

January 23, 2024

Mr. Robert Malone
Director, Exempt Organizations Division
Internal Revenue Service
TEGE Referrals Group - MC 4910 DAL
1100 Commerce Street
Dallas, TX 75242

Re: Request for Investigation into No Labels' Tax-Exempt Status

Dear Mr. Malone:

We respectfully request that the Internal Revenue Service (“IRS”) open an investigation into No Labels, EIN 27-1432208, which claims an exemption under section 501(c)(4) of the Internal Revenue Code (the “Code”).¹

The facts strongly suggest that No Labels no longer operates exclusively for an exempt social welfare purpose as required by the Code. Instead, No Labels’ public statements and reports of its financial activity strongly suggest it is operating in substantial part to sustain the political fortunes of the No Labels Party—the eponymic political party that No Labels has secured ballot access in fourteen states and counting. In addition, almost all of No Labels’ activities now appear to be for direct or indirect political campaign intervention in opposition to the candidacies of Joe Biden and Donald Trump. Therefore, No Labels’ activities appear to be primarily to benefit a private interest and for political campaign intervention, which constitutes a substantial non-exempt purpose that precludes application of section 501(c)(4).

Worse yet it seems No Labels is posing as a 501(c)(4) organization in a shameless attempt to circumvent donor disclosure requirements and contribution limits.² No Labels’ claim of an exemption under section 501(c)(4) must be investigated and, if required by the results of the investigation, No Labels’ section 501(c)(4) status should be immediately revoked. Given the time sensitivity of these matters, we request expedited consideration.

I. Factual Background

No Labels is an active, tax-exempt nonprofit corporation organized under section 501(c)(4) of the Code.³ Incorporated in 2009, at its inception No Labels focused primarily “on promoting centrism and bipartisanship in Congress.”⁴

¹ See IRS, *Results for Tax Exempt Organization Search (EIN:27-1432208)*, <https://apps.irs.gov/app/eos>.

² NO LABELS, UNITY TICKET 2024 FAQs, <https://www.nolabels.org/unity-ticket-faqs> (“We have thousands of individual donors from across the country and across the political spectrum. . . . But we never release the names of our supporters because it is essential to protect their privacy.”).

³ *Id.*; DC.GOV CORP ONLINE, NO LABELS (File No. 296335).

⁴ Mariana Alfaro, *What is the No Labels Political Group, and What is it Trying To Do?*, WASH. POST. (July 14, 2023), <https://www.washingtonpost.com/politics/2023/07/14/no-labels-presidential-election-2024>.

In 2021, however, No Labels shifted its focus to building a national and state-by-state infrastructure for a third-party presidential ticket. In the organization’s own words: “in late 2021, No Labels launched an ambitious new project to secure nationwide ballot access to enable the potential nomination of an independent Unity Ticket in 2024.”⁵ On its public website, No Labels states it is “only doing ballot access work for one office and one election.”⁶

Nancy Jacobson, President of No Labels, described the organization’s work as “building the infrastructure so that a ballot could be available or offered to a ticket.”⁷ The organization’s public materials, directed at those who “organize for No Labels in [their] local community,”⁸ describes its work as “developing the two key assets that a Unity presidential ticket would need to run and win in 2024.”⁹

In November 2023, No Labels conducted an over 70-question public opinion poll which asked respondents about preferred delegate selection process at a No Labels nominating convention, tested the most convincing messaging to support a No Labels Party political campaign, and also asked about “the most legitimate and credible way for No Labels to nominate their presidential candidates.”¹⁰

No Labels’ chief strategist, Ryan Clancy, described the organization’s polling as “a massive modeling exercise where [No Labels] polled 12,000 voters.”¹¹ Specifically, No Labels intends to use its polling data to create models to inform its 2024 election strategy.¹² The group’s public opinion survey research has been ongoing. Since late 2021 No Labels reports polling over 60,000 registered voters to understand the dynamics of the 2024 race.¹³

⁵ NOLABELS.ORG, UNITY TICKET 2024 FAQs, <https://www.nolabels.org/unity-ticket-faqs> [hereinafter “No LABELS, UNITY TICKET FAQs”].

⁶ *Id.*

⁷ NBC News, *No Labels Founder Says ‘We Are Not Functioning’ as a Political Party: Nancy Jacobson Full Interview*, NBC NEWS (July 13, 2023), <https://www.nbcnews.com/meet-the-press/video/no-labels-founder-says-we-are-not-functioning-as-a-political-party-nancy-jacobson-full-interview-188338245510>.

