83, 93 (D.D.C. 2018) (“*CREW II*”). The Court refrained from establishing its own bright-line rule regarding which communications inherently have a campaign-related purpose, but stated that the First Amendment does not require “the agency to exclude from its consideration all non-express advocacy in the context of disclosure.” *CREW I*, 209 F. Supp. 3d at 93.

⁴⁴ *CREW I*, 209 F. Supp. 3d at 94; *see* F&LA at 14-15, MUR 6538R (Americans for Job Security) (finding after remand that the organization’s campaign-related spending exceeded 50% of its overall spending approximately one year before the 2010 election, and that the organization violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political committee); *see also* Conciliation Agreement, MUR 6538R (Sept. 3, 2019).

⁴⁵ Supplemental E&J at 5597, 5605.

⁴⁶ *Id.* at 5597, 5605-06. This approach was subsequently challenged and upheld in federal district court. *See Shays v. FEC*, 511 F. Supp. 2d 19 (D.D.C. 2007). In 2012, in *RTAA*, the Fourth Circuit upheld the Commission’s case-by-case approach in the face of a constitutional challenge. 681 F.3d 544; *see also Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission’s case-by-case method of determining political committee status), *cert. denied*, 572 U.S. 1114 (2014).

⁴⁷ 52 U.S.C. §§ 30102-30104; 11 C.F.R. § 110.11(a)(1).

B. The Commission Should Dismiss the Allegations that No Labels Violated the Act by Failing to Register and Report as a Political Committee

The Complaint alleges that No Labels became a political committee by virtue of its activities related to its ballot access project but failed to register and report as such.⁴⁸ The Complaint asserts that even if No Labels was once a social welfare entity that would not qualify as a political committee, “[s]ince the dawn of this [ballot access] project, No Labels has focused almost exclusively on federal election campaign activity in opposition to two clearly identified federal candidates.”⁴⁹ Specifically, the Complaint asserts that No Labels has ceased coordinating the Problem Solvers Caucus and all of its public activities, are directed toward “defeating Joe Biden, Donald Trump, or both candidates.”⁵⁰ The Complaint argues that this includes the ballot access project because funds spent on the project are expenditures aimed at the defeat of Trump and Biden.⁵¹

No Labels, since before the filing of the Complaint, has publicly stated its reliance on a D.C. Court of Appeals case, *Unity08 v. FEC*, to support its argument that it “is not required to register as a ‘political committee’ under the Federal Election Campaign Act, because it is not supporting any ‘clearly identified candidate.’”⁵² The Complaint seeks to distinguish *Unity08*,

⁴⁸ Compl. at 1.

⁴⁹ *Id.* at 1, 9-12.

⁵⁰ *Id.* at 11.

⁵¹ *Id.*

⁵² No Labels, *No Labels is Conducting its Unity Ticket Project Under the Safe Harbor of the Unity08 Ruling* (Dec. 22, 2023), <https://www.nolabels.org/no-labels-is-conducting-its-unity-ticket-project-under-the-safe-harbor-of-the-unity08-ruling>; see *Unity08 v. FEC*, 596 F.3d 861 (D.C. Cir. 2010). Alternatively, even if the ballot access project were considered campaign activity that is attributable to a major purpose of which is the nomination or election of a federal candidate, No Labels contends that owing to its increased spending in the years the ballot access project was occurring, “its ballot access project has not constituted a majority of its overall spending” in 2021, 2022, 2023, or 2024. Resp. at 8; Howe Aff. ¶ 4.

along with its predecessor *FEC v. Machinists No-Partisan Political League*,⁵³ arguing that No Labels ballot access activities are indicative of No Labels major purpose being electoral.⁵⁴

In *FEC v. Machinists No-Partisan Political League*, the D.C. Circuit held that a so-called “draft group,” which sought to convince Senator Edward Kennedy to challenge sitting-president Jimmy Carter for the Democratic nomination in 1980, was a not political committee under the Act.⁵⁵ Explaining its opinion that such groups did not have the major purpose of nomination or election of a candidate, the court stated that:

