



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

VIA EMAIL

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Scott E. Thomas, Esq.
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1825 I Street, NW
Washington, DC 20006

December 2, 2024

RE: MUR 8203
No Labels

Dear Mr. Thomas:

On January 30, 2024, the Federal Election Commission notified your client, No Labels, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On October 30, 2024, the Commission voted to 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. Accordingly, the Commission voted to close its file in this matter effective December 2, 2024.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Any applicable Factual and Legal Analysis or Statements of Reasons available at the time of this letter's transmittal are enclosed.

If you have any questions, please contact Nick Mueller, the attorney assigned to this matter, at (202) 694-1577 or nmueller@fec.gov.

Sincerely,

A handwritten signature in cursive script that reads "Ana J. Peña-Wallace".

Ana J. Peña-Wallace
Assistant General Counsel

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: No Labels

MUR 8203

I. INTRODUCTION

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

No Labels denies the allegation, stating that since its inception in 2009, it has not operated as a political committee within the meaning of the Act.⁴ While it acknowledges involvement in a ballot access project to enable a potential “unity ticket,” it explains that it “will continue to maintain its primary purpose of advocating for bipartisan, common sense policy solutions, as it has since 2009.”⁵ In support of this position, No Labels provides further

¹ Compl. at 1 (Jan. 23, 2024).

² *Id.* at 1.

³ *Id.* at 1.

⁴ Resp. at 3 (Apr. 5, 2024).

⁵ *Id.* at 4.

1 information about its ballot access project and its other activities, and asserts that its activities are
2 consistent with the D.C. Circuit Court’s opinion in *Unity08 v. FEC*, which found that an entity
3 that had the purpose of facilitating ballot access for a potential unity ticket did not qualify as a
4 political committee under the Act.⁶ Finally, No Labels states that even since it began the project,
5 “its spending on its ballot access project has not constituted a majority of its overall spending.”⁷
6 Since the Complaint and Response were submitted, No Labels has ended its ballot access project
7 efforts and did not nominate any candidate.⁸

8 While No Labels may have met the \$1,000 expenditure threshold, considering its stated
9 purpose, its historical activities, including modest fundraising and independent expenditure
10 activities, and considering its activities relating to its ballot access project — in light of the
11 opinion in *Unity08 v. FEC* — the Commission concludes that the available information does not
12 suggest that No Labels has the major purpose of nominating or electing a clearly identified
13 federal candidate. Accordingly, the Commission dismisses the allegations that No Labels has
14 violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and report as a political
15 committee.

16 II. FACTUAL BACKGROUND

17 No Labels is a 501(c)(4) social welfare organization created in 2009.⁹ No Labels asserts
18 that “its primary mission from its launch in 2010 has been to develop a movement of

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).

⁹ Resp. at 3.

commonsense Americans who will push our elected leaders to work together across party lines to solve our country’s biggest problems.”¹⁰

Among the projects in pursuit of its mission, No Labels asserts that it “was instrumental in developing the “Problem Solvers Caucus” in the U.S. House of Representatives and a similar bipartisan group in the U.S. Senate.”¹¹ No Labels also points to a collection of research and advocacy projects, including its 2023 “Common Sense Policy Booklet” outlining 30 policy ideas in what No Labels calls its “Common Sense Agenda.”¹²

Over the course of its existence, No Labels has engaged in some federal campaign activity. In 2014, No Labels made roughly \$6,000 in independent expenditures in support of House and Senate candidates and, in 2018, No Labels made roughly \$20,000 in independent expenditures in support of a House candidate.¹³ While the Complaint also asserts that No Labels has made direct contributions and bundled contributions to endorsed candidates,¹⁴ the available information suggests that the vast majority of this activity was conducted by No Labels Problem Solvers PAC, a separate segregated fund supported by No Labels members.¹⁵

¹⁰ Resp. at 3.

¹¹ Resp. at 3.

¹² *Id.* at 3 n.9.

¹³ 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.