⁸ NO LABELS, RESOURCES AND DOWNLOADS, <https://join.nolabels.org/resources-and-downloads>.

⁹ NO LABELS, RESOURCES AND DOWNLOADS: TRIFOLD BROCHURE, accessible at: <https://roar-assets-auto.rbl.ms/files/57312/NoLabelsTrifold.pdf>.

¹⁰ Jonathan J. Cooper, *The No Labels Party Asked Its Supporters If They Would Pay \$100 To Help Choose Its 2024 Nominee*, A.P. (Nov. 17, 2023, 5:35 P.M. EST), <https://apnews.com/article/no-labels-poll-unity-ticket-5713de0765dcf4b1b5ec16fb2ee4088d>.

¹¹ Zach Rounceville, *‘No Labels’ Leaders Give NC Media 2024 Ballot Access Update*, CAROLINA J. (Dec. 20, 2023), <https://www.carolinajournal.com/no-labels-leaders-give-nc-media-2024-ballot-access-update>.

¹² *Id.*

¹³ NO LABELS.ORG, MEMORANDUM: TRUMP/BIDEN CAMPAIGNS ARE A HOUSE OF CARDS, <https://www.nolabels.org/memo>. The memorandum additionally states that “[b]oth Joe Biden and Donald Trump have profound vulnerabilities that likely will not get better with time.” *Id.*

Since its infrastructure-building efforts began, No Labels has secured ballot access in 14 states for the “No Labels Party.”¹⁴ It once expected to be on the ballot in 18 to 20 states by the end of 2023.¹⁵ No Labels now says it will be active in 27 states in the coming weeks,¹⁶ and will be on the ballot in 34 states before its nominating convention in 2024.¹⁷

No Labels has publicly telegraphed its plans to stage a 2024 nominating convention for the No Labels Party.¹⁸ In advance of this convention, No Labels published a party platform for the No Labels Party described as a “common sense” document of “poll-tested proposals” that will serve “as a starting point to spur debate” at the No Labels Party’s convention next year.¹⁹ No Labels’ spokespeople have gone so far as to suggest that if no presidential tickets gets the required 270 electoral votes in November 2024, No Labels might use its electors to “cut a deal” with other political parties.²⁰

The organization’s public materials, including press releases and statements by its officers and board members, frame the organization’s 2024 presidential efforts as a concerted attempt to defeat presidential candidates Joe Biden and Donald Trump. On its public website, No Labels casts their “Unity Ticket” as an “insurance policy” against the nominations of Joe Biden and Donald Trump and derides the two candidates, stating: “Americans Don’t Want a Trump-Biden Rematch in 2024. They Think We Can Do Better.”²¹ No Labels has also published a memorandum detailing the perceived weaknesses of Trump and Biden’s campaigns, entitled “Trump/Biden Campaigns are a House of Cards” which states “[b]oth Joe Biden and Donald Trump have profound vulnerabilities that likely will not get better with time.”²²

¹⁴ The states are Alaska, Arizona, Arkansas, Colorado, Florida, Hawaii, Kansas, Mississippi, Nevada, North Carolina, Oregon, South Dakota, Utah and Maine. See Katherine Koretski, *No Labels Gains 2024 Ballot Access in a 12th State*, NBC NEWS (Oct. 23, 2023, 11:34 A.M.), <https://www.nbcnews.com/meet-the-press/meetthepressblog/no-labels-gains-2024-ballot-access-12th-state-rcna121916>; 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>; Caroline Vakil, *Kansas recognizes No Labels as political party*, THE HILL (Jan. 18, 2024), <https://thehill.com/homenews/campaign/4415537-kansas-recognizes-no-labels-as-political-party/>.

¹⁵ April Rubin, *What to Know About No Labels and a Possible Third-Party Presidential Ticket*, AXIOS (Nov. 16, 2023), <https://www.axios.com/2023/11/16/no-labels-third-party-independent-candidate-2024>.

¹⁶ Marshall Griffin, *Nixon Gives Update on ‘No Labels’ Campaign*, MISSOURI.NET (Jan. 4, 2024), <https://www.missourinet.com/2024/01/04/nixon-gives-update-on-no-labels-campaign>.

