

April 19, 2024

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

Re: Supplemental Information Related to January 23, 2024 Request for Investigation into No Labels' Tax-Exempt Status

Dear Mr. Malone:

We write concerning additional information relevant to our January 23, 2024 complaint (the "Initial Complaint")¹ requesting 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").²

As discussed in the Initial Complaint, based upon No Labels' public statements and financial activity reports, No Labels is no longer operating exclusively for an exempt social welfare purpose as required by the Code. Instead, nearly all of No Labels work has been dedicated to securing state ballot access for the No Labels Party and engaging in direct and indirect political campaign intervention in opposition to candidates Joe Biden and Donald Trump. Because No Labels' activities primarily benefit private interests (ie, the No Labels Party) and its primary purpose is political, the Initial Complaint requested that the IRS investigate whether its section 501(c)(4) status should be revoked.

Since the filing of the Initial Complaint, additional facts have come to light from litigation brought by No Labels against NoLabels.com Inc. for trademark infringement. Testimony from No Labels Director of Ballot Access and chairs of the No Labels Party in Arizona, Florida, Montana, and North Carolina reveal that seemingly all of No Labels' activities are focused on benefitting the No Labels Party. No Labels has run all the operations of, and provided all of the resources for, the No Labels Party in the nineteen states where they have ballot access. Although No Labels has ended their pursuit of a "Unity Ticket" in the 2024 presidential election,³ it does not change the fact that No Labels' primary activity since 2021 has been to benefit private interests—a substantial non-exempt purpose—and therefore it is imperative that the IRS investigate whether No Labels' 501(c)(4) status should be revoked.

¹ Attached here as Exhibit A.

² See IRS, *Results for Tax Exempt Organization Search (EIN:27-1432208)*, <https://apps.irs.gov/app/eos>.

³ Kathryn Watson, *No Labels Abandons Plan for "unity" ticket in 2024 presidential race*, CBS (Apr. 4, 2024), available at <https://www.cbsnews.com/news/no-labels-abandons-plans-presidential-race-2024/>.

I. New Factual Revelations⁴

No Labels is an active, tax-exempt nonprofit corporation organized under section 501(c)(4) of the Code.⁵ On December 4, 2023, No Labels filed a lawsuit against NoLabels.com Inc. in the District Court of Delaware for unauthorized use of No Labels’ trademark.⁶ During an evidentiary hearing to support its motion for a preliminary injunction, No Labels presented deposition testimony from a number of key No Labels witnesses: Nick Connors, No Labels’ National Director of Ballot Access; Randy Smith, Chair of the No Labels Party of Florida; Gail Wachtel, Chair of the No Labels Party of Arizona; Admiral Dennis Blair, Chair of the No Labels Party of North Carolina; and David Bell, Chair of the No Labels Party of Montana.⁷

While these witnesses’ testimony was intended to demonstrate that No Labels tightly controls the use of its name and trademark, what it revealed was No Labels’ absolute control over the No Labels Party, and the vast resources flowing from the 501(c)(4) organization to the state political parties. As the Chair of the No Labels Party of Florida bluntly described No Labels’ control of the No Labels Party, “[No Labels] is doing everything.”⁸

No Labels’ Director of Ballot Access admitted that the 501(c)(4) has absolute control over the No Labels Party:

No Labels is in control of the conduct of the party officers and the state affiliates and in control through a number of mechanisms, party officer agreements, bylaws, and an understanding between the No Labels officers and No Labels national, that No Labels is control — is in control of the use of the name, the way the name is used, as well as the conduct of the state affiliates and any officer associated with them.⁹

And the state chairs of the No Labels Party corroborated that No Labels is in absolute control over the state parties.¹⁰ Moreover, the No Labels Party of Montana Chair made clear that No Labels’

⁴ Pages 2-6 of the Initial Complaint provide a full factual background on No Labels’ non-exempt activities.

⁵ *Id.*; DC.GOV CORP ONLINE, NO LABELS (File No. 296335).

⁶ Complaint, *No Labels v. No Labels, Inc.* (Dec. 4, 2023 D. Del), available at <https://storage.courtlistener.com/recap/gov.uscourts.ded.84315/gov.uscourts.ded.84315.1.0.pdf>.

⁷ Hearing on Motion for Preliminary Injunction, *No Labels v. NoLabels.com, Inc.* (Feb. 22, 2024 D. Del), available at https://drive.google.com/file/d/1Yoo5AgH_kWMrkLp40I5GcPzLGYDTIjGq/view?usp=sharing (attached here as Exhibit B).

⁸ Ex. B, Smith Dep. 92:13-14.

⁹ Ex. B, Connors Dep. 89:21 – 90:3.

¹⁰ *See* Ex. B, Smith Dep. 94:4-5 (“Q. Who controls what the [No Labels Party of Florida] does? A. [No Labels]); Ex. B, Blair Dep. 96:23 – 97:23 (“We were set up as an organization that would carry out the mission of No Labels . . . we don’t take any actions without checking with No Labels.”); Ex. B, Bell Dep. 100:15-17 (testifying that the No Labels Party of Montana can only take actions sanctioned by No Labels).

support of the No Labels Party is not to advance “bipartisanship,” but its activities are specifically to benefit the No Labels Party.¹¹

Furthermore, No Labels appears to be the sole organization that funds the No Labels Party. In addition to monetary funding, No Labels has provided extensive, unreported in-kind contributions to the No Labels Party to create the infrastructure necessary for its “Unity Ticket” campaign.¹²

The Initial Complaint detailed how No Labels is providing the No Labels Party with 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, and poll-tested talking points on opponents.¹³ The No Labels and No Labels Party depositions further reveal the in-kind contributions funneled from the 501(c)(4) to the state parties.

According to the depositions of No Labels Party chairs, No Labels has provided the state parties with significant nonmonetary goods and services. No Labels handles all administrative, legal, and compliance work for the No Labels Party.¹⁴ No Labels organizes No Labels Party Zoom calls and quarterly meetings.¹⁵ No Labels creates and maintains the No Labels Party websites.¹⁶ When asked if the state party has any resources such as pamphlets, mailers or promotional materials, the No Labels Party of Montana Chair succinctly described the resources that No Labels is providing to benefit the No Labels Party: “[E]verything . . . comes from No Labels[.]”¹⁷

All of the evidence suggests that No Labels’ work has primarily benefited the No Labels Party in the nineteen states where it gained ballot access.¹⁸

I. Legal Analysis

The Internal Revenue Code requires section 501(c)(4) organizations to operate “exclusively for the promotion of social welfare.”¹⁹ 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.”²⁰

¹¹ Ex. B, Bell Dep. 101:7-9 (“[A]nybody can want bipartisanship. But No Labels is a specific, is a very specific organization with a very specific objective.”).

¹² Unfortunately, because No Labels and the No Labels Party are not following state campaign finance laws by failing to report these in-kind contributions, an exact dollar value of the in-kind contributions from No Labels to the No Labels Party is unknown.

¹³ Ex. A at 1-6.

¹⁴ Ex. B, Smith Dep. 93:15-21; Blair Dep. 96:24 - 97:1.

¹⁵ Ex. B, Smith Dep. 93:17-21.

¹⁶ *Id.* at 95:1-3.

¹⁷ Ex. B, Bell Dep. 101:1-4.

¹⁸ Steve Peoples, *Joe Lieberman's death leaves a hole at No Labels as it tries to recruit a 2024 third-party candidate*, AP (March 28, 2024), available at <https://www.stamfordadvocate.com/news/politics/article/joe-lieberman-s-death-leaves-a-hole-at-no-labels-19373541.php>.

¹⁹ I.R.C. § 501(c)(4)(a).

²⁰ Treas. Reg. § 1.501(c)(4)-1(a)(2)(i).

A Section 501(c)(4) nonprofit organization must primarily serve a public rather than a private benefit.²¹ Activities that benefit only select individuals or groups (private benefit activities) are not exempt function activities for 501(c)(4) entities.²² Specifically, it must not be organized or operated for the benefit of private interests such as a particular company, political party organization, or designated individuals.²³ The IRS regularly denies organizations' exemption under Section 501(c)(4) if applicants' activities are limited to increasing the civic participation of one political party.²⁴

Here, No Labels' activities clearly benefit the No Labels Party—and only the No Labels Party—and the facts are indistinguishable from the instances where the IRS has denied exemption. The Initial Complaint outlined how No Labels is explicitly working to increase the civic and electoral participation of members of the No Labels Party.²⁵ The depositions of key No Labels director and No Labels Party chairs further clarify that No Labels' primary activity is for the private benefit of the No Labels Party. No Labels controls all of the No Labels Party's operations, provides all of its funding and resources, and crafts all of its strategies. No Labels is doing little other than working to benefit the No Labels Party.

Taken together, the facts laid out in this complaint along with the Initial Complaint make clear that No Labels serves the private benefit of the No Labels Party, which is prohibited as a condition of maintaining tax-exempt status.

II. Conclusion

By its own words and the words of the No Labels Party chairs, No Labels is in full control of the No Labels Party. No Labels has misused its non-profit status to funnel dark money to the No Labels Party. No Labels' mission has been to benefit the No Labels Party—not the general social welfare.

Therefore, in light of the new facts indicating that No Labels has operated for the private benefit of the No Labels Party, we respectfully ask the IRS to take immediate action to investigate whether the organization's 501(c)(4) status should be revoked.

Sincerely,



Tiffany Muller
President, End Citizens United

²¹ See, e.g., Priv. Ltr. Rul. 201403020 (Jan. 17, 2014); Priv. Ltr. Rul. 201221029 (May 25, 2012).

²² *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1079 (1989); Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

²³ *Id.*

²⁴ See Priv. Ltr. Rul. 201403020 (Jan. 17, 2014); Non-Docketed Service Advice Review 20044008E (Dec. 2, 2003).

²⁵ Initial Complaint at 6-7.

EXHIBIT A

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/eotopic02.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 some loops and flourishes.

Tiffany Muller
President, End Citizens United

EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

NO LABELS,)
)
Plaintiff,) Civil Action No.
v.) 23-1384-GBW
)
NOLABELS.COM, INC.,)
Defendant.)

- - - -

Wilmington, Delaware
Thursday, February 22, 2023
Evidentiary Hearing

- - - -

**BEFORE: HONORABLE GREGORY B. WILLIAMS
UNITED STATES DISTRICT COURT JUDGE**

- - - -

Michele L. Rolfe, RPR, CRR

2

1 APPEARANCES:

2

3 NIXON PEABODY, LLP
BY: JASON C. KRAVITZ, ESQUIRE
MARK D. LYTLE, ESQUIRE
4 For the Plaintiff

5 HALLORAN, FARKAS & KITTLA, LLP
BY: WILLIAM GREEN, JR., ESQUIRE
6 For the Plaintiff

7 HINKLE LAW FIRM, LLC
BY: BRADLEY SCHLOZMAN, ESQUIRE
8 For the Plaintiff

9 BILLION LAW
BY: MARK M. BILLION, ESQUIRE
10 For the Defendant

11 BALLARD SPAHR, LLP
BY: ELIZABETH S. FENTON, ESQUIRE
12 For the Defendant

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15 P R O C E E D I N G S
16 (REPORTER'S NOTE: The following hearing was held in
17 Courtroom 6B, beginning at 9:30 a.m.)
18 TAYLOR HALLOWELL: All rise. Court is now in
19 session. The Honorable Gregory B. Williams is presiding.
20 THE COURT: Good morning.
21 ALL COUNSEL: Good morning, Your Honor.
22 THE COURT: You may be seated.
23 All right. We're here for the hearing on the
24 preliminary injunction motion of plaintiff No Labels in the
25 case of *No Labels v. NoLabels.com*, Civil Action No. 23-1384.

3

1 Let's start by having counsel put appearances on
2 the record.

3 MR. KITTLA: Good morning, Your Honor. Ted
4 Kittila of Halloran Farkas + Kittila on behalf of plaintiff
5 No Labels, may it please the Court.

6 I'm here to do some introductions this morning.
7 We have at counsel table Jason Kravitz --
8 Stand up, Jason.
9 MR. KRAVITZ: Good morning, Your Honor.
10 THE COURT: Good morning.
11 MR. KITTLA: -- Leslie Hartford --
12 MS. HARTFORD: Good morning, Your Honor.
13 MR. KITTLA: -- Mark Lytle.
14 MR. LYTLE: Good morning, Your Honor.
15 MR. KITTLA: All three have been admitted
16 pro hac, Your Honor, and they are with the Nixon Peabody
17 firm.
18 In the second row, we have Nick Connors.
19 Go ahead and stand, Mr. Connors.
20 MR. CONNORS: Good morning, Your Honor.
21 MR. KITTLA: He's the national director of
22 ballot access for No Labels, and he's our client
23 representative.
24 THE COURT: All right.
25 MR. KITTLA: Next to him, we have William E.

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1 Green, Jr., who is my partner at Halloran Farkas + Kittila,
2 and we have Bradley Schlozman of the Hinkle firm, who has
3 also been admitted pro hac vice, Your Honor.

4 Out in the audience, we have former Congressman
5 Joe Cunningham. He's the national director of No Labels,
6 and next to him, we have Maryanne Martini, who is the
7 communications director for No Labels.

8 THE COURT: Okay.
9 MR. KITTLA: And we're glad to be here, Your
10 Honor.
11 THE COURT: All right. Thank you.
12 All right.
13 MR. BILLION: Good morning, Your Honor. Mark
14 Billion, Elizabeth Fenton here for the defendant,
15 NoLabels.com Inc. All right.
16 THE COURT: All right. So the Court received
17 the slide presentation from Plaintiff as well as the
18 declaration of Leslie Hartford and the joint witness list
19 from the parties, but don't have slides from Defendant.
20 Do you have any?
21 MR. BILLION: No, the defendant will not be
22 presenting slides in its closing.
23 THE COURT: Okay. All right.
24 All right. So let's get started.
25 MR. KITTLA: Your Honor, Mr. Kravitz is going

5

1 to be doing the presentation for Plaintiff on this side,
2 so...

3 THE COURT: Okay.
4 All right. And the Court reminds both sides,
5 the Court allocated five hours for this hearing to be split,
6 time is split equally, so it's timed.
7 MR. KITTLA: Absolutely.
8 THE COURT: All right.
9 MR. KITTLA: And we do have some binders for
10 Your Honor. Mr. Kravitz will offer them up.
11 THE COURT: All right.
12 MR. KRAVITZ: Good morning, Your Honor. Thank
13 you.
14 So before we begin the presentation, we do have
15 copies of all the transcripts, just in the event that it's
16 helpful to the Court, as well as copies of the deposition
17 exhibits.
18 THE COURT: Okay.
19 MR. KRAVITZ: May we present those?
20 THE COURT: Yes.
21 MR. KRAVITZ: Permission to approach, Your
22 Honor.
23 THE COURT: You may.
24 MR. KRAVITZ: And, Your Honor, if I may propose
25 or share with you, I think, what the parties were

1 contemplating, which is -- as you said, we have five hours
 2 to split equally. Much of that is going to be consumed --
 3 at least from the plaintiff's perspective, much of that is
 4 going to be consumed by showing you videotape testimony. I
 5 have about two hours of that, so I'd like to show you those.
 6 I'll introduce each witness and then play those videos, and
 7 then I have, as you know, the slide presentation, which I'm
 8 going to go through fairly quickly, and I'd like to reserve
 9 just a few minutes of rebuttal time, if that makes sense
 10 with Your Honor.

11 THE COURT: Fine with the Court.

12 MR. KRAVITZ: Okay. So the first witness we are
 13 going to present, Your Honor, is a woman named Donna
 14 Wadsworth-Brown. This one is quite short. And Ms. Brown is
 15 a woman who attempted to contact No Labels but instead sent
 16 her e-mail to NoLabels.com.

