

Mr. Paul Cox
General Counsel
North Carolina State Board of Elections
430 N. Salisbury St.
Raleigh, N.C. 27603

August 11, 2023

Re: No Labels Response to Supplemental Request for Information

Dear Mr. Cox:

The State Board's recent Supplemental Request for Information has resulted in my client's rapidly diminishing confidence in the Board's objectivity in the certification process and commitment to compliance with the established legal process for certifying petitions under N.C.G.S.A. 163-96. Rather than adhering to its statutory mandate to "forthwith determine the sufficiency of *the petitions filed with it*," the Board is now seemingly engaged in an unprecedented exercise of combing the Internet so that it can pluck selected statements from a media interview that never even referenced North Carolina or the petitions filed with it.

The State Board, for example, first focuses on a quote from No Labels, Inc. CEO Nancy Jacobson ("No Labels is never gonna run a third-party presidential ticket") as though it is a standalone declaration that could somehow compromise the sufficiency of the petitions submitted in North Carolina. But Ms. Jacobson's meaning is readily apparent when one views her statement in context (and as a whole) rather than the isolated excerpt that the Board cherry-picked:

Hillard: *Why is No Labels looking to run a third-party presidential Ticket?*

Jacobson: *Well, let me just stop. No Labels is never gonna run a third-party presidential ticket... We are actually building the infrastructure so that a ballot could be available and could be offered to a Ticket... We are going to offer our ballot line to the American public if they want it. I mean, we will wait until that time. We're waiting until after Super Tuesday and the Florida Primary to see. And if the public wants it, then we would offer our line, but then we step back. And there will be a campaign that's born, I'm sure, and the Ticket—they will—they will run their campaign.*

In other words, Ms. Jacobson simply noted that the interviewer's question was incorrectly framed in two respects: (1) No Labels had made no final decision to facilitate the nomination of a Unity Presidential Ticket, since the nomination of a Ticket will obviously be contingent on future public support for the effort; and (2) No Labels would not control the Unity Presidential Ticket's general-election campaign because the campaign would be run by the candidates themselves. Ms. Jacobson was not commenting about North Carolina or about the petitions filed with the Board. She merely corrected the initial premise of an interviewer's question when he wrongly implied that No Labels had already decided to nominate a Ticket and that No Labels would be running the Ticket's campaign for them.

Next, the State Board turns its attention to an excerpted exchange between Ms. Jacobson and NBC News that again omits key context and adjacent remarks. No Labels' opponents have continually argued without any basis that No Labels, Inc., a 501(c)(4) entity within the organization, must file federal disclosure reports with the Federal Election Commission because it is the equivalent of national party committees like the Democratic National Committee and the Republican National Committee. In fact, No Labels, Inc. is not required to file federal reports with the Federal Election Commission under established federal court precedent because it will not spend funds to support the Unity Presidential Ticket after that Ticket is placed on the ballot.¹ NBC News raised this issue of federal campaign finance law, as seen below in a transcript that restores the Board's questionable omissions:

Hillard: This is high stakes. We're talking about the White House here. But No Labels will not reveal its donors despite essentially functioning as a political party and registering as a political party in states. So why should the public trust No Labels' motives when they don't know the donors and they don't know the candidates? ... This is a Presidential Ticket, though. High stakes that we're talking about. Why not reveal your donors?

Jacobson: Because you know the truth is about the time in which we live in, you reveal. First of all, we're not a party. And second of all, we're not.

Hillard: But you guys are registering as a party in states around the country and.

¹ See, e.g., Unity08 v. Federal Election Commission, 596 F.3d 861, 869 (D.C. Cir. 2010).

Jacobson: *That's just the requirements of the state. We are not. We are not a.*

Hillard: *The Democratic Party, the Republican Party, they have to go and submit their donors, so if you guys are registering as a political party.*

Jacobson: *We are not. Let's talk about what we're doing. We are building a movement of the commonsense majority. And we're getting ballot access in the 50 states. And we will never run a campaign. This organization—at the moment a campaign.*

Hillard: *But you're registering as a political party.*

Jacobson: *But that's just language. That's not. You know, we are not functioning [that way]. We are one Ticket, one time. A party—the definition of a party—is running candidates up and down the ballot. That is not what we're doing.*