¹⁴ Compl. at 3.

¹⁵ *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 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.

Beyond collecting signatures to achieve ballot access in all 50 states and the District of Columbia, No Labels has engaged in other related activities, including “(1) ongoing research to test public sentiment about the current political landscape or about how the ballot access project should be structured, and (2) messaging that urges public support of the project (via the No Labels website or emails, for example).”¹⁶ The Complaint notes that 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.¹⁷ For instance, in Facebook ads, No Labels has advocated avoiding a 2024 “rematch” or “sequel.”¹⁸

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 approximately 23% of No Labels’s \$10,516,122 in total expenses for that year.¹⁹ 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

¹⁶ Resp. at 4.

¹⁷ Compl. at 5-7; *see* Resp. at 7.

¹⁸ Compl. at 6 nn.39-41.

¹⁹ 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>.

1 presidential/vice-presidential campaign in 2024.”²⁰ This amounts to 34% of No Labels’s
2 \$9,093,757 in total expenses in 2022.²¹

3 No Labels originally intended that this ballot access project would culminate in a
4 nominating convention held in Dallas, Texas in April of 2024 to select a unity party candidate
5 but later it changed those plans with the intention of conducting nominations online.²² No
6 Labels explains that all “expenses related to creating a structure for vetting and selecting
7 potential and eventual ‘unity ticket’ candidates” have been paid by No Labels 2024 (f/k/a
8 Convention 2024), a separate entity that is registered and reports to the Commission as a political
9 committee.²³ Further the Response states that “an arrangement has been in place to assure that
10 any resources of No Labels that are used for fundraising, event planning, meetings, and other
11 vetting/selection steps are in fact reimbursed by No Labels 2024,” a statement that is consistent
12 with No Labels 2024’s disclosure reports, which reflect reimbursements to No Labels for staff
13 time and related expenses.²⁴

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

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

²⁰ No Labels, 2022 IRS Form 990, Schedule C, <https://projects.propublica.org/nonprofits/organizations/271432208/202343209349304114/full>.

²¹ No Labels, 2022 IRS Form 990, Line 18, <https://projects.propublica.org/nonprofits/organizations/271432208/202343209349304114/full>.

²² Compl. at 4.

²³ Resp. at 5; No Labels 2024, Statement of Org. (Jan 17, 2023).

²⁴ Resp. at 5.

ballot access project will not constitute the majority of No Labels’
 spending for 2024.²⁵

Finally, No Labels submitted an additional response on April 17, 2024, informing the
 Commission that No Labels ended its efforts to put forth a “unity ticket” in the 2024 presidential
 election and would not be “making any ballot access it had achieved available to any candidate
 in the 2024 election cycle.”²⁶

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
 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
 during a calendar year.”²⁷ 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.”²⁸ 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.”²⁹ Accordingly, under the statute as thus construed, an
 organization that is not controlled by a candidate must register as a political committee only if

²⁵ Howe Aff. ¶ 4.

²⁶ Supp. Resp. at 1.

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

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

²⁹ *Id.* (emphasis added).

(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.³⁰ 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).”³¹ 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.”³²

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

³⁰ 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).

³¹ Supplemental E&J at 5597, 5605.

³² *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).

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.³³

B. The Commission Dismisses 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.³⁴ 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.”³⁵ 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.”³⁶ 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.³⁷

No Labels asserts that because it “has not supported any particular candidate for the presidency or vice presidency” its activity falls within the holding of *Unity08 v. FEC* and it is not required to register and report as a “political committee” under the Federal Election Campaign Act.³⁸ The Complaint seeks to distinguish *Unity08*, along with its predecessor *FEC v.*

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

³⁴ Compl. at 1.

³⁵ *Id.* at 1, 9-12.

³⁶ *Id.* at 11.

³⁷ *Id.*

³⁸ Resp. at 2; Supp. Resp. at 1; see *Unity08 v. FEC*, 596 F.3d 861 (D.C. Cir. 2010). No Labels also 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.