¹⁷ Melissa Nann Burke, *No Labels Unity Ticket Intends to Secure Spot on Michigan Presidential Ballot*, DET. NEWS (Dec. 9, 2023 11:51 P.M. ET), <https://www.detroitnews.com/story/news/politics/2023/12/09/no-labels-unity-ticket-intends-to-secure-spot-on-michigan-ballot/71864672007>.

¹⁸ See *id.*; see also Lauren Sforza, *No Labels To Host Nominating Convention in Dallas in April: Joe Lieberman*, HILL (Aug. 27, 2023, 10:14 P.M. ET), <https://thehill.com/homenews/campaign/4174216-no-labels-to-host-nominating-convention-in-dallas-in-april-joe-lieberman>.

¹⁹ Jonathan Weisman & Luke Broadwater, *With a Centrist Manifesto, No Labels Pushes Its Presidential Bid Forward*, N.Y. TIMES (July 15, 2023), <https://www.nytimes.com/2023/07/15/us/politics/no-labels-presidential-run.html>; Michael Sherer, *No Labels Releases Proposals To Guide Third-Party Presidential Ticket*, WASH. POST (July 15, 2023, 5:13 P.M. ET), <https://www.washingtonpost.com/politics/2023/07/15/no-labels-platform>.

²⁰ See Vaughn Hillyard & Dan Gallo, *No Labels Floats the Possibility of a Coalition Government or Congress Selecting the President in 2024*, NBC NEWS (Dec. 21, 2023, 1:00 P.M. ET), <https://www.nbcnews.com/politics/2024-election/no-labels-coalition-government-electoral-college-rcna130709>.

²¹ NO LABELS, A UNITY TICKET FOR 2024, <https://2024.nolabels.org>.

²² NO LABELS, MEMORANDUM: TRUMP/BIDEN CAMPAIGNS ARE A HOUSE OF CARDS, <https://www.nolabels.org/memo>.

The group has also put out several anti-Trump and Biden digital videos that appear to be professionally produced.²³ No Labels additionally appears to be running paid digital ads on Facebook with the captions “No one is looking forward to a 2020 rematch next fall, but what if the #2024election had a new option?”²⁴ and “America doesn’t deserve a repeat of the 2020 election. Ensure there is a third choice on the ballot in 2024,”²⁵ and “Are you one of the tens of millions of Americans frustrated by the thought of more of the same?” with imagery depicting caricatured versions of Joe Biden and Donald Trump.²⁶

No Labels’ officers have likewise cast their ballot access efforts as a campaign against Joe Biden and Donald Trump. In April 2023, Margaret White, No Labels’ Co-Executive Director, published an opinion piece in *The Hill* describing the reason behind No Labels ballot access efforts, stating:

Joe Biden has failed to bring the nation together and sits with an approval rating in the low 40s while he attacks the MAGA Republicans as anti-democratic and “semi-fascist.” Donald Trump is mired in fights with virtually everyone, stirring a populist base, but turning to the swing suburban voters who will decide the next election. The 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. It would be no closer to healing its wounds or solving its problems. . . . That’s why we [No Labels] are laying the groundwork for a potential new alternative to serve as an insurance policy against the parties failing to meet the needs of American people for fresh leadership.²⁷

A second opinion piece written by Margaret White in *The Hill* states: “The country needs some sort of insurance policy to make sure that Trump can’t just slip through and into office again.”²⁸

No Labels’ public website states: “To learn more about No Labels’ views about former President Trump, please refer to this note written by our co-chairs, Sen. Joe Lieberman and Dr. Benjamin F.

²³ In “How the Political Elite Try To Crush Competition,” for example, No Labels features an AI-generated “Fake Biden” and “Fake Trump” discussing their mutual unpopularity and the need to shut out No Labels as a competitor in the 2024 election. See No Labels, *How The Political Elite Try To Crush Competition*, YOUTUBE (Dec. 22, 2023), <https://www.youtube.com/watch?v=PsnFOZC2lNo>; see also No Labels, *Americans Do Not Want A 2020 Rematch*, YOUTUBE (Dec. 11, 2023), <https://www.youtube.com/watch?v=bmsgkNAZlU>; No Labels, *Let's Avoid A Doomed Sequel Together*, YOUTUBE (Dec. 18, 2023), <https://www.youtube.com/watch?v=EzT82jl3m5k>.