Draft groups may vary widely in character, from those wishing to encourage a particular individual's entrance as a candidate, to those encouraging a whole field of possible candidates, all of whom meet the group's particular policy or personal qualifications. Draft groups do have one thing in common, however: they aim to produce some day a candidate acceptable to them, but they have not yet succeeded. Therefore none are promoting a “candidate” for office, as Congress uses that term in [the Act].⁵⁶

In *Unity08 v. FEC*, the D.C. Circuit overturned the Commission's determination in Advisory Opinion 2006-20 (Unity08), ruling that a group that planned to facilitate an online nominating process for a “unity ticket” consisting of one Democrat and one Republican and to seek ballot access for that ticket was not subject to the registration and disclosure requirements of the Act as a political committee.⁵⁷ “Absent any compelling ground for distinguishing

⁵³ 655 F.2d 380 (D.C. Cir. 1981).

⁵⁴ Compl. at 13-14.

⁵⁵ *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981); see also *FEC v. Florida for Kennedy Committee*, 681 F.2d 1,281, 1,287-88. (11th Cir. 1982) (following *Machinists* and concluding that a “draft Kennedy” group could only be subject to the Commission's jurisdiction as a political committee if Kennedy was a candidate during the period of the group's activities).

⁵⁶ *Id.* at 393.

⁵⁷ *Unity08 v. FEC*, 596 F.3d 861 (D.C. Cir. 2010).

1 *Machinists*,” the court found “that Unity08 is not subject to regulation as a political committee
2 unless and until it selects a ‘clearly identified’ candidate.”⁵⁸

3 Following the rationale in these cases, in MUR 6660, the Commission determined that
4 that an entity that was devoted to placing a yet unknown, directly nominated presidential and
5 vice-president candidate on the 2012 ballot in 50 states did not have the major purpose of
6 nominating or electing of any clearly identified federal candidates, and therefore was not a
7 political committee.⁵⁹

8 The Complaint argues that *Unity08* is distinct from the present matter on two grounds.
9 First, the Complaint states that *Unity08* only applies to the “narrow circumstance in which a draft
10 group had never, in its history, supported federal candidates.”⁶⁰ Second, while acknowledging
11 that No Labels has not selected a candidate to support in the 2024 election, the Complaint argues
12 that No Labels’s activities are “directly related” to “defeating a clearly identified candidate,”
13 thereby giving No Labels “the major purpose of influencing federal elections.”⁶¹

14 No Labels responds that the Complaint takes the court’s statement regarding *Unity08*
15 having “never, in its history, supported federal candidates” out of context and that No Labels’s
16 “occasional efforts to raise funds for Members of Congress” and independent expenditures in
17 2014 and 2018 congressional races are not of legal significance to the purpose of its ballot access
18 activities in 2024.⁶² Further, No Labels asserts that the content it has posted and published that
19 is critical of Trump or Biden does not distinguish it from the circumstances of *Unity08* and

⁵⁸ *Id.* at 869.

⁵⁹ *See* F&LA at 5, MUR 6660 (Americans Elect) (relying on *Unity08*).

⁶⁰ Compl. at 13.

⁶¹ *Id.*

⁶² Resp. at 7-8.

Machinists where the courts held that they were “not subject to regulation as a political committee unless and until [they] select[] a ‘clearly identified’ candidate.”⁶³

In short, No Labels’s ballot access activities would not contribute to major purpose of a federal political committee unless and until it selected a clearly identified candidate which it ultimately declined to do.⁶⁴ Ballot access activities that are not conducted on behalf of a clearly identified candidate are not activities attributable to the major purpose required to be a political committee consistent with *Buckley*’s narrowed definition the term.⁶⁵ Therefore, we recommend that the Commission, following the rationale of the opinions in *Unity08* and *Machinists*, as well as the analysis in *Buckley*, find that No Labels’s payments for ballot access activities do not contribute toward a major purpose of the nomination or election of a federal candidate.