Thus, Ms. Jacobson mentioned that No Labels, Inc. itself is not registering as a political party in states, since only its state-level affiliates must potentially do so. She also explained that legally and colloquially, No Labels, Inc. is not replicating the structure of the national party committees. Indeed, No Labels, Inc. will not spend funds to support the Unity Presidential Ticket after it is nominated, does not intend to facilitate the nomination of any candidates for office other than President and Vice President, and does not at this point intend to facilitate the nomination of candidates for office after 2024. Ms. Jacobson described these minutiae only to respond to the reporter's question as to why No Labels, Inc. need not file federal reports with the Federal Election Commission. As the Board is well aware, no party is required to run any set number of candidates for office and historically, including the two major parties, political parties in North Carolina have chosen not to run a full slate of candidates.

The bottom line is that none of this interview is at all relevant to whether legally sufficient petitions were filed with the State Board to qualify for ballot access in North Carolina. This interview debate about No Labels, Inc. filing federal disclosure reports with the Federal Election Commission is a matter of federal campaign finance law and has nothing to do with the State Board's proceedings. The No Labels Party of North Carolina, a state-level affiliate of No Labels, Inc., registered itself as a political party committee with the Board in August 2022 and

has duly disclosed all money raised and spent for North Carolina petition-circulation on state reports signed by the state treasurer, John Leonard.² The Chair of the No Labels Party of North Carolina, Admiral (ret.) Dennis Blair, was listed on all petitions circulated and filed with the Board. The Board has already determined that the Local Boards properly certified the petitions submitted and has only delayed State Board certification based on the “general purpose and intent” issue. We submit that the Board should certify these petitions “forthwith “ and certify No Labels as a political party in North Carolina. There is no basis for delay with extraneous and extra-statutory discussions about No Labels, Inc.’s compliance with federal campaign finance law.

Even in the absence of any standards or guidance issued by the State Board, No Labels has also produced unprecedented amounts of evidence about its efforts to inform petition-signers of the organization’s “general purpose and intent.” The Board’s intimation that No Labels somehow needed to inform petition-signers about the myriad technical federal and state regulatory requirements that govern the election process, such as the federal filing status of its affiliated 501(c)(4) organization, finds no support in a statute merely requiring information about “*general* purpose and intent.” Even if the Board had statutory authority to arrogate to itself the determination as to whether the requirement that “general purpose and intent” has been communicated, which it does not, any objective assessment by the Board would inevitably lead to the conclusion that this requirement is met. This is particularly true inasmuch as state Supreme Court precedent requires only substantial compliance with election laws.

Finally, the State Board asked a question regarding attachments to the petition-circulators’ affidavits. As indicated in the affidavits, petition-circulators received upon commencing work in North Carolina a packet that included a contract, a “Signature Gatherer/Petition Circulator Expectations” document, and two documents regarding No Labels’ background and stances on public policy issues. Petition-circulators signed the contract at that time but did not sign other pages in the packet. Two affiant petition-circulators (Jamie Johnson and Ronner Williams) later added their signatures to a blank line on the “Expectations” document when they executed their affidavits, though they were not required to do so. What matters about the affidavits, is not when or how many of the

² NCSBE Database Entry for No Labels Party of North Carolina [STA-160BNQ-C-001], available at <https://cf.ncsbe.gov/CFOrgLkup/DocumentGeneralResult/?SID=STA-160BNQ-C-001&OGID=49834>.

underlying documents were signed, but rather that they demonstrate compliance with the “general purpose and intent” requirement.

In sum, the State Board has no statutory authority to make the determination whether the “general purpose and intent” requirement has been met. Rather than set forth a standard by which it is judging compliance with the “general purpose and intent” requirement, the Board appears to be engaging in an unprecedented exercise of raising questions and then, when those questions are answered, raising additional questions, all the while failing to provide any previously adopted standard to measure compliance with the “general purpose and intent” clause. So far as we are aware, the Board has not undertaken any similar exercise with respect to other third-party petitions for ballot access.

Under any objective assessment, No Labels has plainly demonstrated its compliance with the “general purpose and intent” requirement. Accordingly, even if it fell within the State Board’s purview to assess such compliance, it is now statutorily mandated “forthwith” to certify the petitions that were filed with it. No Labels requests the Board to do so at its August 13, 2023 meeting and reserves all legal rights should the Board fail in its duty.

Sincerely,

Robert F. Orr
Attorney at Law