²⁴ See Facebook Ad Library, No Labels “A New Option,” accessible at: <https://www.facebook.com/ads/library/?id=1545682982947584>

²⁵ See Facebook Ad Library, No Labels “Put a 3rd choice on the ballot in 2024! 2020 Rematch?” accessible at: <https://www.facebook.com/ads/library/?id=177654818766995>

²⁶ Facebook Ad Library, No Labels “Let’s Avoid a Doomed Sequel Together,” accessible at: <https://www.facebook.com/ads/library/?id=3045900262208132>

²⁷ Margaret White, *America Needs a New Alternative*, HILL (Apr. 7, 2023, 6:00 P.M. ET), <https://thehill.com/opinion/congress-blog/3939951-america-needs-a-new-alternative/?fbclid=IwAR0R3G9OgkF-mGN7V1Uwn8XrAvczVVKLKY7MdTocWu9pG07EicvRht7ECI8>.

²⁸ Margaret White, *Just Like in 2016, False Confidence Against Trump Could Be Our Downfall in 2024*, HILL (May 15, 2023), https://thehill.com/opinion/congress-blog/4005249-just-like-in-2016-false-confidence-against-trump-could-be-our-downfall-in-2024/?fbclid=IwAR2PzVFA_6704PoEC0FDSFE9iyx-GH_KmgIyL8B7nbTJ83w9QhS84YTnXYw.

Chavis, Jr.”²⁹ The “note” is also published on No Labels’ public website and is entitled “Donald Trump Should Never Again Be President.”³⁰ It states:

We are the national co-chairs of No Labels and want to be very clear about what *we, and our movement*, believe: Donald Trump should never again be president of the United States. . . . We don’t believe there is any “equivalency” between President Biden and former President Trump, who is a uniquely divisive force in our politics and who sought to disrupt the peaceful transfer of power after he lost the 2020 election.³¹

No Labels clarified it is conducting these efforts to win the presidential, stating on its public website that No Labels “will ONLY offer [its] ballot line to a ticket if [No Labels] believe[s] it has a realistic shot to win outright.”³² No Labels’ President, Nancy Jacobson reiterated the group’s mission in its 2024 efforts is to defeat Donald Trump and Joe Biden: “The only reason to do this is to win.”³³

In Fiscal Year 2021, No Labels contributed \$2.4 million to the section 527 political committee, Insurance Policy for America, Inc., an organization which shares the same operating address as No Labels.³⁴ To date, Insurance Policy for America, Inc. has spent \$1.6 million for “ballot access” efforts paid to Capitol Advisors and Blitz Canvassing.³⁵ No Labels’ 2022 Form 990 reports \$8.9 million in total program service expenses which consist of “citizen engagement” and “digital and grassroots movement building and ballot access.”³⁶ When disclosing its political campaign and lobbying activities on Schedule C, No Labels reports over \$3.1 million on “expenses for ballot access in multiple states that potentially could be used by a presidential/vice-presidential campaign in 2024.”³⁷ The group paid close to \$2.2 million to Capitol Advisors, “a Virginia-based consulting

²⁹ NO LABELS, UNITY TICKET FAQs.

³⁰ NO LABELS, DONALD TRUMP SHOULD NEVER AGAIN BE PRESIDENT, <https://www.nolabels.org/no-labels-donald-trump-president>.

³¹ *Id.*

³² Vaughn Hillyard & Dan Gallo, *No Labels CEO Defends 2024 Ticket Against Spoiler Charges*, NBC (July 18, 2023, 5:00 P.M. ET), <https://www.nbcnews.com/politics/2024-election/no-labels-ceo-defends-2024-ticket-spoiler-charges-rcna94378>.

³³ *Id.*

³⁴ See IRS, Insurance Policy for America, Inc., Form 8872 (Apr. 23, 2023), accessible at: <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=139550&formType=e8872>. This appears to be incorrectly reported as a grant to another 501(c)(4) organization on No Labels’ 2021 Form 990 filing with the IRS. See IRS Form 990 (2021), No Labels, EIN: 27-1432208, accessible at: <https://projects.propublica.org/nonprofits/organizations/271432208/202331939349300603/full> [hereinafter “2021 IRS Form 990”].

³⁵ See IRS, Insurance Policy for America, Inc., Form 8872 (May 2, 2023), accessible at: <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=139598&formType=e8872>; IRS, Insurance Policy for America, Inc., Form 8872 (May 10, 2023), accessible at: <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=139688&formType=e8872>; IRS, Insurance Policy for America, Inc., Form 8872 (July 29, 2023), accessible at: <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=141456&formType=e8872>.