17 THE COURT: Okay.

18 (Video deposition was played for the Court as
 19 follows:)

20 Q. Good afternoon, Ms. Brown. Is it okay if I call you
 21 Donna?

22 A. Sure, yes.

23 Q. Okay. Great.

24 And how old are you, ma'am?

25 A. I'm 79.

1 Q. Okay. Are you currently employed?

2 A. I'm a retired school teacher.

3 Q. How many years did you teach?

4 A. 43 years all together.

5 Q. Wow.

6 A. 30 years in high school. And then when I retired, I
 7 was invited to come to the University of Missouri and teach
 8 in their College of Education. I worked with young -- young
 9 teachers for 13 years.

10 Q. Wow. For the 30 years that you taught high school,
 11 what subjects did you teach?

12 A. English.

13 Q. Fantastic.

14 And can you just tell me what your own
 15 educational background is?

16 A. I have a master's degree in English and 24 hours of
 17 post-graduate work.

18 Q. Okay. And are you familiar with my client No Labels?

19 A. Yes, I am.

20 Q. Okay. Great.

21 Do you recall generally how it was that you
 22 first came to learn about No Labels?

23 A. I mean, I've seen general things on the Internet.

24 And the first time that I responded to No Labels was --

25 there was an ad on Facebook. And by that time, I had -- I

1 had seen enough and read enough and heard enough names of
 2 people involved in No Labels, and so I clicked on the thing
 3 and made a donation.

4 Q. You have a recollection of clicking on an ad which
 5 led you to make a donation; is that right?

6 A. Yes. Yes.

7 Q. Okay. And when you made that donation, do you recall
 8 how much it was for?

9 A. Yes, it was \$10.

10 Q. Okay. Was there -- why did you make the donation?
 11 Why did you decide that this was worth giving \$10 to?

12 A. Well, I was learning about the organization and
 13 feeling very positive about it. And I'm on a retired
 14 teacher's income. I wish I could have given more, frankly,
 15 but I gave \$10.

16 Q. And when you say that you were interested in the
 17 organization, which organization were you interested in?

18 A. No Labels.

19 Q. Did you think it was a one-time donation, or did you
 20 think it was a recurring donation?

21 A. Normally, when I make a political donation, I make it
 22 a one-time because, A, I may not have enough money the next
 23 month and, B, I'm watching to see if it's still the
 24 candidate or an organization I want to follow. But then it
 25 turned out to be a three-month donation.

1 Q. Okay. And how did you come to realize that it was a
 2 reoccurring donation?

3 A. Well, I saw it on my Discover account.

4 Q. Did you take any action at that point to -- once you
 5 realized that this was a reoccurring donation --

6 A. Yes, I wanted to contact them and tell the
 7 organization that I wanted to cancel the auto-pay and just
 8 make a monthly donation as -- as it goes along. I'm sure
 9 what I did there was to simply google No Labels and contact
 10 them that way.

11 Q. Okay. Do you recall what it was that you searched?

12 A. "No Labels" and I probably -- I'm guessing, probably
 13 took the first one that was at the top. I -- that would be
 14 normally what I would do.

15 Q. Right. That would be your normal -- that would be
 16 your normal process; is that right?

17 A. Un-huh.

18 Q. Okay. And so it took you to a website.

19 A. Yes.

20 Q. Is that correct?

21 A. Yes.

22 Q. And did the website appear to you to be a No Labels
 23 website?

24 A. Yes.

25 Q. Okay. And what did you do once you were on this

1 website?

2 A. I said that I wanted to cancel the auto-pay.

3 Q. I'm showing you Plaintiff's 78. It's a Gmail e-mail

4 from donnawbrown@aol.com. Whose e-mail address is that?

5 A. That's mine.

6 Q. Okay. And the e-mail says, "I support your program,

7 but I am simply not able to make a contribution each month.

8 I did not know I was signing up for a recurring withdrawal.

9 Please cancel my monthly contribution and confirm. Thank

10 you, Donna Wadsworth-Brown."

11 Do you see that?

12 A. Yes. Yes, I think that's my e-mail.

13 Q. When you sent this e-mail, Donna, did you intend this

14 e-mail to go to No Labels, the company that you had donated

15 \$10 to?

16 A. Yes, yes.

17 Q. Okay.

18 A. Yes.

19 Q. The defendant in this case, NoLabels.com Inc., they

20 have alleged that your e-mail was a setup, that you were

21 asked by someone at No Labels, my client, to pretend that

22 you were confused and to send this e-mail to the wrong

23 company, to the wrong website.

24 How do you respond to that?

25 A. That's -- that's ridiculous and -- and insulting. I

1 just -- that's -- there's absolutely no truth to that at

2 all. I just -- barely involved with No Labels and wanted to

3 give a donation to -- as a desperate attempt to try to find

4 something better than -- than what we're being offered out

5 there.

6 (End of video deposition.)

7 MR. KRAVITZ: And, Your Honor, the next witness

8 that we're going to present by video, his name is Charles

9 Siler. He's actually a 30(b)(6) witness for the defendant,

10 NoLabels.com Inc. His excerpts are considerably longer.

11 It's just over an hour. And Mr. Siler is the man who

12 hatched the NoLabels.com scheme and drafted the website's

13 content.

14 (Video deposition was played for the Court as

15 follows:)

16 Q. You mentioned a Unity Ticket, what is your

17 understanding of my client's interaction with a Unity

18 Ticket? What's your understanding of that Unity Ticket?

19 A. My understanding of the plaintiff's efforts to secure

20 ballot access in multiple states is so they can offer a

21 ballot line to presidential candidates as a Unity Ticket, an

22 alternative electoral option.

23 Q. Okay. Has my client, No Labels, expressed support

24 for any 2024 presidential or vice presidential candidate, to

25 your knowledge?

1 A. To my knowledge, the plaintiff has not engaged in any

2 expression of support for a candidate. I have seen them

3 express opposition to a few candidates, but not support for

4 anyone in particular in a way that would lead me to, like,

5 conclude that they've selected a person to -- to, like,

6 provide that ballot access, their ballot line to.

7 Q. Who have you seen them express opposition to?

8 A. The plaintiff has repeatedly said that they are

9 opposed to a rematch of the previous presidential election

10 between current president Joe Biden and the former President

11 Donald Trump.

12 Q. Have you ever visited my client's website?

13 A. I have visited the plaintiff's website, yes.

14 Q. Okay. And you're aware that that website is located

15 at lab -- at nolabels.org?

16 A. I am.

17 Q. How many times do you think you visited that website?

18 A. Maybe 20.

19 Q. How did you come to be involved in an entity called

20 NoLabels.com Inc.?

21 A. I think that this is a question that has -- that has,

22 like, different potential timelines to it. I'll give the

23 one that seems the most appropriate, and then, if you want

24 to dig in further, we can do that.

25 But it really started when I was doing something

1 rather routine for my line of work. I am a political

2 consultant. I engage in a lot of campaign work, both for

3 candidates, as well as for issues that are -- appear on the

4 ballot. I also do public policy advocacy and work on behalf

5 of numerous nonprofits. In the course of my work, it's

6 quite routine to regularly look for domains and different

7 assets that might be of utility.

8 And so I -- around some time early -- early mid

9 October, I went on to GoDaddy and saw that NoLabels.com was

10 available for purchase. So I then consulted with one of my

11 long-time collaborators. And then took that -- like, that

12 domain, that property to -- to a -- to an entity that I work

13 with. We were able to secure that domain, and then quickly

14 wanted to set up an entity that would support the efforts of

15 that domain.

16 So I became the -- effectively the sole officer

17 of NoLabels.com Inc, so the defendant in this case.

18 Q. Okay. You mentioned that you consulted with one of

19 your long-time collaborators, was -- was that someone named

20 Lucy Caldwell?

21 A. Yes.

22 Q. Did you misspeak or did you intend to say that?

23 A. No, NoLabels.com was also a site that I had seen No

24 Labels had used and had seen both -- like, as one of their

25 properties before, so I was aware that they had owned it at

1 one time.

2 Q. Okay. And when you discovered that NoLabels.com was
3 available, you reached out to Lucy Caldwell; is that
4 correct?

5 A. Yes. She was the first person I called.

6 Q. Okay. What did you discuss with her at that time?

7 A. Really just that it was available. It was one of
8 those things that, like, I did not expect to find. I
9 actually found it quite surprising that it was available.

10 It wasn't -- like, generally, when I find these domains,
11 depending on the -- the domain itself, like, often it's,
12 like, \$10 or something to acquire a domain. It's not very
13 expensive.

14 And then some of them, depending on the
15 potential value, like, if it's a single word, like rock.com
16 or something, those often can go for tens of thousands of
17 dollars. But NoLabels.com was available for, I think, just
18 under \$11,000.

19 Q. Un-huh?

20 A. Which seemed to be a remarkable potential value. So
21 there really didn't need to be much conversation at that
22 point. It was just like, hey, this is available, that's
23 crazy. So we should look at, like, acquiring it.

24 Q. What does Ms. Caldwell say in response?

25 A. I don't remember her exact words. But the premise of

1 as having particular value?

2 A. So what appeared to me was that the plaintiff was
3 already cultivating a -- a movement of people who are
4 dissatisfied with the two traditional political parties, the
5 Democrats and the Republicans, in a way that could have
6 immense, like, grassroots value. But it seemed that the
7 plaintiff was, one, kind of neglecting that potential, that
8 community, as well as potential candidates and other --
9 other individuals in that space.

10 So, since it was available, my initial thought
11 was that this would be a great way to connect with people
12 who shared -- or had unaligned political views. And, then,
13 to manage that community of people, create conversations,
14 and bring people together in the spirit of what the
15 plaintiff was already doing, but in a way that I saw was
16 neglected.

17 So it was an opportunity to build political
18 power by leveraging an unnurtured movement.

19 Q. What -- what was it that you believed my client, the
20 plaintiff here, was neglecting?

21 A. A lot of my work has often been focused at the state
22 level rather than the federal level. So I saw a lot of
23 opportunity to engage this community to effect state-level
24 change, policy change, so...

25 Q. So at that time, what did you plan to do with the

1 what she was -- her response was, That's incredible. We
2 should figure out how to grab that.

3 Q. Okay. So you needed to get some funding?

4 A. Un-huh.

5 Q. I need you to answer verbally for the record.

6 A. Oh, my apologies, yes.

7 Q. Did Ms. Caldwell have any suggestions about funding?

8 A. No, not at that time. I already had an idea for
9 that.

10 Q. What was the idea?

11 A. So Lucy Caldwell and I are already independent
12 contractors with another group, the American Patriot
13 Project. The American Patriot Project does a number of
14 other activities, but I knew that there was funding
15 available there for different projects.

16 I took the idea to my supervisor at the American
17 Patriot Project, Joshua Silver. So -- and Joshua Silver
18 also just immediately was aware that this was something of
19 potential value, and that the price was quite reasonable for
20 the potential value. So there really weren't further
21 discussions needed about it at that time. It was really
22 just, let's make sure that we secure the asset.

23 Q. You -- you referred a few times to the value of --

24 A. Un-huh.

25 Q. -- of the domain NoLabels.com. Why did you view that

1 NoLabels.com domain, if you actually purchased it?

2 A. Well, at the initial outset, there was no plan. It
3 was just shock that it was available.

4 Q. Do you ever communicate with Mr. Silver by text?

5 A. By text, no. We do use Signal messaging.

6 Q. Okay.

7 A. Occasionally.

8 Q. But you didn't use it in this case?

9 A. I am an animal of a -- of an industry that values
10 confidential communication. And so, it was important to
11 make phone calls and act quickly, you know, using the phone
12 just when I knew that I could get ahold of him. But also,
13 yeah, like, it's just a matter of habit to not put a lot of
14 things in writing. That's pretty standard.

15 Q. Mr. Silver approved your request for funding; is that
16 correct?

17 Okay. So American Patriot Project agreed to and
18 then actually did go forward with the transaction to acquire
19 the domain from dan.com, right?

20 A. Yes.

21 Q. And so that was strictly American Patriot Project
22 money that was used?

23 A. Yes.

24 Q. Did you have a discussion with Mr. Silver at that
25 time about who would actually control the domain?

- 1 A. No, not at that time.
- 2 Q. At some point did you have that discussion with
- 3 Mr. Silver or someone at -- at American Patriot Project?
- 4 A. Yes.
- 5 Q. Who did you discuss that with?
- 6 A. Well, Joshua Silver, because he runs the American
- 7 Patriot Project, so, yes, Joshua Silver.
- 8 Q. Okay. What was the discussion, what was the
- 9 substance of it?
- 10 A. Well, the conversation was that we wanted to set up a
- 11 distinct entity because this -- the website, this asset, was
- 12 distinct from any of the other types of projects that we
- 13 were working on. So we wanted to actually silo it out and
- 14 kind of like segregate it from the rest of our work, and
- 15 build internal firewalls and different things so that we
- 16 limited the number of folks engaged on the project that were
- 17 connected to American Patriot Project.
- 18 So that's when we decided to set up the entity
- 19 known as the defendant here -- the NoLabels.com Inc.,
- 20 between those things, so...
- 21 Q. Does NoLabels.com Inc. have any advisors?
- 22 A. Yes.
- 23 Q. And how many advisors does the company have?
- 24 A. We have -- well, two main advisors; so myself as a
- 25 consultant via the American Patriot Project, and then Lucy

- 1 Caldwell is an advisor via the American Patriot Project
- 2 where she provides expert support in making sure that I have
- 3 legal guidance and legal advice, and that all of that is
- 4 arranged with the counsel and everything like that.
- 5 Q. Do -- strike that.
- 6 Are you compensated for your role as an advisor?
- 7 A. It would be difficult to say. I am on a retainer for
- 8 the American Patriot Project, so I don't bill them for work
- 9 with the defendant.
- 10 Q. Okay. Are there any other advisors to
- 11 NoLabels.com Inc.?
- 12 A. Initially, Joshua Silver had played a role in helping
- 13 with the formation of the defendant, but he has not had
- 14 really any role beyond that outside of a -- a couple very
- 15 short communications, so he does not really play a large
- 16 role, but he would be a person to -- to note.
- 17 Q. Are you affiliated with RT Group?
- 18 A. Yes.
- 19 Q. What is RT Group?
- 20 A. RT Group is -- I -- I actually don't know their legal
- 21 structure. But they are an entity that is, like, I think an
- 22 oversight or overlaps with the American Patriot Project. So
- 23 I do consulting work with the RT Group as well.
- 24 Q. Does NoLabels.com Inc. have a bank account?
- 25 A. Yes.

- 1 Q. Are you aware that there was an invoice submitted
- 2 from APP to NoLabels.com Inc.?
- 3 A. I am. I actually triggered that invoice personally.
- 4 Q. Okay. And do you whether that invoice has been paid?
- 5 A. I believe that it has not been paid at this time.
- 6 Q. Okay. Who actually designed the website at
- 7 NoLabels.com?
- 8 A. The design -- well, there's multiple parts to this,
- 9 but the design -- I did the art direction, a lot of the copy
- 10 development. Actually, I wrote all of the copy for the
- 11 site. But the vendor, Break Something, also they do
- 12 business as the Oak Collective, I believe.
- 13 Q. Un-huh. And you did all that by telephone?
- 14 A. I had -- well, I had, like, a -- there's a Google doc
- 15 for the copy that I believe was produced for you all that
- 16 had the site copy. And there were instructions about, like,
- 17 colors and imagery to use, so, but a lot of the
- 18 conversations were done by telephone.
- 19 Q. You drafted that copy?
- 20 A. I drafted that. And then there were edits provided
- 21 by Lucy Caldwell. And then Joshua Silver later offered some
- 22 deletions. He didn't add anything. But he did review and,
- 23 like, make some suggested tightening, so...
- 24 Q. You mentioned also that in addition to the copy for
- 25 the website, you also provided direction on colors and

- 1 imagery, right, sort of the visual design?
- 2 A. Yes.
- 3 Q. How did you communicate those -- that -- that
- 4 direction?
- 5 A. So to Stephen I said -- I -- we had like a phone
- 6 call, as well as I had created some imagery for him as well
- 7 to kind of base it off of.
- 8 Q. Where did you create the imagery?
- 9 A. On my computer, like...
- 10 Q. Using what?
- 11 A. I believe Adobe InDesign.
- 12 Q. Did you have a particular file for this project?
- 13 A. I put those on a Google Drive, so...
- 14 Q. Where -- did you create these images from whole cloth
- 15 or did you take them from somewhere else?
- 16 A. Well, I was definitely inspired by the -- the
- 17 plaintiff's website and materials, absolutely.
- 18 Q. Tell me what you mean by, "you were inspired by the
- 19 plaintiff's website and materials"?
- 20 A. Well, as a -- so working in the political space,
- 21 like, when I do work for, like, Democrat candidates, there's
- 22 a certain aesthetics that you use to, like, communicate to
- 23 people that you're working with a Democrat candidate.
- 24 The same thing you would do with a Libertarian
- 25 is like colors, fonts, imagery that you'd use.