The Complaint’s argument that No Labels’s relatively modest independent expenditures regarding congressional candidates, years prior to the ballot access project, or its membership communications endorsing or fundraising for congressional candidates affect the nature of the purpose of its ballot access activities, is a logical leap and inconsistent with the reasoning of the court in *Unity08*. The Complaint derives this distinction from the opinion’s isolated statement in *Unity08* that “the question before us is whether a group that seeks to select (or “draft”) candidates, but which has never supported a clearly identified candidate in the past and does not

⁶³ *Id.* at 6 (quoting *Unity08 v. FEC*, 655 F.2d at 389).

⁶⁴ *Unity08*, 596 F.3d at 869 (“[W]e find that *Unity08* is not subject to regulation as a political committee unless and until it selects a ‘clearly identified’ candidate”); *see also id.* at 868 (“*Machinists*’ reading of *Buckley* as limited to groups who have a “clearly identified” candidate was essential to its outcome in *Machinists* and is therefore binding on us.”).

⁶⁵ *Buckley*, 424 U.S. at 79 (concluding that the term “political committee” “need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate”).

1 have any fixed intention of supporting the selected candidates, can avoid regulation as a political
 2 committee under *Machinists*.⁶⁶

3 However, this statement was a description of the party before the court, not an attempt to
 4 set exacting limits to the application of the principle of law it set out. Like *Unity08*, No Labels
 5 ballot access activities have not been aimed at a particular candidate and there is no reason for
 6 No Labels's modest past electoral activities to impute their purpose onto ballot access for an
 7 undetermined candidate.⁶⁷

8 The second distinction proffered by the Complaint is equally unpersuasive. The
 9 Complaint argues that by criticizing Trump and Biden through Facebook ads, op-eds, and
 10 materials on its website as part of promoting the need for its ballot measure project, No Labels
 11 has the major purpose of "defeating two clearly identified candidates."⁶⁸ But imputing the
 12 purpose of particular messaging to all of its ballot access activities would be inconsistent with
 13 the court's opinion in *Machinists*.⁶⁹ There, the court found that "draft Kennedy" groups were not
 14 political committees without regard to its and its representatives' attacks on President Carter
 15 against whom they wanted Kennedy to run.⁷⁰ Thus, while individual expenses advocating

⁶⁶ *Unity08 v. FEC*, 596 F.3d at 869; Compl. at 13.

⁶⁷ As the court in *Unity08* discussed, this stands in contrast to political parties, whose past activities may be imputed to their activities even prior to nominating a particular candidate. The entire purpose of political parties is to support its candidates and they "almost invariably intend to support their nominees." *Unity08 v. FEC*, 586 F.3d at 869. As the court notes "the risk of a 'quid pro quo' from donations to such parties might therefore be materially greater than the risks of corruption presented by bona fide draft groups." *Id.*

⁶⁸ Compl. at 13; *see supra*, pg. 6.

⁶⁹ *Machinists*, 655 F.2d 380; *see also* F&LA, MUR 6660 (Americans Elect) (concluding that an entity "devoted to placing a yet unknown, directly nominated presidential and vice-president candidate on the 2012 ballot in 50 states" not a political committee despite it later in the same election cycle making independent expenditures in support of a senate candidate).

⁷⁰ *Machinists*, 655 F.2d 380. In MUR 1038, the matter underlying *Machinists*, the record indicated that one of these groups "has conducted and anticipates conducting in the future, a direct mail program urging support of a "draft Kennedy"/"oppose Carter" movement and that another "has run anti-Carter, pro-Kennedy newspaper ads and sponsored similar mass mailings." First Gen. Counsel's Rpt. at 9-10, MUR 1038 (Florida for Kennedy Committee,

1 against Biden or Trump may be indicative of an electoral purpose relating to those expenses, that
 2 does not equate to the entire ballot access project they promoted being for the purpose of electing
 3 (or defeating) a clearly identified candidate.⁷¹ Following the rationale of the courts in
 4 *Machinists* and *Unity08*, No Labels's ballot access project is better understood as conduct aimed
 5 towards the potential candidacy of an as-of-yet-not-identified individual rather than conduct
 6 aimed towards the defeat of clearly identified candidates.