³⁶ No Labels, Form 990 (2022), Part III, Line 4a.

³⁷ *Id.* Sched. C, Part I-A; Part IV.

firm owned by Michael Arno . . . who specializes in ballot access.”³⁸ No Labels publicly pledged to raise \$70 million to support its efforts to secure ballot access for the 2024 elections.³⁹

No Labels appears to be the sole organization funding the No Labels Party’s ballot access. “No Labels 2024,” the federal independent-expenditure-only political committee registered with the Federal Election Commission reported \$108,255.64 in disbursements between its formation in October 2022 through its most recent filing.⁴⁰ All reported disbursements were either for merchant fees paid to the committee’s payment processors, reimbursements for operational expenses paid to the 501(c)(4) entity, or contribution refunds.⁴¹

II. Legal Analysis

The Internal Revenue Code requires section 501(c)(4) organizations to operate “exclusively for the promotion of social welfare.”⁴² Treasury Regulations interpret “exclusively for the promotion of social welfare” to mean that the organization is “*primarily* engaged in promoting the common good and general welfare of the people of the community.”⁴³ Activities that benefit only select individuals or groups (private benefit activities) are not exempt function activities for 501(c)(4) entities.⁴⁴ And neither are activities which constitute direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.⁴⁵

No Labels’ activities primarily benefit the No Labels Party, a private rather than public interest, and additionally constitute direct or indirect intervention in a political campaign in opposition to two presidential candidates. Therefore, the organization now has a substantial non-exempt purpose that is inconsistent with the application of section 501(c)(4).

A. Private Benefit

An organization that primarily benefits private individuals does not engage in exempt social welfare activity under Code section 501(c)(4). The courts and the IRS have long maintained that when the facts and circumstances indicate that an organization is established or operates to benefit

³⁸ Tori Otten, *The Shady Right-Wing Firm Helping No Labels Get on the Ballot*, NEW REPUBLIC (Dec. 7, 2023), <https://newrepublic.com/article/177352/no-labels-right-wing-consulting-firm>.

³⁹ Dan Merica, *No Labels Wants to Raise \$70 Million for Its Third-Party Effort. Its Momentum is Unclear.*, MESSENGER (July 12, 2023, 5:00 A.M. ET), <https://themessenger.com/politics/no-labels-wants-to-raise-70-million-for-its-third-party-effort-its-momentum-is-unclear>.

⁴⁰ No Labels 2024, the independent-expenditure-only political committee, reports the same operational address as No Labels, the 501(c)(4) organization. Fed. Election Comm’n, Form 1 (Statement of Organization) (Jan. 17, 2023), <https://docquery.fec.gov/cgi-bin/forms/C00827543/1676675>. For an itemized list of No Labels 2024’s disbursements, see Fed. Election Comm’n, *Disbursements: No Labels 2024* (Jan. 1, 2022 – Dec. 31, 2024), https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00827543&two_year_transaction_period=2024&min_date=01%2F01%2F2022&max_date=12%2F31%2F2024 [*hereinafter* “No Labels 2024, Disbursements”].

⁴¹ See No Labels 2024, Disbursements.

⁴² I.R.C. § 501(c)(4)(a).

⁴³ Treas. Reg. § 1.501(c)(4)-1(a)(2)(i).

⁴⁴ *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1079 (1989).

⁴⁵ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

only one political party, that organization engages in non-incidental private benefit inconsistent with application of section 501(c)(4).⁴⁶

In the seminal case, *American Campaign Academy v. Commissioner*, the Tax Court upheld the IRS's denial of an exemption under section 501(c)(3) for an organization that trained campaign managers and staff on the grounds that the academy primarily benefitted the Republican Party and Republican candidates.⁴⁷ The IRS has likewise denied exemption under section 501(c)(4) to several chapters of an organization dedicated to training Democratic candidates on running for office, and revoked the exemption for other chapters of the same organization on the grounds that they were "conducted primarily for the benefit of a political party and a private group of individuals, rather than the community as a whole."⁴⁸

In 2014, the IRS denied the 501(c)(4) exemption to an organization that sought to "increase civic participation" through hosting "forums, debates, community service projects, and mixers" because the facts and circumstances made it apparent to the IRS that such activity was limited to increasing the civic participation of members of one political party.⁴⁹ In 2003, the IRS held that an organization with the goal of increasing the number of women in public/political service was a "partisan organization" because the facts illustrated that participation in its leadership training programs was limited to members of a certain political party.⁵⁰ In each of these cases, the IRS found that the organization operated for a non-incidental private purpose because its activities as a whole primarily benefitted the private interests of candidates and other partisans affiliated with a particular political party.