1 So the plaintiffs', like, community that -- the
2 one that I had described as having been neglected, had like
3 an aesthetic that they were accustomed to that was branded
4 by No Labels, the plaintiff here, that I wanted to
5 replicate, so I was intentionally looking to match the
6 aesthetic of the plaintiff.

7 Q. Do you feel like you -- you succeeded in doing that?

8 A. Yeah, I feel like a lot of the things about, like,
9 the language was attractive to this community; and so we
10 wanted to mirror language while also, like, having our own
11 intent of communicating to that community.

12 So the one that, like, I felt that the plaintiff
13 was not reaching out to or like really leveraging this
14 community of motivated, disaffected, unaffiliated voters.

15 So, yeah, I -- I found it attractive as a -- as
16 a -- as a -- as a visual aesthetic that they recognize,
17 so...

18 Q. Did you indicate anywhere in your materials that were
19 accessible by Lucy Caldwell and Josh Silver and Stephen
20 Solomon that you were attempting to replicate?

21 A. I definitely told them but --

22 Q. Let me finish my question.

23 A. My apologies. I apologize.

24 Q. That you were attempting to replicate kind of the
25 look and feel of the plaintiff's site?

1 A. Yeah, I definitely told them that was the intention.

2 Q. The website at NoLabels.com also contained
3 photographic images, right?

4 A. Yes.

5 Q. And who -- who -- who -- who chose to put or to
6 select those images that ultimately wound up on the website?

7 A. That decision was made between myself and Lucy
8 Caldwell. Collaboratively, we were trying to figure out
9 what would make sense.

10 Q. Okay. And was that done -- well, explain the
11 process, explain how that worked.

12 A. So in that context, we knew we needed some imagery,
13 so we wanted to make it clear that we were talking about a
14 different subset of individuals than the plaintiff is trying
15 to engage with.

16 So we talked about a lot of the candidate stuff
17 that is -- that the -- that is plaintiff is not interested
18 in, so non-Presidential candidacies, things like that, as
19 well as just engagement with voters, people who would either
20 presently or eventually identify themselves as either No
21 Labels voters, or folks that would identify themselves as
22 disaffected independents.

23 So we saw imagery that connected both to like
24 the plaintiff's universe but then also to the universe of
25 people that we were trying to engage with.

1 Q. Who chose to put Donald Trump on the website?

2 A. Oh, I definitely chose that.

3 Q. Okay. And you chose to make that the first picture
4 that the -- that a visitor would see on the NoLabels.com
5 landing page, right?

6 A. Absolutely.

7 Q. Okay. Why did you chose that image?

8 A. One of the reasons is -- again, we're trying to find
9 folks who are disaffected by traditional political parties.

10 A lot of people who identity as Trump supporters
11 actually also feel that the Republican party, in its current
12 form, is not serving them.

13 Q. Have you looked through your signal messages to
14 determine whether there are any that are responsive to the
15 request that have been propounded on the defendant in this
16 case?

17 A. So almost all of those Signal messages have a preset
18 expiration function, so there aren't any present in those.

19 Q. So what's the preset time frame?

20 A. It depends on the conversations. So for some
21 conversations, they're set to a week, some are set to a day,
22 some are set to a few hours.

23 Q. What other politicians did you tell him to pull
24 images for?

25 A. It would have been Tyson Draper who was a candidate

1 for the U.S. Senate in Arizona at the time.

2 Q. You said that you're on a retainer with APP; is that
3 correct?

4 A. With the -- yes.

5 Q. Is that something you get paid monthly?

6 A. Yes.

7 Q. Okay. And how much is that?

8 A. It's \$10,000 a month.

9 Q. Okay. And what portion of that \$10,000 do you
10 attribute to the work that you've done -- or that you did
11 for the defendant in this case, NoLabels.com Inc.?

12 A. I don't. That's not how we do any of the accounting.
13 I don't track hours for the American Patriot Project, so...

14 Q. Okay. After the acquisition of the NoLabels.com
15 domain initially by American Patriot Project, subsequently
16 by Mr. Solomon, did you hear or learn about there being
17 outreach by a third party to reacquire that domain?

18 A. No.

19 Q. Okay. If the broker had engaged with the owners,
20 would you have recommended selling it back to --

21 A. It was never our intent to sell it back, like, we
22 weren't looking to sell it. The reason we purchased it was
23 to own it.

24 Q. Okay. If -- if you had been made aware of that
25 outreach, would you have agreed to transfer it back free of

- 1 cost?
- 2 A. Oh, I do not believe so, no.
- 3 Q. Why?
- 4 A. Because we were going to use it for our own, like,
- 5 purposes, like, we had no intention of selling it. This
- 6 wasn't purchased with any intent to profit from the sale.
- 7 It wasn't purchased to, like, lose money on the sale.
- 8 If we wanted to do that, I could have just,
- 9 like, reached out to someone at -- at the plaintiff's
- 10 offices and told them that it was available and they should
- 11 do it, but that was not my interest.
- 12 Q. You're a political consultant, you're a political
- 13 animal, right?
- 14 A. In context, yes.
- 15 Q. Okay. And you formed the view that No Labels, my
- 16 client, is neglecting some segment of the voting public and
- 17 that frustrates you, right?
- 18 A. Yeah. I -- I don't think frustration is the right
- 19 word at all. I think that it presents an opportunity. It's
- 20 not frustration.
- 21 Q. Okay. So you see an opportunity by virtue of my
- 22 client, No Labels, neglecting -- in your view, neglecting a
- 23 certain segment of the voting public, right?
- 24 A. Yes.
- 25 Q. But instead of contacting my client, No Labels, and

- 1 suggesting to them that they could do more to broaden their
- 2 appeal, and that, and informing them of your view that
- 3 they're neglecting a certain percentage of the voting
- 4 elector rate, you, instead, decide you're going to register
- 5 NoLabels.com and create your own website to capitalize on
- 6 what you view as that opportunity, right?
- 7 A. Yeah, absolutely. I get to maintain control and
- 8 leverage this to serve my own interests, rather than having
- 9 to negotiate that with the plaintiff. I -- so it's a way
- 10 for me to retain more control over how I engage that
- 11 segment.
- 12 Q. Okay. And Mr. Solomon and his entity, Break
- 13 Something or Oak Collective --
- 14 A. Un-huh.
- 15 Q. -- did build this website, right?
- 16 A. Yes.
- 17 Q. Did they charge for that service or those services?
- 18 A. Yes.
- 19 Q. Who did they charge?
- 20 A. They invoiced the American Patriot Project.
- 21 Q. You're aware that Mr. McIntyre, Kelvin McIntyre
- 22 submitted a declaration to the Court in connection with the
- 23 prior proceeding relating to the temporary restraining
- 24 order, correct?
- 25 A. Yes.

- 1 Q. And in that sworn declaration, which I can show you
- 2 if you want, he described the APP as a vendor to
- 3 NoLabels.com Inc.
- 4 Do you agree with that characterization?
- 5 A. Yes.
- 6 Q. Okay. How is it a vendor to NoLabels.com, what --
- 7 what are the services that are being provided?
- 8 A. The American Patriot Project provides consulting
- 9 services to the defendant.
- 10 Q. Okay.
- 11 A. Everything from, like, guidance on the potential
- 12 legal issues, legal strategy, to copy edits on the -- on the
- 13 NoLabels.com site, so...
- 14 Q. Okay. Does the defendant pay for those services?
- 15 A. At this point, I have not seen any invoices come
- 16 through. Again, this was so quickly, like, in court, we
- 17 really didn't have time to navigate a lot of the
- 18 compensation structure.
- 19 Q. Was it your expectation that APP would be paid by the
- 20 defendant?
- 21 A. Eventually.
- 22 Q. At some point were efforts made to try and promote
- 23 the NoLabels.com website?
- 24 A. Yes.
- 25 Q. Okay. And can you tell me about those efforts.

- 1 A. Through Break Something, who -- who was the vendor
- 2 who built the site, I -- I had asked them to, also, do a
- 3 Google AdWords campaign to boost the site.
- 4 Again, a lot of this was moving quickly. I was
- 5 trying to see if we could build a community rather quickly.
- 6 And so, we wanted to elevate our ranking on search engine
- 7 returns without having to wait for traditional SEO practices
- 8 to take hold.
- 9 Q. To what end, did you want to engage with these
- 10 people? What was your -- what was your end game?
- 11 A. For me personally, like my personal motivation was
- 12 that we could actually engage with people that felt, like,
- 13 they weren't being serviced by the two-party system, and
- 14 that there's a lot of legislative races that -- especially
- 15 in Arizona, where there's a very thin margin of majority in
- 16 both legislative chambers that potentially we can move the
- 17 needle enough to make a difference in some of those races
- 18 and similarly in other state houses.
- 19 Q. Remind me of the name of the gentleman who you
- 20 testified was previously running for U.S. Senate in Arizona?
- 21 I don't know why I have a mental block with his name.
- 22 A. His name was Tyson Draper.
- 23 Q. And do you have any reason to believe that my client,
- 24 No Labels, supported his candidacy?
- 25 A. I have every reason to believe that they were opposed

1 to it.

2 Q. Prior to early October of 2023, when you first
3 discovered the availability of the --

4 A. Un-huh.

5 Q. -- NoLabels.com domain, do you recall having a
6 discussion with Ms. Caldwell where she expressed her -- her
7 views to you that she is -- she is opposed to my client, No
8 Labels?

9 A. Yeah. So as a matter of, like, private conversation,
10 yes, I have awareness that she has opposition to the
11 plaintiffs, like, current project around the Unity Ticket.

12 Q. Did you ever discuss with her a meeting that she
13 attended in June of 2023 where there was a group of people
14 involved in politics -- I'll just say that -- who met for
15 the purposes of discussing how to oppose my client No
16 Labels?

17 A. So, yes, I'm aware that she has very likely spoken to
18 people and has had meetings with people that are opposed to
19 the No Labels Unity Ticket project.

20 Q. Did -- did her opposition to No Labels and the Unity
21 Ticket come up in your discussions with her when you told
22 her in early October 2023 that you had -- you had discovered
23 that NoLabels.com was available?

24 A. After the -- after I discovered that, at some point,
25 yes, that has come up. And that said, like, I don't know

1 what Joshua Silver's interest is. I knew that he would
2 understand that there's value in funding this. I don't know
3 what Lucy's personal interests are in this, like, domain. I
4 can only speak to my own personal interests, so...

5 But has she shared that, like, yeah, there's
6 potential here to, like, influence or impact the Unity
7 Ticket project? Yes.

8 Q. What has she said specifically?

9 A. Well, that's what I mean, is that, like, the details
10 of, like, a mechanism for that or anything, we -- we didn't
11 get that far, so just that she views it as a -- as a problem
12 and a threat to the election, so...

13 Q. So let's talk a little bit about the Google Ad
14 campaign.

15 Incidentally, before we talk more about Google
16 Ads, has NoLabels.com Inc. -- does it have a different
17 website that's not located at NoLabels.com now?

18 A. No, no. The defendant doesn't own any other or
19 manage or -- no association with any other web domains.

20 Q. Okay. Are you aware of any website that's currently
21 in place today and accessible -- publically accessible today
22 that contains portions or -- or the entirety of the -- of
23 the prior NoLabels.com website? Do you know whether it's
24 been repackaged and put up on a different domain?

25 A. Not to my awareness. I -- I have not seen anything.

1 But if you're asking if there's another version of the
2 website out somewhere, not by anything that the defendant
3 has done, so...

4 Q. Okay. Or anything that you've done?

5 A. Or anything that I have done personally either.

6 Q. Okay. For the uninitiated, can you explain your
7 understanding of how a Google -- Google AdWords campaign
8 works?

9 A. Again, it's not my expertise either, but I will
10 explain, like, my understanding of it is that Google has
11 organic search term results. So if you search for, say,
12 "apple," it will decide whether or not you want to look at,
13 like, Apple, the business that sells iPhones, or whether or
14 not you're looking for the fruit. But if a company, say,
15 Apple Records, wants to promote themselves and they're not
16 showing up organically or perhaps they are organically at
17 the top but they want to make sure that they're at the top
18 of the promoted search term returns, then they pay Google to
19 trigger a placement of their domain with an ad at the top of
20 the promoted search returns when people search for keywords
21 that were identified by the -- by the purchaser.

22 Q. Okay. The goal of a Google AdWords campaign is to --
23 is to give a particular website a boost so that more people
24 are likely to see it, right?

25 A. Google AdWords is a marketing service. So in the

1 same way any marketing campaign is intended to boost the
2 visibility of whatever client or product, service, yes.
3 Like, it is intended to boost the visibility of that, so
4 that's how we used it.

5 Q. And the list of search terms -- excuse me, Google
6 AdWords that you and -- and Mr. Solomon and Ms. Caldwell
7 came up with was about 20 different terms, right?

8 A. Sounds about right. It was narrow, but...

9 Q. And 19 of the 20, all but 1, contained the word "no"
10 and the word "labels," sometimes misspelled intentionally,
11 right?

12 A. That sounds right, yes.

13 Q. Okay. The one example of an -- of an AdWords that
14 did not contain "no labels" was "problem solvers." Does
15 that sound right?

16 A. Sounds right.

17 Q. Okay. "Problem solvers" is a term that -- that is
18 associated with my client No Labels, correct?

19 A. Yeah.

20 Q. And do you know how much money was paid to Google for
21 this campaign?

22 A. I don't know what the actual invoicing was. I -- we
23 had -- I -- I believe the initial conversations were to
24 budget somewhere around \$2,500, I believe, towards this.

25 This is a -- kind of a trial to see what kind -- what it

1 looks like.

2 **Q.** And do you know whether Google invoiced someone for
3 that campaign?

4 **A.** Well, I'm sure they invoiced someone. The invoices,
5 I believe, went to the contact@nolabels.com e-mail address,
6 but that was something that the vendor -- Stephen Solomon's
7 company, Break Something, was managing. So they were
8 sending -- they were paying that, to my understanding, and
9 then forwarding their invoice to the American Patriot
10 Project.

11 **Q.** Is that an e-mail that you monitored? Is that an
12 account that you monitored?

13 **A.** I did not monitor it. We had the vendor, Break
14 Something, Oak Collective, monitor that.

15 **Q.** The website that -- that was ultimately Defendant's
16 website at -- at NoLabels.com, had -- or provided visitors
17 with the opportunity to provide their contact information;
18 is that correct?

19 **A.** There was a -- yes, a -- like, a reach out to us and
20 submit contact information, yes.

21 **Q.** Right. What would the purpose -- what was the
22 purpose of providing that opportunity to visitors?

23 **A.** I -- I -- I would think it's -- well, to me, it would
24 be obvious for my work, but, uh, there's like multiple
25 reasons we would do that. One of the biggest values in --

1 in political campaigns is building lists of engaged likely
2 voters who are moveable between candidates or issues, and
3 there's potential value in building a list of people who
4 self-identify as disaffected by the two traditional
5 political parties.