7 Here, No Labels's activities advocating against Biden and Trump appear to be a modest
 8 portion of No Labels's overall spending. For instance, Facebook's ad library indicates that each
 9 of the three ads referenced by the Complaint were placed at a cost of less than \$100.⁷² And
 10 while there is some staff expense involved in authoring op-eds and content for No Labels's
 11 website, the amount of content provided does not suggest that the total spending on these

et al.). As No Labels notes in its Response, press reports from the time also indicate that "draft Kennedy" groups were unambiguously opposing Carter. Resp at 7 n.24 (citing Bill Peterson, *Draft-Kennedy Advocates Kick Off Campaign in Minnesota*, WASH. POST, (June 10, 1979), <https://www.washingtonpost.com/archive/politics/1979/06/11/draft-kennedy-advocates-kick-off-campaign-in-minnesota/f2c7ef33-dd17-447a-8a35-65821ea20491/>). Moreover, the court in *Machinists* itself acknowledged the direct opposition to Carter among "draft Kennedy" groups. *Machinists*, 655 F.2d at 383 n.2 (noting the comments of Willaim Winpisinger, who was involved with several of the draft groups at issue stating: "President Carter has abandoned his constituency, his party's platform, and his own campaign pledges. Carter may be the best Republican President since Herbert Hoover. Look at his record. President Carter — to me — is through. He is a weak, vascillating [sic] and ineffective President. I know as well as anyone, that those are dangerous words.").

⁷¹ Moreover, it is also questionable whether activity that opposes the election of a candidate, without any possibility of being understood as in support of a particular candidate (such as here where a candidate has yet to be identified), could constitutionally be considered as counting toward the major purpose of a potential political committee as the possibility of *quid pro quo* corruption seems modest when there is no supported candidate to corrupt. See *Unity08*, 596 F.3d at 868 ("[T]he opportunity for corruption appears to be lesser here: whereas the groups in *Machinists* almost certainly were providing assistance of some kind to Senator Kennedy by increasing his name recognition and support, Unity08's proposed method of generating nominees was such that neither donors nor candidates would know at the time of the donations which candidate would ultimately benefit from the group's convention. This would appear to significantly lessen the likelihood of a "quid pro quo" of the kind that *Buckley* supposed might undermine the integrity of our political process."); *Machinists*, 655 F.2d at 392 ("[W]here a group's activities are not related in any way to a person who has decided to become a candidate, the "actuality and potential for corruption" are far from having been 'identified.'").

⁷² See Facebook Ad Library, No Labels "A New Option," <https://www.facebook.com/ads/library/?id=1545682982947584>; Facebook Ad Library, No Labels "Put a 3rd choice on the ballot in 2024! 2020 Rematch?" <https://www.facebook.com/ads/library/?id=177654818766995>; Facebook Ad Library, No Labels "Let's Avoid a Doomed Sequel Together," <https://www.facebook.com/ads/library/?id=3045900262208132>.

activities amounts to a substantial portion of the \$10,516,122 No Labels spent in 2021 or the \$9,093,757 it spent in 2022.⁷³ Accordingly, these activities advocating against Biden and Trump do not, on their own, suggest that No Labels had the major purpose of nominating or electing candidates.⁷⁴

Therefore, because No Labels's federal electoral activities, including advocating against Biden and Trump, were modest and its ballot access project was not in reference to a clearly identified candidate, the organization does not appear to have had the major purpose of nominating or electing a federal candidate and thus No Labels did not become a political committee as alleged. Accordingly, we recommend that the Commission dismiss the allegation that No Labels failed to register and report as political committee in violation of 52 U.S.C. §§ 30102, 30103, and 30104.

IV. RECOMMENDATIONS

1. Dismiss the allegation that No Labels violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to register and report as a political committee;
2. Approve the attached Factual and Legal Analysis;
3. Approve the appropriate letters;

⁷³ See No Labels, 2021 IRS Form 990, Line 18; No Labels, 2022 IRS Form 990, Line 18.

⁷⁴ Moreover, we are not in possession of information contradicting the sworn statement of No Labels's Treasurer that even if all of the ballot measure activity were considered to have the major purpose of electing a clearly identified candidate, those expenses "did not and do not constitute the majority of No Labels' spending during any calendar year." Howe Aff. ¶ 4.

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