The facts here are indistinguishable from these instances. No Labels is explicit about what it is doing: developing "key assets that a Unity presidential ticket [running on the No Labels Party line] would need to run and win in 2024."⁵¹ Thus, like each of the denials described above, the facts and circumstances here indicate that No Labels' activity is limited to increasing the civic and electoral participation of members of one political party—the No Labels Party. Indeed, No Labels does not work to secure state ballot access for slates of candidates on a nonpartisan basis, nor is it helping any other political party craft its platforms, conduct research or message testing, or stage nominating conventions.

In making it the organization's mission to provide resources for a "Unity presidential ticket" to run on the No Labels Party line, No Labels is primarily benefitting private individuals and is not operating exclusively for an exempt purpose.

⁴⁶ See, e.g., Priv. Ltr. Rul. 201403020 (Jan. 17, 2014); Priv. Ltr. Rul. 201221029 (May 25, 2012).

⁴⁷ *American Campaign Academy*, 92 T.C. at 1079.

⁴⁸ See Priv. Ltr. Rul. 201221029 (May 25, 2012); see also Priv. Ltr. Rul. 201221028, -027, -026, -025; 201142027; 201128035, -034, -032.

⁴⁹ Priv. Ltr. Rul. 201403020 (Jan. 17, 2014).

⁵⁰ Non-Docketed Service Advice Review 20044008E (Dec. 2, 2003).

⁵¹ NO LABELS, RESOURCES AND DOWNLOADS: TRIFOLD BROCHURE, accessible at: <https://roar-assets-auto.rbl.ms/files/57312/NoLabelsTrifold.pdf>.

B. Primary Purpose

No Labels also does not appear to be doing much other activity than direct or indirect intervention in political campaigns—underscored by its filings with the IRS and clearly shown through its public 2023 activities. Under the IRS’s longstanding “primary purpose” test, a section 501(c)(4) organization must “primarily” engage in activities that promote social welfare.⁵² While “primarily” is not defined in the Code or regulations, it is generally understood that social welfare activity should constitute more than 50 percent of a 501(c)(4) organization’s overall activity each fiscal year.⁵³

In a recent tax court case, *Memorial Hermann ACO v. Commissioner*, which concerned the denial of a healthcare organization’s section 501(c)(4) status, the IRS suggested the allowance for secondary purpose activity may be significantly lower than traditionally understood. In that case, the IRS repeatedly argued that the presence of a single “substantial” non-exempt purpose would make an organization ineligible for 501(c)(4) status.⁵⁴ The Tax Court seemed to agree with this argument but declined to definitively decide whether a substantial nonexempt purpose is sufficient to deny the exemption under section 501(c)(4).⁵⁵ While there is no bright line limit to nonexempt activity under the “substantial” standard, five percent or less of total activities each year is generally considered a safe harbor⁵⁶ and courts have found activities in the range of 16 to 20 percent to be substantial.⁵⁷

Direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office are not exempt function activities for 501(c)(4) entities.⁵⁸ In assessing the purpose of an organization’s activities, the IRS examines all the facts and circumstances in light of the organization’s “objective manifestations of intent.”⁵⁹

No Labels does not qualify as a section 501(c)(4) organization under *either* the IRS’s “primary purpose” test or its newly articulated “substantial” standard from *Memorial Hermann*. In 2022, out of \$8.9 million in reported program expenditures, No Labels reports that it spent \$3.1 million on political activity in fiscal year 2022 and close to \$5.8 million on “citizen engagement.”⁶⁰ However,

⁵² I.R.C. § 501(c)(4)(a); Treas. Reg. § 1.501(c)(4)-1(a)(2).

⁵³ The IRS provides expedited review in seeking a determination letter to any section 501(c)(4) organization which asserts it will spend 60% or more of its total expenditures and total time on social welfare activities and less than 40% of its time on direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office. See Daniel Werfel, IRS, *Charting a Path Forward at the IRS: Initial Assessment and Plan of Action* (June 24, 2013) at 24.