6 The other side is to -- also, begin to allow
7 people to feel like they might actually be plugging in to a
8 community of like-minded voters and political-engaged
9 people. And so personally my goal was to eventually have
10 enough of -- enough contacts from people to start engaging
11 them not entirely unilaterally but to spur
12 cross-communicative engagement between the contactees.

13 **Q.** Okay. Did you make any efforts to try and figure out
14 how many people had in fact submitted their information?

15 **A.** So curious, I didn't expect much, because, one, it
16 was brand-new. It had no, like, real visibility or
17 footprint in the space, but -- but Stephen, through his
18 role, like, monitoring the website, just would report, like,
19 Hey, here's someone that contacted. And I don't know if he
20 forwarded every contact e-mail notification that came in or
21 not, but we got forwarded some of them, so he forwarded
22 those to me and I believe he forwarded them to Lucy as well.

23 **Q.** Okay. Do you recall approximately how many people in
24 total submitted their contact information through the
25 website, through Defendant's website?

1 **A.** I don't know how many unique individuals did, but we
2 had what appeared to be under 30 potential responses in
3 total before we shut it down, so...

4 **Q.** All right. So, Mr. Siler, I'm showing you Exhibits 2
5 and 3. And if you can just -- okay.

6 And do you know what "Cost" refers to? That's
7 the preceding column name.

8 **A.** Yeah, that looks like the spend of the campaign to
9 get those impressions.

10 **Q.** So about \$2,100. Do you see that?

11 **A.** Yes, that's what that looks like.

12 **Q.** And that sounds about right to you?

13 **A.** It does. It sounds in the range of what we had
14 initially asked to do.

15 **Q.** Okay. And shifting gears to number -- to Exhibit 3,
16 please.

17 **A.** Un-huh.

18 **Q.** Can you tell me what that is, please.

19 **A.** That looks like it is a breakdown of the campaign
20 that was on Exhibit 2 in the -- kind of a breakout of the
21 different Google ad terms that were -- that we sought to
22 have our ad served on.

23 **Q.** Okay. These were the search terms that -- that the
24 defendant paid -- well, somebody -- somebody paid Google for
25 purposes of the Google ad campaign, right?

1 **A.** Correct. That's my understanding of that.

2 **Q.** Okay. Did you consider the Google ad campaign to be
3 successful during its tenure, during its -- as it ran its
4 course?

5 **A.** As a test balloon for a digital campaign, I would
6 say, yes, it was successful in that function.

7 **Q.** Understood.

8 All right. If we could mark this as
9 Plaintiff's 4, and specifically if you can jump to R41.

10 **A.** Okay. Yes.

11 **Q.** Okay. What -- what is reflected on this document,
12 R 41?

13 **A.** This -- I assume that this -- and I'm pretty
14 confident that this is all of the folks who contacted -- who
15 filled out the contact form from the defendant's website.

16 **Q.** Okay. Looking at that first entry, there's someone
17 whose name is Donna Wadsworth-Brown. Do you see that?

18 **A.** I do see that.

19 **Q.** Do you know whether she contacted or sent any e-mails
20 to contact@nolabels.com?

21 **A.** I don't think so. I don't know. I -- I think that
22 some of these submissions -- we did have, like, copy. I'm
23 not -- so the -- the thing that I don't want to misstate is
24 for the form.

25 **Q.** Okay. Let me ask you to flip over to R44.

- 1 A. Okay. Yeah.
- 2 Yes.
- 3 Q. And R 44 is an e-mail sent from Donna
- 4 Wadsworth-Brown.
- 5 Do you see that?
- 6 A. Yes.
- 7 Q. That's the same person whose name we just looked at,
- 8 right?
- 9 A. Yes.
- 10 Q. And this is sent on November 21st, 2023. That's the
- 11 same date that she entered the contact information, right?
- 12 A. Let me go back and look just to see -- I mean --
- 13 Q. Sure.
- 14 A. -- I'll assume that you're telling the truth. So --
- 15 yes, it looks like it.
- 16 Q. Sometimes I get it wrong.
- 17 A. It looks like it, yes.
- 18 Q. Okay. And she's sending this to
- 19 contact@nolabels.com, right?
- 20 A. Okay. It does appear that way.
- 21 Q. Have you seen this e-mail before?
- 22 A. I saw it in collecting stuff for production.
- 23 Q. Okay. So you didn't see it on or about
- 24 November 21st, 2023?
- 25 A. I did not. I think that it might have been forwarded

- 1 to me. I -- I think I saw this, the content of this e-mail.
- 2 I didn't access it through the web -- through the e-mail
- 3 address or the e-mail account. I believe that Mr. Solomon
- 4 had forwarded it to us.
- 5 Q. Okay.
- 6 A. So -- and that's why I said I wasn't sure if this
- 7 message came from a form submission or if this was from a
- 8 direct e-mail. This appears to be a direct e-mail to me.
- 9 Q. Right. You think that Mr. Solomon would have
- 10 forwarded this to you?
- 11 A. Yes. Me and Lucy, I believe at some point. I don't
- 12 know if immediately. I don't know how frequently he was
- 13 checking the inbox, so...
- 14 Q. Right.
- 15 A. But I -- I vaguely recall this message because I
- 16 found it kind of funny, to be honest.
- 17 Q. Why was it funny?
- 18 A. Because we don't have any mechanism to accept
- 19 donations --
- 20 Q. Right.
- 21 A. -- or contributions, and so obviously we looked to
- 22 see who this person was. And then they seemed -- appeared
- 23 to have some affiliation with the plaintiff, so it -- it
- 24 seemed to us like it was kind of a strategically worded
- 25 e-mail to create problems potentially for us, and we kind of

- 1 ignored it, really.
- 2 Q. You said she had some -- it appeared she had some
- 3 connection to the plaintiff?
- 4 A. Yes. It appeared that she had some connection to the
- 5 plaintiff at one of the state levels, but I didn't really
- 6 dig too deeply. So it's not something that I can say with
- 7 certitude, but it was enough for at least a circumstantial
- 8 conclusion that this was somebody that was associated with
- 9 the plaintiff and had a relationship with the plaintiff.
- 10 And so the wording to us just seemed like it was someone
- 11 trying to set something up, and so we just ignored it
- 12 because we have no mechanism to take donations or
- 13 contributions and --
- 14 Q. Right.
- 15 A. So...
- 16 Q. So let me unpack that a little bit. So you have a
- 17 specific memory of Mr. Solomon sending this e-mail to you.
- 18 A. That's what I'm saying is I recall this -- the -- the
- 19 copy of this --
- 20 Q. Yeah.
- 21 A. -- like, e-mail. I don't recall -- like I said,
- 22 the -- the thing that I was not familiar was whether it
- 23 originated as a field in a form or if it was an e-mail.
- 24 Here I see this looks like it was a direct e-mail. One,
- 25 there's different ways someone could interpret that. As

- 1 someone who works in this space of, like, having forms on
- 2 websites, whether it's, like, petition your governor to,
- 3 like, you know, protect water, whatever.
- 4 The thing is it's quite common that you get
- 5 spurious and -- and, like, sometimes deprecating contact --
- 6 like responses. So I'm not unfamiliar with this as a
- 7 routine practice of, like, just people in the political
- 8 space. So, yeah, I mean, my immediate reaction is someone
- 9 with experience in this field, this was someone being, like,
- 10 antagonistic and setting somebody up.
- 11 Q. So what -- what evidence did you have to support that
- 12 conclusion?
- 13 A. Evidence, that's what I was just saying, it's --
- 14 that's circumstantial. But when I looked her up, it looked
- 15 like there was some potential connections between her and
- 16 the plaintiff and -- so the fact that she's, like, trying to
- 17 say that she wants to end a contribution that she's not
- 18 making to us, like, I don't -- like the thing that I would
- 19 assume or that I did assume is that it's to substantiate
- 20 some kind of, like, confusion argument or that someone has
- 21 had financial harm from, like, some degree of confusion.
- 22 But, again, that's not something that I would be
- 23 unfamiliar with.
- 24 Q. So did you contact Ms. Wadsworth-Brown?
- 25 A. No.

1 Q. To your knowledge, has anyone contacted her about
 2 this e-mail?
 3 A. No.
 4 Q. Is it possible that she was actually confused, and
 5 that she has donated money to my client, No Labels, and was
 6 contacting your website because she had thought your website
 7 was my client's website?
 8 A. We could -- -- if we talked about everything that's
 9 possible, it would be a long conversation, so I...
 10 Q. But do you deem that to be an impossible scenario?
 11 A. I would say it is not impossible. But I would just
 12 say, in my experience, that's how I read it, and that's how
 13 I still read it now, so... even if it's wrong, like it's --
 14 there's no contribution, there's nothing to refund. I'm not
 15 in, like, a customer service business here. I'm not trying
 16 to, like, maybe her feel like she's being responded to, that
 17 is not my goal and that's not how I'm spending my time,
 18 so...
 19 Q. Okay. Are you aware of anyone else that -- that
 20 exhibited, at least facially, any confusion between the
 21 defendant's website and my client, No Labels?
 22 A. The only thing that I've encountered was from the
 23 declaration -- declarations that were filed. And -- and
 24 even that was, again, from someone who had a relationship
 25 with the plaintiff. And so it feels connected and -- and

1 feels like it validates this theory, from my perspective.
 2 Q. So you think Dr. Love, who submitted a declaration
 3 under oath under the penalty of perjury was not, in fact,
 4 confused?
 5 A. I'm not saying that I am making a judgment about
 6 whether or not she is being honest. I think that it is
 7 suspicious. But that's my -- I'm allowed to have reactions
 8 to things that, you know, so...
 9 Q. Right. Did it occur to you at any point in time when
 10 you were registering the domain name for NoLabels.com and
 11 building and designing the website and lifting images off
 12 the -- sorry, being inspired by images off the no -- the No
 13 Labels website, and using No Labels in your Google AdWords
 14 campaign, did it occur to you that some people might
 15 actually be misled into believing the defendant's website
 16 had some connection to my client, No Labels?
 17 A. I mean, it's always a possibility. I think that one
 18 of the -- one of the greatest problems for American
 19 democracy is a lack of voter education, unfortunately. So
 20 confusion happens in every campaign. So, yeah, of course
 21 it's possible.
 22 We intentionally use language, though, that we
 23 intended to separate ourselves, to a degree, from the
 24 plaintiff in that we talked about, like, the parties,
 25 candidates, things that the plaintiff was specifically not

1 doing.
 2 And so, yes, we were trying to engage with a
 3 community that was familiar with the plaintiff, and
 4 understood the plaintiff's, like, larger ideological
 5 presentation. But, no, we were -- like, yeah, it's always
 6 possible, people can be confused.
 7 So once we had the lawsuit, even before there
 8 was any temporary restraining order, like, we quickly put up
 9 a -- like a large disclaimer up to -- to, like, clarify that
 10 it is not the plaintiff's website.
 11 Q. Right. Except the disclaimer said NoLabels.com is
 12 not affiliated with nolabels.org, right?
 13 A. I don't remember the exact verbiage. That sounds
 14 close to right, yeah.
 15 Q. Doesn't someone have to know what -- which website is
 16 which in order for that to make any sense at all?
 17 A. I mean, I -- I feel like you always have to have
 18 context to understand what something means. Like, it's hard
 19 to understand the meaning of anything without context.
 20 Q. Did -- let's take a look at the next page, R52.
 21 That's an e-mail from someone named Mark Shapeton.
 22 Do you see that?
 23 A. Un-huh, yep.
 24 Q. So -- and when you read it at the time, how did you
 25 react to the fact that someone was saying, How can I help No

1 Labels and President Trump?
 2 A. No reaction.
 3 Q. No reaction?
 4 A. No.
 5 Q. Okay. Can you help No Labels and President Trump at
 6 the same time?
 7 A. Potentially. It depends on, one, is -- like, I don't
 8 know all of the objectives of the plaintiff. And at this
 9 point, we had a pretty limited scope of what we were trying
 10 to do, so that's why we ignored it. It really doesn't have
 11 relevance to us, so...
 12 Q. But you ignored the one below it too where he says
 13 that he's resending this and he wants to join No Labels?
 14 A. Yep.
 15 Q. You ignored that?
 16 A. Yeah.
 17 Q. So this --
 18 A. We ignored all of these.
 19 Q. So this is a person who is expressing interest in the
 20 organization that you said --
 21 A. Un-huh.
 22 Q. -- you were eagerly looking to grow and to do it
 23 quickly because of an election coming, right?
 24 A. Yes.
 25 Q. And here that's a guy saying count me in?

- 1 A. Un-huh.
- 2 Q. Right?
- 3 A. Yeah.
- 4 Q. And you ignored it?
- 5 A. Yes.
- 6 Q. Why?
- 7 A. Well, it's -- one, it's not enough mass at this
- 8 point, so...
- 9 Q. Earlier we were looking at that e-mail from Donna
- 10 Wadsworth-Brown, do you recall that? I'll just show it to
- 11 you.
- 12 A. Yeah.
- 13 Q. Okay. You testified that your -- to the best of your
- 14 memory, you thought, when you saw this e-mail, that this was
- 15 essentially a set up e-mail, right?
- 16 A. Yeah, it looks spurious to me. And the reality is,
- 17 as I said, it's not uncommon to have that happen when you
- 18 have an open forum with political websites and other things,
- 19 so, it's pretty common.
- 20 Q. Right. And you specifically thought that she had
- 21 some connection, some affiliate with my client, No Labels,
- 22 right?
- 23 A. Yes. As I said, I don't have, like, concrete
- 24 evidence, it was speculation like, kind of a -- was the --
- 25 like circumstantial, like, assumption that she has some

- 1 relationship with someone in the plaintiff's universe.
- 2 Q. Why did you think that someone in the plaintiff's
- 3 universe, to your use term --
- 4 A. Un-huh.
- 5 Q. -- would be interested in causing mischief with your
- 6 website?
- 7 A. It's what I would do if I was on the other side,
- 8 honestly, is I would do things similarly.
- 9 Q. Can you tell me if Plaintiff's 6 is a true and
- 10 accurate screenshot or screen capture from Defendant's
- 11 website that used to be at NoLabels.com?
- 12 A. It looks like it.
- 13 Q. Same question for Exhibit 7?
- 14 A. I believe so, it looks more reflective of what I
- 15 recall.
- 16 Q. Okay. And same question for Exhibit 8, is that a
- 17 true and accurate screenshot of a -- an excerpt from the
- 18 NoLabels.com website?
- 19 A. I believe so. And then that shows where the e-mail
- 20 address was, so...
- 21 Q. Okay. This -- Exhibit 9, Plaintiff's 9 is an exhibit
- 22 that we were provided earlier today. All right. So let's
- 23 look at Exhibit 9.
- 24 A. Un-huh.
- 25 Q. Can you just describe generally what it is we're

- 1 looking at and then we'll talk specifics?
- 2 A. Yeah, so this is a printout, it looks like a -- from
- 3 the -- kind of like real quick concept sketch of what I
- 4 thought we could do as a website initially, when I was
- 5 trying to pitch the concept to the American Patriot Project,
- 6 so...
- 7 Q. So this was a document that you created on your own?
- 8 A. I created this, yes.
- 9 Q. Okay. Did you have any input from anyone else?
- 10 A. I think at a point I got input from Lucy Caldwell on
- 11 this. And this was -- like I said, this was to really
- 12 present to Joshua Silver, partially to -- well, the intent
- 13 was to get his buy-in for the project.
- 14 Q. Did you create this after you had realized that
- 15 NoLabels.com, the domain, was available?
- 16 A. Oh, yes, absolutely.
- 17 Q. Okay. Did you create this after the domain had been
- 18 secured by American Patriot Project?
- 19 A. It would have been pretty close to concurrent but it
- 20 might have been slightly after, so...
- 21 Q. Do you -- do you think this was an effort by -- by
- 22 you to -- to persuade APP to -- to go forward with the plan
- 23 to secure the NoLabels.com domain, or was this a plan after
- 24 the domain has been secured to -- as far as what the site
- 25 could look like and -- and could do?