Machinists No-Partisan Political League,³⁹ arguing that No Labels ballot access activities are indicative of No Labels major purpose being electoral.⁴⁰

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.⁴¹ 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].⁴²

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.⁴³ “Absent any compelling ground for distinguishing

³⁹ 655 F.2d 380 (D.C. Cir. 1981).

⁴⁰ Compl. at 13-14.

⁴¹ *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).

⁴² *Id.* at 393.

⁴³ *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.”⁴⁴

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.⁴⁵

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.”⁴⁶ 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.”⁴⁷

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 2024.⁴⁸ 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

⁴⁴ *Id.* at 869.

⁴⁵ See F&LA at 5, MUR 6660 (Americans Elect) (relying on *Unity08*).

⁴⁶ Compl. at 13.

⁴⁷ *Id.*

⁴⁸ Resp. at 7-8.

1 *Machinists* where the courts held that they were “not subject to regulation as a political
 2 committee unless and until [they] select[] a ‘clearly identified’ candidate.”⁴⁹

3 In short, No Labels’s ballot access activities would not contribute to major purpose of a
 4 federal political committee unless and until it selected a clearly identified candidate which it
 5 ultimately declined to do.⁵⁰ Ballot access activities that are not conducted on behalf of a clearly
 6 identified candidate are not activities attributable to the major purpose required to be a political
 7 committee consistent with *Buckley*’s narrowed definition the term.⁵¹ Therefore, the
 8 Commission, following the rationale of the opinions in *Unity08* and *Machinists*, as well as the
 9 analysis in *Buckley*, finds that No Labels’s payments for ballot access activities do not contribute
 10 toward a major purpose of the nomination or election of a federal candidate.

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

⁴⁹ *Id.* at 6 (quoting *Unity08 v. FEC*, 655 F.2d at 389).

⁵⁰ Resp. at 2; Suppl. Resp. at 1; *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.”).

⁵¹ *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*.”⁵²

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’s
 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.⁵³

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.”⁵⁴ 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*.⁵⁵ 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.⁵⁶ Thus, while individual expenses advocating

⁵² *Unity08 v. FEC*, 596 F.3d at 869; Compl. at 13.

⁵³ 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.*

⁵⁴ Compl. at 13; *see supra*, pg. 6.

⁵⁵ *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).

⁵⁶ *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

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. Following the rationale of the courts in *Machinists*
 4 and *Unity08*, No Labels’s ballot access project is better understood as conduct aimed towards the
 5 potential candidacy of an as-of-yet-not-identified individual rather than conduct aimed towards
 6 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. And while there is some staff expense involved in
 9 authoring op-eds and content for No Labels’s website, the amount of content provided does not
 10 suggest that the total spending on these activities amounts to a substantial portion of the
 11 \$10,516,122 No Labels spent in 2021 or the \$9,093,757 it spent in 2022.⁵⁷ Accordingly, these
 12 activities advocating against Biden and Trump do not, on their own, suggest that No Labels had
 13 the major purpose of nominating or electing candidates. Moreover, the Commission is not in
 14 possession of information contradicting the sworn statement of No Labels’s Treasurer that even
 15 if all of the ballot measure activity were considered to have the major purpose of electing a

sponsored similar mass mailings.” First Gen. Counsel’s Rpt. at 9-10, MUR 1038 (Florida for Kennedy Committee, *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 William 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, vacillating [sic] and ineffective President. I know as well as anyone, that those are dangerous words.”).

⁵⁷ See No Labels, 2021 IRS Form 990, Line 18, <https://projects.propublica.org/nonprofits/organizations/271432208/202331939349300603/full>; No Labels, 2022 IRS Form 990, Line 18, <https://projects.propublica.org/nonprofits/organizations/271432208/202343209349304114/full>.

1 clearly identified candidate, those expenses “did not and do not constitute the majority of No
2 Labels’ spending during any calendar year.”⁵⁸

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

⁵⁸ Howe Aff. ¶ 4.