⁵⁴ *Memorial Hermann ACO v. Commissioner*, T.C. Memo 2023-062.

⁵⁵ *Id.* at *4, *5 (“[Organization] fails to qualify as an organization described by section 501(c)(4) because its [] activities primarily benefit [private interests], rather than the public, and therefore constitute a *substantial nonexempt purpose*.”) (emphasis added).

⁵⁶ See *Seasongood v. Commissioner*, 227 F.2d 907, 912 (6th Cir. 1955).

⁵⁷ See, e.g., *Haswell v. United States*, 500 F.2d 1133 (Ct. Cl. 1974), cert. denied, 419 U.S. 1107 (1975).

⁵⁸ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

⁵⁹ Internal Revenue Service, 2022 E.O. CPE Text, *Election Year Issues* at 351-52, <https://www.irs.gov/pub/irs-tege/eotopici02.pdf>.

⁶⁰ No Labels reports two programmatic buckets of work: ‘citizen engagement’ and ‘digital and grassroots movement building and ballot access,’ which together account for \$8.9 million in expenses. Reported expenses for ballot access and related political

it is unclear what its “citizen engagement” work would consist of, if not No Labels’ national ballot access work, since No Labels does not claim credit for any other large project on its Form 990 that could possibly amount to nearly \$6 million dollars in program expenses.⁶¹ All other expenses, including salaries, legal, compliance, and advertising costs also appear to be in furtherance of No Labels’ ballot access efforts.

The organization’s objective purpose for its ballot access work, made exceptionally clear through statements from its board members and officers, is to defeat two candidates for public office: Joe Biden and Donald Trump. Therefore, the vast majority of No Label’s programmatic spending appears to be devoted to political campaign intervention and thus not to social welfare activities as required to qualify for section 501(c)(4) exempt status under both the primary purpose and substantial tests.

Though No Labels has not yet filed its 2023 Form 990, undoubtedly the portion of its budget spent on political activity will be higher than in previous years due to No Labels’ significant expansion of its ballot access efforts in 2023. Indeed, the organization publicly stated it intends to raise \$70 million for ballot access efforts leading up to the 2024 election. If No Labels’ projections for its fundraising come to fruition, under the IRS’s traditional “primary purpose” test, that would mean to offset \$70 million in secondary purpose spending the organization’s total program budget would have to exceed \$140 million. Applying the IRS’s “substantial” standard articulated in *Memorial Hermann* produces a figure that strains credulity even more so. Under *Memorial Hermann*, No Labels’ program budget would need to exceed \$1.4 *billion* if it spends \$70 million on political activity.

The weight of the evidence therefore suggests No Labels no longer operates “exclusively for the promotion of social welfare” as required by section 501(c)(4) and thus it should not receive the benefits of (c)(4) status.

III. Conclusion

No Labels appears to be primarily organized to operate as the main artery that sustains the No Labels Party. It is the lifeline through which anonymous donors can ensure the No Labels Party receives vital infrastructure, including a professionally planned multi-state ballot access program, a carefully curated party platform, legal and compliance consulting, survey research and large-scale modeling data support, message and strategy guidance, earned and paid media coverage, poll-tested talking points on opponents, and even a pre-planned, all-expenses-paid, party nominating convention.

The objective purpose of No Labels’ ballot access work—as clearly stated by its board members and officers—is to orchestrate the defeat of two candidates for public office: Joe Biden and Donald

work account for \$3.1 million. This indicates the program expenses for ‘citizen engagement’ work equals close to \$5.8 million. No Labels, Form 990 (2022), Part III, Line 4a; *Id.* Schedule C.

⁶¹ See No Labels, Form 990 (2022), Part III, Line 4a.

Trump, making these efforts non-exempt political campaign intervention. The volume of time and money spent on this work compared to anything else that the organization is doing demonstrates that No Labels no longer operates “exclusively for the promotion of social welfare” as required by section 501(c)(4). Instead, the organization appears to operate primarily to convey a non-incidental private benefit to the No Labels Party to oppose the candidacies of Joe Biden and Donald Trump. Its activities are therefore in furtherance of a substantial nonexempt purpose.

For these reasons, we respectfully urge the IRS to take immediate action to investigate whether the organization’s 501(c)(4) status should be revoked.

Sincerely,

A handwritten signature in black ink, appearing to read "Tiffany Muller". The signature is written in a cursive, flowing style with a prominent initial "T".

Tiffany Muller
President, End Citizens United