- 1 A. This -- like regardless of whether it was concurrent
- 2 or not, the intent was to have this sell the -- like after
- 3 the securing of the domain, to sell, like -- that this could
- 4 do a number of different things that I felt Joshua Silver
- 5 and the American Patriot Project would be interested in.
- 6 Q. Okay. Did you make this available to Mr. Silver?
- 7 A. Yes.
- 8 Q. Okay. What feedback do you recall Ms. Caldwell
- 9 giving you about this document?
- 10 A. Mostly to, like, alter some of the initial tone,
- 11 so... so she felt that, like, some of the initial concepts
- 12 were too -- leaning too far into that space.
- 13 Q. Leaning too far into which space?
- 14 A. Like -- apologies. Leaning too far into -- I guess
- 15 like the colloquial would be like a dog whistle, so...
- 16 Q. Okay. Just so that we can understand the content of
- 17 this document better. NL is an abbreviation for No Labels,
- 18 right?
- 19 A. In this context, yes, it's shorthand. Yep.
- 20 Q. And it's an abbreviation for my client No Labels,
- 21 right?
- 22 A. No, it is not.
- 23 Q. What is it an abbreviation for?
- 24 A. The one place where the plaintiff would be identified
- 25 would be in the box NL.org.

- 1 Q. NL.org?
- 2 A. It just says NL.org there, but the idea being that if
- 3 at some future point there was, like, the potential to
- 4 collaborate, that that would be where a linkage is. The --
- 5 you'll see different colors on this sheet; the green were
- 6 things that maybe we thought would be useful initially, and
- 7 the gray were things that -- potentially, over time. And
- 8 all of that wound up truncating just to the home page
- 9 really. I think maybe there was a contact page and a --
- 10 Q. How would you characterize it?
- 11 A. I would characterize it as a pitch deck to a
- 12 potential, like, funder and vendor.
- 13 Q. Okay. Pitch deck for what could be done with
- 14 NoLabels.com?
- 15 A. As a potential utilization of the asset, the domain,
- 16 yes.
- 17 Q. Okay. So let's look at the second page?
- 18 A. Un-huh.
- 19 Q. It says NL.com style guide?
- 20 A. Un-huh.
- 21 Q. NL.com is the defendant's website, right?
- 22 A. Yes, it is the defendant's website.
- 23 Q. So these were the colors and the styles that you were
- 24 proposing be used for NoLabels.com, the website?
- 25 A. Yes, this was the kind of initial -- as I had

- 1 mentioned earlier, conceptualization of matching the style
- 2 of the plaintiff, yes.
- 3 Q. Matching the style of the nolabel.org website?
- 4 A. Yes.
- 5 Q. And I think you testified earlier, "problem solver"
- 6 is a term associated with my client No Labels, right?
- 7 A. Yes, I'm aware of that.
- 8 Q. Okay. Second page, the top, it says "home page."
- 9 Do you see that?
- 10 A. Yes.
- 11 Q. And on the right there's a picture of former
- 12 President Trump, do you see that?
- 13 A. Yes.
- 14 Q. Okay. So this one says the -- and I'm going to --
- 15 I'm going to -- when I see "NL," I'm going to say No Labels,
- 16 okay?
- 17 A. Okay.
- 18 Q. So this says, "The NoLabels.com home page should
- 19 feature language and imagery that mirrors nolabels.org,"
- 20 right?
- 21 A. Un-huh.
- 22 Q. That's consistent with what you testified earlier,
- 23 right, that you wanted -- you wanted your site to mirror --
- 24 A. Yep.
- 25 Q. -- the language and imagery of my client's website,

- 1 right?
- 2 A. Yes.
- 3 Q. We handwrote page numbers on there, okay, so we're on
- 4 page 3 now. You go on to write, "The nolabels.com home page
- 5 will display problematic but real No Label imagery, such as
- 6 Trump speaking at a No Labels event, right?"
- 7 A. Yes.
- 8 Q. What did you mean by "problematic but real No Labels
- 9 imagery"?
- 10 A. Well, again, like I said, this is to pitch to the
- 11 American Patriot Project.
- 12 So Joshua Silver, I understand his -- his
- 13 disposition towards the plaintiff -- and I know that he
- 14 thinks that the plaintiff and the Unity Ticket is incredibly
- 15 problematic. He sees the -- the Unity Ticket as a project
- 16 that will hand the keys to President Trump -- to former
- 17 President Trump once again.
- 18 And so I know that appealing to him for
- 19 continued funding means presenting him with the idea that we
- 20 associate the plaintiff with President Trump.
- 21 Q. Okay. When you use the word "problematic" who are
- 22 you referring to, problematic to whom?
- 23 A. Problematic to the general public.
- 24 Q. Okay.
- 25 A. So...

- 1 Q. Okay. But then you said, "but real No Labels
- 2 imagery, problematic but real No Labels imagery," as to the
- 3 imagery, that reference to "NL" is a reference to my
- 4 client's imagery, right?
- 5 A. Correct, that is the plaintiff's imagery.
- 6 Q. Okay. Such as Trump speaking at a No Labels event
- 7 and that's consistent with the picture you have to the
- 8 right, correct?
- 9 A. Yes. The idea that it's not inherently the
- 10 plaintiff's property, but imagery of individuals associating
- 11 with the plaintiff attending events -- events hosted by the
- 12 plaintiff, that kind of thing, so, yes.
- 13 Q. Okay. You go on to say:
- 14 "The language will reflect nolabels.org," that's
- 15 my client's website, right?
- 16 A. Un-huh.
- 17 Q. -- "while including overt christo-nationalist dog
- 18 whistlers, for example, No Labels now has ballot access in
- 19 14 states with support in 88 counties, right?"
- 20 A. Yes.
- 21 Q. Explain what that means, please.
- 22 A. Yes, so as I said, this is one of the things where
- 23 Lucy Caldwell's advice was to alter the rhetoric.
- 24 One of the -- one of the ways that we engage
- 25 with folks on the right in persuasion is using dog whistles

1 that other people wouldn't inherently recognize, but would
2 send a message to them that they have found their community,
3 so it -- it's a way to short-circuit credibility
4 establishment.

5 So the concept here that we didn't actually
6 utilize was using terms like, "1488," and things that would
7 be recognizable to a more far right leaning audience.

8 Q. When you say "far right," you're talking about white,
9 while nationalist dog whistles, right?

10 A. Yes, sometimes. So this is one example of that. I
11 mean, the unfortunate reality of a lot of the political work
12 I do is you have to have a -- an honest understanding of the
13 prejudices in our culture.

14 So I'm often looking -- like, racism is
15 incredibly prevalent in American culture from my
16 perspective. Misogyny, when I've worked on projects trying
17 to stop voucher programs in different states, I have
18 leveraged everything from Islamophobia to fear about
19 immigrants getting access to public funds for private
20 schools.

21 So using language that resonates with
22 problematic audiences to get them in the door so that you
23 can then deliver a certain message to them is unfortunately
24 a practice that you have to sometimes have to engage in.

25 Q. Have you ever seen racist dog whistles like the one

1 Q. Why would Mr. Silver be interested in painting the
2 plaintiff as a right-wing shadow operation?

3 A. I mean, you would have to ask him that. But I know,
4 like, how he talks about the plaintiff and -- and his
5 concerns but, like, where that originates, I can only guess.
6 Like, I mean, I can make educated guesses, but that's all it
7 would be.

8 Q. Okay. You said you know how he talks about them, how
9 does he talk about them?

10 A. In limited context, it's not something that dominates
11 a lot of your conversation, but he thinks that it is a
12 dangerous project that will threaten democracy.

13 Q. And he would like to stop it, correct?

14 A. Joshua Silver would, yes.

15 Q. You go on to write, "Examples would be by fixating on
16 red meat issues that can be fixed with the unity of real, in
17 quotes, 'Americans' such as immigration, welfare waste, war
18 spending in Ukraine and possibly anti-abortion messaging."

19 What did you mean by that?

20 A. That's the same as the dog whistles, these are just
21 additional types of dog whistles. These are maybe softer
22 than some of the earlier ones, so...

23 Q. Okay. Next page, page 5 --

24 A. Un-huh.

25 Q. -- No Labels vision page.

1 you propose here, actually on the nolabels.org?

2 A. No, I have never seen anything like that on the
3 plaintiff's website and that's why -- we're not talking
4 about -- people we're talking about, their -- the
5 plaintiff's language and... so like adding to it, so
6 including additional things.

7 Q. Right.

8 The next page, page 4, "About NL page, about No
9 Labels page --"

10 A. Un-huh.

11 Q. You say, "This is a real opportunity for us to mirror
12 the nolabels.org language while also framing the entire No
13 Labels project as a right-wing shadow effort by crafting
14 language that looks like it's coming from No Labels as a
15 right-wing shadow group."

16 What did you mean there?

17 A. Yes, this is to say that the -- that this -- the
18 domain that we purchased, NoLabels.com, could be used to
19 present the plaintiff as a right-wing shadow effort, so
20 leaning into things that I knew were important to Joshua
21 Silver that, like, he was -- like I said, he was very
22 worried about Trump, the -- the revelations about Harlan
23 Crow's funding of the plaintiff, things like that, primed
24 Josh to think that there's a way to paint the plaintiff as a
25 right-wing shadow effort.

1 "This is a real opportunity for us to mirror the
2 nolabels.org language while seeing what a No Labels world
3 would look like."

4 What does that mean?

5 A. I mean, this, again, which just says that we could
6 utilize the asset of the dot com domain to -- to create --
7 to lean into the idea that it is a right-wing shadow effort
8 interested in a world that looks like a right-wing utopia.

9 Q. You go on to say, "This is such an easy chance to
10 describe pre-civil rights America as the utopia, throwing in
11 lots of references to western civilization and culture and
12 the degradation of society as we've gotten more divided by
13 radical elements and we all know who those elements are."

14 What does that mean, "who those elements are"?

15 A. Well, this is, again, the same thing. This is
16 leaning into the language of the -- the right, again, trying
17 to move those -- to capture those people.

18 The idea is that even if you look at, say, the
19 DeSantos campaign that ended or the Trump campaign, the way
20 that they're engaging with their base is talking about the
21 United States having been a better country pre-civil rights
22 and they talk about the legacy of western civilization and
23 culture. This is, like, far-right language and stuff this
24 they would recognize, so...

25 Q. And this is what you were proposing to Josh Silver

1 for the use of NoLabels.com, right?

2 A. Correct.

3 Q. The next page, page 6, nolabels.org page and, again,

4 nolabels.org is my client's website, right?

5 A. Un-huh.

6 Q. "We should keep some things really close to the

7 actual Nolabels.org page, and identify the No Labels team as

8 probably one of the places to do that."

9 First, who is the No Labels team? Why did you

10 want to -- why were you proposing that there be a page on

11 NoLabels.com that would be really close to the actual

12 nolabels.org page and identifying the true nolabels.org --

13 excuse me, No Labels leadership team?

14 A. Well, over time, if there was a reason to more

15 closely associate then this would be where we would do that.

16 But, again, it was grayed out because we weren't looking

17 into doing this yet. It would have been premature.

18 Q. You think that the proposal you were making, which is

19 to come as close as you can to emulate the nolabels.org

20 website, but at the same time put things on that -- on your

21 NoLabels.com page that would be anathema to No Labels and

22 nolabels.org you think there was going to be, at some point

23 in the future some opportunity to collaborate together?

24 A. First, I don't know that I would say that they are

25 anathema to the plaintiff, so I would say that that's not

1 how the plaintiff publicly presents themselves but that

2 aside, there is a -- this is a belief that people within the

3 plaintiff's organization and even some key leadership are

4 interested in changing direction.

5 And so there's conversations happening around

6 that, but this is too premature for that.

7 Q. Okay. But your -- your objective long-term was to

8 have there be a merger of my client, No Labels, and the

9 folks who are behind NoLabels.com?

10 A. To potentially change the -- the focus of the

11 plaintiff away from the ballot access in the way that they

12 were going about it and then build a different type of

13 community, yes, so...

14 Q. Okay. And you thought that an effective way to do

15 that would be to make it look like your website was No

16 Labels' website at nolabels.org, but to include in it items

17 and -- and information that would appeal to right-wing

18 elements?

19 A. Yeah, this isn't the sole, like, strategy; this is

20 just one, like, finger.

21 Q. Okay. Next page, page 7. "No Labels in the news

22 page."

23 A. Un-huh. So the idea is that they -- separately,

24 there are groups that are looking to promote problematic

25 stories for the plaintiff. So this would be a place where

1 if there is stuff that is reflective that way, then, that

2 could be hosted here, so...

3 Q. Okay. What does -- what did you mean when you wrote

4 "anti-No Labels work"?

5 A. Well, obviously, I'm looking for quick funding. I

6 know that -- like I said, any time you set up a third party,

7 there's people who are going to be inherently opposed to

8 that, and part of the process of moving quickly is to find

9 out where the fastest, like, source of support can come

10 from.

11 So, I mean, it's something that you see -- I

12 mean, like, I -- I think an easy example would be like Ford

13 motor vehicles in World War II selling trucks to the Germans

14 and the Americans, like, you look for funding where funding

15 can come from sometimes, whether you're aligned with the

16 funders or the project.

17 Q. What groups are you referring to then?

18 A. "Groups," what do you mean?

19 Q. Yeah, with respect to the anti-No Labels work.

20 A. Oh, there's groups that -- I mean, even stuff that

21 the plaintiff identified in, like, a third way. I mean, I

22 don't know, there are lots of groups out there that are

23 opposed to No Labels, as well as just the Democrat party

24 itself.

25 Q. You go on to say, "We can even add No Labels

1 commentary about the news hits that just highlights the

2 terrible features of No Labels with each post if there is

3 capacity."

4 A. Yep.

5 Q. What did you mean by that?

6 A. Just that we could frame news stories however we

7 want. And, again, like, for people who don't like the

8 plaintiff, this is an extra way that you could, like, create

9 a negative frame for the plaintiff.

10 Q. Page 8 of this document, No Labels around the US

11 page, and you write, "This is where we can highlight all the

12 crazy organic and inorganic No Labels candidates as we

13 celebrate the growing movement around the country, maybe

14 even have a heat map or something."

15 A. Un-huh.

16 Q. Can you explain that please?

17 A. Yeah, so -- well, it's -- it's helpful to go to the

18 next sentence and then just link them because they

19 contextually go together. The idea is that some of the

20 fears that -- that people who are opposed to the plaintiff's

21 work have is that once they create that ballot line, this

22 ballot access, that it becomes kind of uncontrollable, and

23 so the idea is to -- for -- in this strategy, would be to

24 demonstrate how little control the plaintiff has over their

25 ballot lines in the hope that they would turn away from the

1 strategy, so leading back to potentially, at some point,
 2 turning the plaintiff in a different direction.
 3 Q. Can you tell me how it's not accurate?
 4 A. Because you're asking me what my intentions were.
 5 This is how I'm trying to sell it to someone who I know has
 6 a hostile disposition towards the plaintiff.
 7 Q. Okay. Why would you want to sell Josh Silver on
 8 something that you didn't personally believe in?
 9 A. I'm not saying that, like, I completely feel -- so my
 10 personal goal was to leverage this into a space where we
 11 could actually capture voters and then insert messages into
 12 that captured community. But to get there, I needed people
 13 to help me build a structure, so what I needed was funding
 14 from people who don't like the plaintiff. I also personally
 15 don't think that the plaintiff's larger objectives are
 16 ideal, but I don't have the same hostility towards them
 17 that, say, Joshua Silver has.
 18 He feels they're, like, a threat to democracy,
 19 and I feel like that ship might have sailed, so...
 20 Q. Who ultimately had control of the content of the
 21 website, you or Josh Silver?
 22 A. At this point, ultimately, Josh Silver would, but it
 23 was delegated to me so much that, as you can see, the actual
 24 content of the website is not reflected in this document or
 25 from this document.

1 Q. Next page, page 9 --
 2 A. Un-huh.
 3 Q. -- POTUS nominees page, that stands for President of
 4 the United States, right?
 5 A. Yes.
 6 Q. And you say, "This will be a really fun page. Here
 7 we can do profiles on any candidates we think would be
 8 off-putting national -- No Labels POTUS nominees and VPOTUS
 9 nominees along with bios made to look as problematic as
 10 possible for No Labels."
 11 A. Un-huh.
 12 Q. Right?
 13 A. Yes.
 14 Q. And the NLs referred to here refer to my client No
 15 Labels, right?
 16 A. Yes, this is the plaintiff.
 17 Q. Right. Did you include on -- on Defendant's website
 18 profiles of candidates that would be off-putting to No
 19 Labels in terms of the vice president and the presidential
 20 nominees?
 21 A. We never even got far enough to do that, so no.
 22 Q. You have two images of Donald Trump on there.
 23 A. Donald Trump was never going to be a nominee from the
 24 plaintiff, so -- the Donald Trump is to signal to people
 25 that would be in the base, right-wing people, who still feel

1 potentially disaffected by the former Republican party.
 2 Q. Okay. You go on to say, "We could potentially even
 3 include a running poll on the site to see who people want to
 4 see become the No Labels POTUS nominee/ticket, and then we
 5 can just rig our own poll to make it look as shit as
 6 possible."
 7 A. Yeah.
 8 Q. So can you explain that, please.
 9 A. Yeah. I mean, this is one of the reasons that
 10 people, like, come to me for ideas is because I often have
 11 ideas that are very unorthodox and out of the box, and this
 12 is one of those pitches to Josh that I knew that he would
 13 find compelling so that you could just -- once you control
 14 the domain and what it presents, you can say anything you
 15 want on it. It's -- I mean, there's nothing wrong with
 16 having a -- artificial poll results.
 17 Q. And then -- right. In fact, you can just rig the
 18 results that you want --
 19 A. Un-huh.
 20 Q. -- and make them look as shit as possible, right?
 21 A. That's not what that says. Yes, as in the polling,
 22 the potential ticket, yes.
 23 Q. Okay. And -- and you thought that would appeal to
 24 Mr. Silver?
 25 A. Yes.

1 Q. Did it appeal to him?
 2 A. Well, the American Patriot Project has funded the
 3 formation of the defendant and the running of the website.
 4 Q. Okay. Page 11, next page. The No Labels SCOTUS
 5 page, that's Supreme Court of the United States, right?
 6 A. Yes.
 7 Q. And you write, "People often put more weight into
 8 SCOTUS nominees than they do the POTUS, so I think we should
 9 make sure that people don't fail to understand the SCOTUS
 10 ramifications of a No Labels ticket," right?
 11 A. Yes, absolutely.
 12 Q. And you go on to say, to write, "Here we can really
 13 put the most fucked-up SCOTUS decisions from 1950s and
 14 earlier and herald them as a time of bipartisanship and
 15 unity and talk about how great a future we could have with
 16 nominees picked by the shitbags at No Labels."
 17 A. Yes.
 18 Q. What did you mean by that?
 19 A. Well, that's the -- so again, part of the pitch is,
 20 like, we could make this look as problematic as possible for
 21 the plaintiff. So one of the ways to do that is to
 22 highlight how the Supreme Court would actually be impacted
 23 by a Unity Ticket in a negative way.
 24 Q. Okay. In looking back at this document, I mean, are
 25 you are -- you proud that you wrote this stuff?

1 A. I mean, it's not a matter of pride. This is a lot of
2 what my work looks like, so -- I actually have a lot of work
3 product that looks similar.

4 Q. Why did you use the phrase "shitbags at No Labels"?

5 A. Because I knew that that would appeal to the
6 audience. I write for my audience.

7 (End of video deposition.)

8 MR. KRAVITZ: And, Your Honor, the next witness
9 we're going to play, which will be a considerably shorter
10 clip, will be from Josh Silver. As you just heard, he's the
11 principal of the American Patriot product -- Project, excuse
12 me, and he funded the NoLabels.com scheme.

13 (Video deposition was played for the jury as
14 follows:)

15 Q. Can you tell me what your association is with --

16 A. I am the principal --

17 Q. -- the American Patriot Project?

18 A. At the -- it's a 501(c)(4), and I'm the principal at
19 that entity.

20 Q. Was APP involved in NoLabels.com?

21 A. Yeah, APP provided funding that was used to purchase
22 the website.

23 Q. Purchase the domain?

24 A. Yeah.

25 Q. Okay. So you don't have an opinion about that

1 organization and its mission?

2 A. Yeah, I -- I do have an opinion. I -- I -- I think
3 that the notion of enhancing moderation and competition in
4 politics is a worthy one. It's the same one that I've been
5 fighting for for years. However, I believe that trying to
6 find middle ground between two pretty fundamentally broken
7 political parties is misguided.

8 And I think that more recently, No Labels'
9 effort to field a so-called compromise candidate in the 2024
10 election, when arguably the most extreme and dangerous
11 presidential candidate our country has ever seen is the
12 Republican presumptive nominee, is probably the dumbest
13 political strategy I've ever seen. And it goes actually
14 antithetical to trying to foster moderation because it
15 nearly guarantees that Donald Trump will win the
16 presidential election this November, and, therefore, it is a
17 terrible idea.

18 Q. So fair to say you're not a fan of Donald Trump as a
19 political candidate?

20 A. That is a fair statement.

21 Q. Would it be fair, then, to say that you don't support
22 No Labels' Unity Ticket?

23 A. Yes.

24 Q. Given that view, would it be fair to say that you are
25 not in favor of No Labels succeeding in its efforts to put

1 forward a Unity Ticket in 2024?

2 A. Yeah, that's correct. It is the reason why I was
3 willing to support the effort that Charles came up with, his
4 idea.

5 Q. I want to ask if you had discussed with Mr. Siler or
6 Ms. Caldwell, or anyone else for that matter, ways to impede
7 No Labels and its Unity Ticket prior to the NoLabels.com
8 project coming to your attention.

9 A. But I'm sure that I was privy to and was part of
10 brainstorming sessions to talk about what we might be able
11 to do to make sure that they don't succeed in enabling
12 Donald Trump to get elected.

13 Yeah, I mean, I'm sure that I brainstormed with
14 Lucy and Charles about ways that we might be able to
15 decrease their chances of success with this so-called Unity
16 Ticket. It was not until Charles reached out to me and said
17 you're -- you know, I found NoLabels.com, and it's available
18 for \$10,000. That was the first thing I'd ever heard where
19 I was -- I thought that is a really smart idea.

20 Q. Did you consider just registering the domain No
21 Labels idea as "ridiculous.com"?

22 A. No, we did not consider that.

23 Q. Any -- anything like that where you actually state in
24 the domain itself what the objective of the website is?

25 Were you concerned at all in your mind that

1 people who visited your site could be confused believing it
2 was actually the real No Labels website?

3 A. I wasn't concerned about it.

4 Q. Mr. Solomon testified in sum and substance -- this is
5 not a quote -- he testified that the NoLabels.com website
6 would offer political commentary that was critical of No
7 Labels and inconsistent with the No Labels message.

8 A. No, because I wasn't -- it wasn't clear to me when
9 the site was being created that specifically criticizing No
10 Labels would be the goal. If you -- if you recall, if you
11 look at the text that I provided in my edit, it really was
12 not explicitly or implicitly critical of No Labels. So, no,
13 I did not understand that to be a central piece of the sort
14 of messaging goal.

15 Q. You say it was not explicitly or implicitly critical
16 of No Labels. It was more nuanced than that, right?

17 A. Yeah, it was.

18 Q. So I'm showing you Plaintiff's 54, which is
19 Bates-labeled 254.

20 Would it surprise you if Mr. Siler testified
21 that he very specifically chose these colors because he
22 wanted to emulate the nolabels.org color scheme?

23 A. Would it surprise me? No, I mean he's a -- he's a
24 hard-nosed operative. No, that would not surprise me. I
25 mean, for you to say Charles was -- was intentionally

1 looking to do something that was pushing on the edge or
 2 close up to the look and feel of the plaintiff's website,
 3 that would not surprise me.
 4 Q. You don't recall Mr. Siler discussing with you that
 5 the website was "a real opportunity for us to mirror the
 6 nolabels.org language while also framing the entire No
 7 Labels project as a right-wing shadow effort by crafting
 8 language that looks like it's coming from No Labels as a
 9 right-wing shadow group"?
 10 A. I wouldn't have characterized it as a shadow group,
 11 but I do think that the website did make nolabels.org -- it
 12 did make No Labels look to be more right wing.
 13 Q. Well, you remember seeing some e-mails using the
 14 e-mail address contact@nolabels.com?
 15 A. Yeah, I remember people fishing, trying to -- what
 16 clearly looked like people trying to engage us to figure out
 17 who we were, yes.
 18 Q. Who -- who is responding to you from
 19 contact@nolabels.com?
 20 A. I would assume it's Charles, but I don't know.
 21 Q. Showing you Plaintiff's 64. Exhibit 64 is from
 22 someone named Donna Wadsworth-Brown, and that's November 21,
 23 2023, sent to contact@nolabels.com.
 24 Do you see that?
 25 A. I do.

1 Q. Right. So this person, Donna Wadsworth-Brown, at
 2 this e-mail address, donnawbrown@aol.com.
 3 She writes, "I support your program but I'm
 4 simply not able to make a contribution each month. I did
 5 not know I was signing up for a reoccurring withdrawal.
 6 Please cancel my monthly contribution and confirm.
 7 "Thank you, Donna Wadsworth-Brown."
 8 A. Oh, I see. Yeah, so you are saying she thought that
 9 this was going to nolabels.org but it went to NoLabels.com.
 10 Q. Okay. But why don't you just assume for a moment
 11 that this woman was, in fact, confused, Donna
 12 Wadsworth-Brown, that she intended to contact my client, the
 13 plaintiff, No Labels, but instead accidentally contacted
 14 your website through contact@nolabels.com, would that have
 15 bothered you to know that this -- this person was, in fact,
 16 confused?
 17 A. Would it have bothered me? I don't -- I don't know.
 18 I don't know. It is a pretty abstract question. I really
 19 don't know if it would have bothered me.
 20 Q. So you are indifferent? Would it be fair to say you
 21 are indifferent as to whether NoLabels.com was causing
 22 people to be confused and to contact the wrong website?
 23 A. I'm somewhat indifferent, yeah.
 24 Q. Did it ever occur to you that the Google AdWords
 25 campaign that you funded for NoLabels.com would cause people

1 to go to your website instead of to the official No Labels
 2 website at .org?
 3 A. Yeah. I -- I assumed that could be the case.
 4 Q. Okay. Did you, in fact, assume that that would be
 5 the case?
 6 A. Yeah, I assumed that was likely that that could
 7 happen, yes.
 8 Q. Can you tell me what Exhibit 66 shows? It looks to
 9 me like the subject is, in fact, the finalized March 2024
 10 APP contract with Kelvin McIntyre, right?
 11 A. Correct.
 12 Q. And do I understand correctly that this is an
 13 agreement between APP and Kelvin McIntyre that effectively
 14 appoints him as the client for purposes of -- for purposes
 15 of the litigation against NoLabels.com Inc.?
 16 A. Yeah, this -- this -- this contract was given -- was
 17 given to me by Charles for execution. Again, I don't know
 18 the payee, but he set up this contract and asked us to
 19 execute it and make payment for the -- for the project.
 20 Q. Did it strike you as just a little curious that
 21 Charles Siler, who is the President of NoLabels.com Inc.,
 22 needed to find someone to pay to be the client for purposes
 23 of the lawsuit?
 24 I'm looking for you to help me understand is why
 25 did Charles Siler not himself qualify to be the client? Why

1 did he need to find a body double?
 2 A. I do not know.
 3 Q. So RepresentUs is a legal entity, correct?
 4 A. It is, of course.
 5 Q. It's also a federally registered trademark, right?
 6 A. Looks like, yes, it is.
 7 Q. Okay. It's also characterized as a movement
 8 throughout your website, right?
 9 A. Yes.
 10 Q. Do you --
 11 A. As part -- as part of a movement, yes.
 12 Q. Yep, part of a movement, absolutely.
 13 You might even say it is trying to lead a
 14 movement, right?
 15 A. Yeah.
 16 Q. Okay. Despite those three things, do you believe
 17 anybody has a hard time understanding that RepresentUs is
 18 one particular organization?
 19 A. Generally, no, I think that's -- that's an accurate
 20 statement.
 21 (End of video deposition.)
 22 MR. KRAVITZ: And, Your Honor, the next witness
 23 we will play for you is Stephen Solomon. Also a short clip.
 24 I do want to note for the record that with the
 25 assistance of the special master yesterday, we worked out a

1 deal, if you will, to redact both in the -- any exhibits
2 that are shown, and also to mute the audio, to essentially
3 anonymize one person's name.

4 We can -- we'll certainly make that even
5 available to you and to the Court, of course. But we did
6 that in the interest of trying to protect confidentiality
7 for that one person.

8 But Mr. Solomon, as you've heard now, is the
9 principal for Break Something. His company built the
10 website at NoLabels.com and he reacted to the content.

11 (Video deposition was played for the jury as
12 follows:)

13 Q. Were you aware of the plaintiff, No Labels, prior to
14 acquiring the NoLabels.com domain in the fall of 2023?

15 A. Yes.

16 Q. What is Break Something?

17 A. We are a political advertising agency.

18 Q. Are there any documents that define the scope of the
19 work that you were asked to do for them in connection with
20 NoLabels.com?

21 A. Any documents that exist on the scope would have been
22 over e-mail. There were some Google Docs; there were some
23 chats.

24 Q. You personally, Stephen Solomon, became the
25 registrant of the NoLabels.com domain, correct?

1 A. Un-huh.

2 Q. When Mr. Siler first -- first approached you about
3 acquiring the NoLabels.com domain, did that domain trigger
4 anything in your -- in your mind?

5 A. I kind of thought, like, oh, good get. But, like,
6 you know, I don't actually know. But, like, it seems clear
7 that the objective here was to make commentary on the
8 political work that No Labels was doing.

9 Q. When you say "commentary"?

10 A. Political commentary.

11 Q. Right. And are you talking about favorable
12 commentary or --

13 A. No, yeah, not -- not positive.

14 Q. Earlier you testified that you assumed Mr. -- you
15 assumed Mr. Siler was going to use the NoLabels.com domain
16 as an opportunity to make political commentary that would
17 not be favorable for No Labels, correct?

18 A. Yeah. I mean, I -- based on a bunch of assumptions,
19 so, like, I don't totally know what his motivations are at
20 any time, but, like, I know kind of where that group sits in
21 the world and what their objectives are and what they are
22 trying to do.

23 I had -- was assuming that it wouldn't be a
24 positive site or else it wouldn't have been something that
25 somebody would go out and spend that much money for. And

1 then when I got the copy, it was pretty clear what we were
2 trying to do.

3 Q. And what was clear about what they were trying to do?

4 A. Like -- I mean, I think, like, make an argument that
5 the work that No Labels is doing is potentially elevating
6 the wrong people. And, I don't know, make -- elevate some
7 of those bad things to the right people to kind of make them
8 a little bit less likely to go into something that No Labels
9 want.

10 Q. Did they tell you during that initial phone call that
11 they wanted the site to kind of emulate the look and feel of
12 the No Labels website?

13 A. Yeah.

14 Q. At some point, you were asked to create a website
15 that would emulate the look and feel of nolabels.org, right?

16 A. Yeah. I mean, I think it was, like, we wanted
17 something that was going to, like, make the best connection
18 and have, like, the best way to make our argument, like, the
19 least amount of friction.

20 Q. Do you recall at some point being told that the --
21 that the website being put up at NoLabels.com should use the
22 same color scheme as the website at nolabels.org?

23 A. Well, we got a bunch of graphics first that were in
24 the same color scheme so it was clear.

25 Q. Approximately how much money did Oak Collective bill

1 in connection with the work performed for NoLabels.com?

2 A. \$6,000.

3 Q. And was that \$6,000, approximately, paid?

4 A. Yeah.

5 Q. By whom?

6 A. The American Patriot Project.

7 Q. Do you recall just the sum and substance of the -- of
8 the slide deck?

9 A. Yeah. I mean, I don't know if we're talking about
10 the same slide deck, but I was given a slide deck that when
11 I tried to find it in our record search was a dead link that
12 had, like -- basically it felt like he was trying to build
13 the website in Google presentations with, like, lots of
14 descriptions about all of the things that he was trying to
15 do.

16 Q. Do you recognize Exhibit 10?

17 Do you recall seeing -- let me just direct your
18 attention to -- the Bates is number 256 at the bottom
19 right-hand side; do you see that?

20 A. If it wasn't this, it was this in some other format.
21 Like, this was definitely conveyed to me. I'm not sure it
22 was this page of this slide deck but, like, yes.

23 Q. Okay.

24 A. Yes, the vibes of this were communicated with me.

25 Q. And what are the vibes of this page?

- 1 A. That they want to use the imagery. That they want to
 2 show problematic but real imagery from No Labels. But,
 3 like, what -- if I was told to lift up problematic things
 4 with No Labels, I would pick up -- I don't know, the Donald
 5 Trump photos of him in front of the No Labels -- or the
 6 Problem Solvers Caucus. There were, like, a bunch of other
 7 people in images that they wanted to pick up. The guy in
 8 Arizona, this Tyson Draper.
- 9 Q. Did he ever suggest to you that he wanted the website
 10 that you were building for him to frame the entire No Labels
 11 project as a right-wing shadow effort?
- 12 A. Yeah, I have no idea. But that doesn't seem like an
 13 angle that we wouldn't take. It seems like -- I mean, I
 14 feel like that's a -- it's like an angle that would be on
 15 the table.
- 16 Q. Why do you think that?
- 17 A. Because it's -- it feels like some -- like an
 18 argument to me that we would make to -- like make our
 19 criticism of No Labels, like, more salient or reach a wider
 20 audience.
- 21 Q. Weren't you the guy on the receiving end of contact
 22 at NoLabels.com?
- 23 A. Only very kind of. I set up that info ad, but I
 24 didn't sign in until, like, the end of -- the end -- the end
 25 of January.

- 1 Q. But you monitor -- you monitored contact@nolabels.com
 2 for at least some period of time?
- 3 A. No, I logged in on like the 29th of January to find
 4 out -- like, I don't know why I needed to. But very
 5 recently, I logged in, I hadn't been logged in before that.
- 6 Q. At no point during the development work that you were
 7 doing for NoLabels.com did you think to yourself, I wonder
 8 if people are going to accidentally wind up on this website
 9 believing it would -- believing it to be nolabels.org or the
 10 No Labels website?
- 11 A. Yeah, I guess, like, one of the things that we're
 12 trying to thread -- or I guess the answer is no. But, like,
 13 the needle that we're trying to thread goes through that,
 14 and, like, I think that that's why we asked ourselves, does
 15 it have a disclaimer? Is the org real? And the answers to
 16 all those questions for us was yes.
- 17 Q. Did you become aware at some point that anyone had
 18 actually been confused by NoLabels.com, believing it was
 19 nolabels.org?
- 20 A. People get confused by all kinds of things that we
 21 put out online for, like, much more straightforward
 22 circumstances. So, did it -- was I given an alert of
 23 confusion? No.
- 24 Q. At some point you're told to -- to become the
 25 registrant for NoLabels.com, right?

- 1 A. Yeah, not asked, but, yeah.
- 2 Q. And at the time that happens, you're aware of the
 3 plaintiff in this case, No Labels, right?
- 4 A. Yeah, I know No Labels exists.
- 5 Q. And you were then subsequently told that they want
 6 you to build a website at NoLabels.com using the same color
 7 scheme as No Labels' official website, right?
- 8 A. Yeah.
- 9 Q. You were then told that -- well, you -- you draw the
 10 conclusion that the purpose of this website is going to be
 11 to provide unflattering political commentary about No
 12 Labels, the plaintiff?
- 13 A. Un-huh.
- 14 Q. Right?
- 15 A. Yeah.
- 16 Q. And at no point in time did you come to the
 17 conclusion that there might be people who come to this
 18 website, NoLabels.com, believing it to be the official
 19 website of my client, No Labels?
- 20 A. I have no idea. I think that, like, in the process
 21 of making political commentary, like, we oftentimes need to
 22 lift up the brands that we are critiquing. This is one of
 23 those cases.
- 24 Q. What does that mean, "to lift up the brands that
 25 you're critiquing"?

- 1 A. Use the brand -- like, clearly, we're using the No
 2 Labels brand to make the argument here and, like, I would --
 3 like, the confusion isn't a question that I'm asking myself,
 4 it's like not a concern of mine.
- 5 It's whether or not someone is going to go there
 6 and be able to draw the conclusions about NoLabels.com that
 7 we're trying to get them to draw, and in this case, it
 8 wasn't flattering.
- 9 UNKNOWN ATTORNEY: So I'm going to mark this as
 10 Exhibit 11.
- 11 Q. Did you ever see this e-mail before?
- 12 A. No.
- 13 Q. Your -- this is your -- it's your testimony, this is
 14 the very first time you've ever seen it?
- 15 A. Definitely the very first time.
- 16 Q. So if Mr. Siler testified that you forwarded this
 17 message to him, he would be mistaken?
- 18 A. Yeah, it must have been him forwarding it, logged in
 19 as that account.
- 20 Q. Okay. This is an e-mail from someone named Donna
 21 Wadsworth-Brown dated November 21st, 2023.
- 22 Do you see that?
- 23 A. Un-huh.
- 24 Q. And in this e-mail, she says, "I support your
 25 program, but I'm simply not able to make a contribution each

1 month. I did not know I was signing up for a recurring
 2 withdrawal. Please cancel my monthly contribution and
 3 confirm."
 4 A. Yeah.
 5 Q. Do you think Ms. Wadsworth-Brown meant to send this
 6 e-mail to NoLabels.com?
 7 A. Literally no idea.
 8 Q. Okay. But my question wasn't whether you were
 9 surprised by it, my question is: If it turns out that she
 10 testifies under oath that she mistakenly contacted the
 11 website you created, believing it to be associated with my
 12 client, the plaintiff here, No Labels, does that bother you?
 13 A. Yeah. I think that, like, you're, like, one, like,
 14 kind of my level of bothered, I don't think is relevant
 15 here.
 16 Getting something like this doesn't seem out of
 17 the realm of possibility, and not something that, like,
 18 would even raise flags. I think that it's, like, if it were
 19 NoLabels.com, I would respond to it, but, like, I'm not,
 20 and, like, it's not my job to manage the inbox.
 21 Q. So let me show you Plaintiff's 12. Can you tell me
 22 what it is?
 23 A. Conversation with --
 24 Q. This document bears a date of December 5, 2023. Can
 25 you just generally describe the substance of this e-mail,

1 this thread.
 2 A. An addition of a clarification of the website.
 3 Q. And Mr. Siler asked you or directed you to put some
 4 additional information on the -- on the website for this
 5 clarification, right?
 6 A. Correct.
 7 Q. And then puts a note below this clarification that
 8 says, "kind of defeats the purpose, huh?"
 9 A. Un-huh.
 10 Q. What did you understand that to mean?
 11 A. I don't know.
 12 Q. You don't know what he meant when he said that this
 13 clarification "kind of defeats the purpose"?
 14 A. Yeah, I don't -- I don't know, I didn't push him on
 15 it.
 16 Q. So just so I'm clear and just so the record is clear,
 17 the clarification says, "NoLabels.com is not affiliated with
 18 nolabels.org," right, response -- well, in connection with
 19 that clarification says, "kind of defeats the purpose, huh?"
 20 A. Yeah.
 21 Q. And you don't -- you don't have any idea what he was
 22 talking about?
 23 A. I mean, I don't know.
 24 Q. It's okay that you don't know. I'm asking you what
 25 you -- what you believe it to mean as you sit here right

1 now?
 2 A. I mean, I just don't -- I don't know.
 3 Q. Do you think he means that by saying, "NoLabels.com
 4 is not affiliated with nolabels.org," you're kind of
 5 defeating the purpose of the website, which is to suggest
 6 that NoLabels.com is affiliated with nolabels.org?
 7 A. I don't know.
 8 Q. All right. I'm showing you Plaintiff's 25.
 9 A. So this says that we were achieving 28 percent
 10 impression share when people were looking for No Labels.
 11 It's when somebody searches for No Labels, our search will
 12 show up.
 13 Q. Showing you Plaintiff's 44. You were providing some
 14 edits?
 15 A. Yeah. Yeah.
 16 Q. And then do you know what it was you were laughing at
 17 when you wrote "LOL"?
 18 A. No idea.
 19 Q. Do you remember what you were reacting to when you
 20 said, "I love this"?
 21 A. No idea. These were all the edits that were asked
 22 for.
 23 Q. So which is the part that was the LOL moment?
 24 A. I don't know, the whole thing.
 25 Q. The whole -- all these edits were funny?

1 A. The final product, I don't know, I mean, I don't
 2 know.
 3 Q. Showing you Plaintiff's 46.
 4 Do you think it was an accident or a coincidence
 5 that those colors are the same colors that are used on
 6 nolabels.org?
 7 A. Yeah, I don't know.
 8 Q. You don't know? So you think it's -- you think it
 9 might just be accident that Mr. Siler told you to use the
 10 same exact colors that were used on the nolabels.org site?
 11 A. And stranger things have happened.
 12 Q. Okay. So here, at the top, there's a -- there is a
 13 picture of Lincoln in sort of lavender and yellow hues,
 14 right, where is that from?
 15 A. I don't know, I think it's from the No Labels site.
 16 Q. Nolabels.org?
 17 A. Yes.
 18 Q. And at the bottom, there's one -- there's an image of
 19 Lincoln in -- would you agree those are pretty similar
 20 colors?
 21 A. They're pretty similar colors, yeah.
 22 Q. Would you agree that's a pretty similar image of
 23 Lincoln?
 24 A. Yeah, there's only one -- I mean, his other side, but
 25 there's only one Lincoln in the Lincoln Memorial. So if

- 1 you're going to take that picture, it is all going to look
 2 the same.
- 3 Q. Do you think that that was a coincidence, that those
 4 two images look similar?
- 5 A. I have no idea.
- 6 Q. And so there was a plan to spend more money on
 7 advertising?
- 8 A. There was a plan where we could -- or there was an
 9 opportunity to spend more money and, like, we had begun -- I
 10 don't know if it rises to the threshold of plan, but, like,
 11 it had been talked about, it could have happened.
- 12 (End of video deposition.)
- 13 MR. KRAVITZ: And, Your Honor, the next clip is
 14 of Nick Connors, also a short clip.
- 15 Mr. Connors works for No Labels, the plaintiff,
 16 the 501(c)(4) organization and he runs the National Ballot
 17 Access Program and coordinates the state affiliates.
- 18 (Video deposition played.)
- 19 Q. Mr. Connors, just continuing where we just left off,
 20 you were just asked by Mr. Billion whether there was
 21 anything else misleading about the NoLabels.com website.
 22 How about the domain NoLabels.com, do you think
 23 that was misleading?
- 24 A. Yes.
- 25 Q. How so?

- 1 A. I think it's very easy for people to get confused on
 2 exactly what the true website is. A lot of people associate
 3 dot com as an entity's specific website, so I see it's very
 4 easy for Americans or anybody to think that NoLabels.com was
 5 No Labels, the real No Labels actual website.
- 6 Q. And you were asked questions about Exhibit J.
 7 How about the colors, you can see that there are
 8 some colors associated with the NoLabels.com website, right?
- 9 A. Correct.
- 10 Q. Do those colors look familiar to you, anything that
 11 you're familiar with?
- 12 A. Yeah, we -- we typically -- No Labels typically uses
 13 yellow and purples.
- 14 Q. Okay. And how about the phrase "common sense
 15 majority," do you see that right above Donald Trump's
 16 picture?
- 17 A. Yes.
- 18 Q. Does that phrase "common sense majority" have any
 19 significance to you as an employee of No Labels?
- 20 A. Yeah, it's very closely associated with No Labels.
- 21 Q. So do you consider that misleading?
- 22 A. Yeah, that's associated with a fake website, yes.
- 23 Q. Okay. And then how about on the second page, do you
 24 see there is another picture of Donald Trump?
- 25 A. Yes.

- 1 Q. And this, if you squint hard enough, it says
 2 something like, "a No Labels leader." Do you see that?
- 3 "Want to be a No Labels leader," do you think it's
 4 misleading to put a picture of Donald Trump next to a --
 5 next to content that says, "want to be a No Labels leader"?
- 6 A. Yeah, I think it is highly misleading.
- 7 Q. Is the plaintiff, No Labels, aware of the state
 8 affiliate's use of the No Labels name in connection with
 9 their activities?
- 10 A. Yes.
- 11 Q. Does the plaintiff permit the state affiliates to use
 12 the No Labels name in connection with their activity?
- 13 A. Yes.
- 14 Q. Mr. Billion asked you several hypothetical questions
 15 about the bylaws and about the officer agreement. And I
 16 think one example that he asked you about was if Admiral
 17 Blair were to decide that he no longer supported No Labels
 18 and effectively wanted to hijack the No Labels party of
 19 North Carolina for some purpose that was inconsistent with
 20 the No Labels mission.
 21 Are you -- well, first, are you aware of that
 22 happening?
- 23 A. No.
- 24 Q. Okay. Are you aware of anything like that happening
 25 in connection with a No Labels state affiliate?

- 1 A. No.
- 2 Q. Are you aware of a single instance in which a No
 3 Labels state affiliate has taken any action with its name --
 4 with the No Labels name that No Labels found objectionable?
- 5 A. No.
- 6 Q. Are you aware of a single instance in which a state
 7 affiliate took any action with the No Labels name that the
 8 plaintiff, No Labels, found to be inappropriate?
- 9 A. No.
- 10 Q. Are you aware of a single instance in which a state
 11 affiliate took any action with the No Labels name that No
 12 Labels had not previously approved?
- 13 A. No.
- 14 Q. Has No Labels ever had to rebuke a state affiliate
 15 for using the name No Labels in a way that No Labels didn't
 16 want it to be used?
- 17 A. No.
- 18 Q. Do you have a view as to why the state affiliates
 19 have never made any use of the No Labels name that the
 20 plaintiff found objectionable?
- 21 A. Well, No Labels is in control of the conduct of the
 22 party officers and the state affiliates and in control
 23 through a number of mechanisms, party officer agreements,
 24 bylaws, and an understanding between the No Labels officers
 25 and No Labels national, that No Labels is control -- is in

1 control of the use of the name, the way the name is used, as
2 well as the conduct of the state affiliates and any officer
3 associated with them.

4 Q. Okay. And then lastly, you were shown a document
5 which was marked as Exhibit H, which is the Arizona bylaws.
6 I just want to direct your attention to the page that's
7 Bates Number NL 47 and under Section 2(b), that's
8 authorized activities -- first, let me back up.

9 Section 2(A) defines No Labels, Inc., as No
10 Labels.

11 And then looking at 2(b), subsection (ii) it
12 says -- one of the authorized activities is, "obtain ballot
13 access for candidates nominated by No Labels for the federal
14 offices of president and vice president."

15 Who is that No Labels in that reference there?

16 A. No Labels national.

17 Q. Okay. And what do you understand that to mean, that
18 phrase, "candidates nominated by No Labels"?

19 A. Candidates for the president and vice president of
20 the United States that are nominated by No Labels national
21 through its nominating process.

22 Q. And the last sentence in that paragraph 2(b) says,
23 "NL AZ."

24 What does that stand for?

25 A. No Labels Arizona.

1 Q. Okay. It says, "No Labels Arizona is not authorized
2 and shall not nominate, support, or oppose any candidate for
3 a state, county, municipal, school, or district office or
4 position. "

5 What's your understanding of that?

6 A. That the state affiliate is directed that it shall
7 not nominate, support, or oppose any candidate for any
8 office other than the president and vice president in --
9 which that is nominated through No Labels national
10 nominating process.

11 Q. Can you jump to NL 50, please?

12 A. (Complies.)

13 Q. Do you see section 6? And that says, "The
14 presidential and vice presidential nominees of No Labels
15 Arizona shall be the candidates nominated at the No Labels
16 national nominating convention."

17 What do you understand the phrase, "shall be the
18 candidates nominated at the No Labels national nominating
19 convention" to mean?

20 A. Will be that whoever comes out of -- whatever the
21 presidential ticket that comes out of the nominating process
22 will be the nominees listed on the Arizona state ballot
23 through the Arizona No Labels affiliate.

24 (End of deposition.)

25 MR. KRAVITZ: And, Your Honor, the next witness,

1 very short excerpt, is from Randy Smith, who is the chair of
2 the Florida No Labels state affiliate.

3 (Video deposition was played for the jury as
4 follows:)

5 Q. Were you provided with any particular portfolio or
6 job duties when you became a part of the organization?

7 A. Yes. I was to carry out the plan, which might
8 include signing documents, attending Zoom meetings for the
9 State of Florida. So --

10 Q. Okay.

11 A. -- not a lot of work.

12 Q. Tell me how else you know how to do your job.

13 A. Because I'm a member of the parent organization that
14 is doing everything, and it's -- it's like being a branch of
15 a company, and the company tells you how to do your job, and
16 you do your job.

17 Q. Okay. Fair enough.

18 How does the company convey -- to use your
19 analogy, how does the company convey to you how to do your
20 job?

21 A. Well, I signed the bylaws for the -- for the mandate
22 for the State of Florida.

23 Q. Un-huh.

24 A. And I sit in on Zoom calls with 50 other people
25 across the country doing the same thing.

1 Q. If I do click on the -- the website and fill out a
2 contact form, do you get that?

3 A. No.

4 Q. Where does it go?

5 A. To the people administering No Labels Florida. I am
6 the chair. I don't administer the website and -- and all
7 that.

8 Q. That's fine.

9 Who are those folks?

10 A. Nick Connors. Is Connors his last name? Yeah, yeah.
11 Nick Connors and No Labels' parent company, if you will.

12 Q. Okay. That's fine.

13 And then you also mentioned Nick Connors. What
14 is his relationship with No Labels of Florida?

15 A. He's with the plaintiff and handles the
16 administration for me for No Labels of Florida.

17 He organizes our Zoom calls, our quarterly
18 meetings. We sign an annual bucket. We have to have a
19 formal meeting to stay compliant with corporate formalities
20 in the State of Florida. So I don't handle that. Nick
21 Connors makes sure all of that happens.

22 Q. And you believe that their sole mission is ballot
23 access?

24 A. No Labels Florida -- my job is ballot access and
25 corporate formalities to follow the legal laws of getting a

1 ballot access in the State of Florida. That's -- that's No
 2 Labels Florida. And I'm doing that on behalf of the
 3 plaintiff, which is their mission also.
 4 Q. Who controls what the organization does?
 5 A. The plaintiff.
 6 Q. Okay. You are part of the plaintiff -- or your
 7 organization is part of the plaintiff?
 8 A. We don't operate independently. We have bylaws and a
 9 mandate. If we don't follow what those bylaws and mandate
 10 are, we will be terminated and replaced with somebody who
 11 will.
 12 Q. If you look at Exhibit C --
 13 So when it comes to the bylaws, they can -- your
 14 view is that they can be amended by the officers; is that
 15 correct?
 16 A. Yes, but if we amended them in a way that wasn't
 17 congruent with No Labels' directive, then we couldn't.
 18 Q. Okay. And how do you -- why do you say that?
 19 A. Because they would remove us. We do what they tell
 20 us to do. And if we don't, we'd be removed.
 21 Q. Were you personally involved in the
 22 signature-gathering process to get ballot access?
 23 A. I was on calls where they said they are going to get
 24 things signed. And we had a team of people doing it that
 25 was managed by Nick Connors and the plaintiff.

1 Q. And with respect to the website, did the plaintiff
 2 approve the website?
 3 A. Of course. You could say it's their website.
 4 Q. Do you have -- does No Labels Party of Florida have a
 5 licensing agreement for use of the trademark?
 6 A. It is my understanding that No Labels Party of
 7 Florida is authorized to represent their No Labels name and
 8 trademark.
 9 (End of video deposition.)
 10 MR. KRAVITZ: Your Honor, the next witness we've
 11 present by a very short video clip is Gail Wachtel. She's
 12 the share of the Arizona No Labels state affiliate.
 13 (Video deposition was played for the jury as
 14 follows:)
 15 Q. Is there anyone involved in signature collection to
 16 get the No Labels party on the ballot, to your knowledge?
 17 A. My understanding is No Labels National worked to get
 18 the signatures. And I had no knowledge of it.
 19 Q. How would No Labels Party of Arizona characterize the
 20 relationship between the party and No Labels?
 21 A. Number one -- I keep repeating, but it's the
 22 essential truth -- No Labels Arizona Party was created by
 23 national as part of the ballot access process.
 24 Q. Do you have any sort of agreement personally with No
 25 Labels that sets forth your obligations as the chair?

1 A. Yes.
 2 Q. I referenced earlier an agreement between you and the
 3 No Labels party. I'm going to pull that up.
 4 A. Un-huh.
 5 Q. Did No Labels, Inc. provide you with this agreement?
 6 A. It came from No Labels national.
 7 Q. Does No Labels Party of Arizona engage in
 8 fundraising?
 9 A. Not -- not that I know of.
 10 Q. Does No Labels Party of Arizona engage in any
 11 advertising?
 12 A. No.
 13 (End of video deposition.)
 14 MR. KRAVITZ: Your Honor, the next and
 15 second-to-last video clip is a very short one from admiral
 16 Dennis Blair. He is the chair of the North Carolina state
 17 affiliate of No Labels.
 18 (Video deposition was played for the jury as
 19 follows:)
 20 Q. How do you -- why do you believe that No Labels of
 21 North Carolina is allowed to use the phrase "No Labels" in
 22 its name?
 23 A. Because we are an affiliate of that 501(c)(4) No
 24 Labels organization. We were an organization established by
 25 No Labels. All of the legal analysis, all of the work to

1 gain ballot access was conducted by No Labels. We were set
 2 up as an organization that would carry out the mission of No
 3 Labels, which is to get on the North Carolina state ballot
 4 in November 2024 to put forward a third candidate for
 5 President and vice president should No Labels, the 501(c)(4)
 6 mother ship organization decide to do so. Un, as a
 7 practical matter, mark, we don't take any actions without
 8 checking with No Labels. We are doing the activities that
 9 will lead to that objection -- that objective that I stated
 10 for you. We are all volunteers, spending only part time on
 11 this project, and so our activities are done either at the
 12 request of or with the complete agreement of the No Labels
 13 organization 501(c)(4) organization in Washington.
 14 Q. When it comes to fundraising, other than with the
 15 plaintiff, does your organization coordinate fundraising
 16 with anyone? Third-party fundraises or anything like that?
 17 A. No.
 18 Q. Let me ask you: Does your organization advertise?
 19 A. No.
 20 Q. Does your organization maintain any social media
 21 presence?
 22 A. No.
 23 Q. Okay. Does noble, the 501(c)(4) know that No Labels
 24 North Carolina is using the No Labels name in connection
 25 with its North Carolina state operations?

- 1 A. Yes, yes.
- 2 Q. Um, does No Labels the 501(c)(4) interact with No
3 Labels North Carolina on a regular basis?
- 4 A. Yes.
- 5 Q. Has No Labels the 501(c)(4) ever objected to No
6 Labels North Carolina's use of the No Labels name?
- 7 A. No, un, no, on the contrary.
- 8 (End of video deposition.)
- 9 MR. KRAVITZ: And, lastly, Your Honor, is a
10 short clip from David Bell. He's the chair from the Montana
11 No Labels state affiliate.
- 12 A. I am the chair of No Labels Montana and the treasurer
13 of No Labels Montana as well.
- 14 Q. One is -- does the organization have a board, how is
15 it governed?
- 16 A. It is not have a board, per se. The selection of
17 officers is determined by No Labels national. They asked if
18 I would be willing to sit in the role of chair for their
19 Montana initiative, and I said yes. They subsequently asked
20 if I would serve either temporarily or permanently in the
21 role of treasurer, and I said yes, and they then asked if I
22 would help identify other people that might be willing to
23 join the initiative in Montana in one or more of those
24 capacities.
- 25 Q. Are there any other officers?

- 1 A. Yes.
- 2 Q. Who are they?
- 3 A. They were asked by No Labels national, as they had
4 asked me, if they would be willing to sit in those officer
5 positions.
- 6 Q. That's fine. And who prepared those documents?
- 7 A. No Labels national prepares the documents. They send
8 them to me for review and approval ensuring that they are
9 accurate. And then No Labels national actually files them
10 with the secretary of the state and the various other
11 administrative and regulatory bodies that requires the
12 paperwork.
- 13 Q. Can no labels remove you from your position?
- 14 A. I am sure they can, within the agreement that I have,
15 I am sure they have the authority to remove me from, I
16 assume -- I assume they have the authority to remove me from
17 my position. Yes. I serve in the capacity for No Labels.
18 In fact, yes, I am recalling the provision of the agreement
19 that governs that. And I can be draw from my position and
20 they can remove me from my position under the terms of the
21 agreement.
- 22 Q. Madam court reporter, if you could put up exhibit B.
23 And it is your testimony that you interpret this agreement
24 to suggest that they can remove you at any time?
- 25 A. Yes. The bottom of page two, section 4, articulates

- 1 circumstances under which the relationship can be severed.
- 2 Q. Assuming that, quote, "nobles," closed quote, is a
3 trademark, how do you know today that No Labels Montana that
4 can use that name?
- 5 A. Use the name No Labels under the authority of No
6 Labels national.
- 7 Q. And where does that authority come from?
- 8 A. No Labels national.
- 9 Q. Has anyone ever -- has anyone at No Labels national
10 ever discussed the appropriate or inappropriate use of the
11 trademark with you?
- 12 A. Only to the extent that the activities that occur in
13 Montana under the guides and auspices of No Labels be done
14 according to what they have granted us authority to do.
- 15 Q. So is it your testimony that you can only use the No
16 Labels mark for activities sanctioned by No Labels national?
- 17 A. Yes.
- 18 Q. Okay. Do you have to ask permission prior to using
19 the trademark from No Labels national?
- 20 A. Certainly would. Yeah, if there are any Montana
21 initiative that would use the No Labels brand, I would be
22 sure that that is authorized and agreed upon. No Labels is
23 accepting, you know, the -- accepting the consequences of
24 that brand being out there in that capacity. So I would
25 seek permission prior to doing that.

- 1 Q. Does No Labels Montana have any pamphlets, mailers,
2 or other promotional material?
- 3 A. No, everything No Labels comes from No Labels
4 national.
- 5 Q. So is the movement bipartisanship or is the movement
6 No Labels, the plaintiff?
- 7 A. Well, anybody can want bipartisanship. But No Labels
8 is a specific, is a very specific organization with a very
9 specific objective.
- 10 (End of video deposition.)
- 11 MR. KRAVITZ: And, Your Honor, so that concludes
12 the testimony portion for the plaintiffs.
- 13 THE COURT: All right. So we're going take a
14 break at this time. A 15-minute break. Plaintiff has
15 20 minutes remaining.
- 16 MR. KRAVITZ: Thank you, Your Honor.
- 17 (Break taken.)
- 18 MR. KRAVITZ: May I proceed, Your Honor.
- 19 Thank you. So, Your Honor, we do have these
20 slides that we prepared to provide you with summary of the
21 argument and the evidence. I'm going to skip a lot of these
22 because you already know a lot of this, and a lot of this
23 is, I think, made clear in the briefing.
- 24 But, for starters, as you well know, the
25 preliminary injunctions do provide for a relaxed evidentiary

1 standard and affidavits are appropriate. We do have -- as
 2 you know, we are relying on a couple of affidavits,
 3 particularly with respect to witness confusion.
 4 I'm not going to waste your time with the
 5 standard for preliminary injunctions. We believe we have a
 6 likelihood of prevailing -- substantial likelihood of
 7 prevailing on the cybersquatting claim, Your Honor, the
 8 three-part test.

9 There's no question that the mark is
 10 distinctive. There's no question that the marks are
 11 substantially identical. And there's also no question in
 12 our view that the name NoLabels.com was registered with the
 13 intent to profit from the mark.

14 We provided the relevant provision from the
 15 statute. And also a couple of cases, Your Honor, as you may
 16 recall at the TRO hearing you asked whether we had any case
 17 cites where benefit was found without there being an effort
 18 to actually sell the domain back to the original owner.

19 With respect to infringement, we believe the
 20 case is even stronger. And, of course, the Third Circuit
 21 looks to the *Lapp* factors, there are at least ten factors,
 22 they are not -- it's a nonexhaustive list, none is
 23 necessarily dispositive.

24 In this case, Your Honor, we think we have if
 25 not every one of these *Lapp* factors substantially in our

1 favor then a vast majority of them. Obviously, the names
 2 are identical. There's no question that the No Labels mark
 3 is strong and literally getting stronger every day.

4 It is difficult to not find an article about No
 5 Labels in the New York Times or Wall Street Journal or
 6 Politico or CNN, whatever it happens to be. It is a
 7 much-discussed organization, given the upcoming 2024
 8 election.

9 Defendant's intent is a key element, Your Honor.
 10 And I have got a slide later in the deck where I will go
 11 into a little more detail on this. But intent really could
 12 not be more clear based on the evidence you just saw.

13 The absolutely undeniable intent of NoLabels.com
 14 was to emulate nolabels.org they wanted to create a website
 15 that looked and felt like the experience of the nolabels.org
 16 experience. They used the same color scheme. And despite
 17 the fact that Mr. Solomon thought that might just be a
 18 coincidence, the document provides otherwise. As did the
 19 testimony; Mr. Siler admitted what he was trying to do.

20 Defendant's intent was to copy, as closely as
 21 they could, the nolabels.org website, and populate it with
 22 information that would turn off No Labels' supporters,
 23 people who are interested in getting information about No
 24 Labels, learning about No Labels, are instead going to be
 25 confronted with information that would be anathema to them,

1 that would repel them from the mission of No Labels.
 2 And you saw the slide, Your Honor, we're going
 3 to talk a little bit more about this later in my
 4 presentation, but the home page was intended to feature
 5 language and imagery that mirrored the nolabels.org website,
 6 and that would display problematic but real imagines, such
 7 as Trump speaking at a No Labels event.

8 And what was on their website when it went up
 9 live was Trump right on the landing page, knowing that that
 10 would repel voters who were interested in the No Labels
 11 message.

12 And, Your Honor, the language, it says "the
 13 language will reflect nolabels.org while including overt
 14 christo-nationalist dog whistles. And I am not an expert in
 15 christo-nationalist dog whistlers, Your Honor, but a Google
 16 search taught me what 1488 stands for, and it is not pretty.

17 And this is what they want -- this is what
 18 Mr. Siler was proposing to do with this website, the website
 19 that they are here to ask you to allow them to put back
 20 online. There is no question that intent heavily weighs in
 21 favor of the plaintiff.

22 Actual confusion. Remarkably powerful evidence
 23 of actual confusion. We have Dr. Patricia Love by
 24 affidavit. We have Ms. Wadsworth-Brown by deposition
 25 testimony, that you saw, Your Honor. And we have the two

1 that we have attempted to protect the confidentiality of
 2 their names. Those affidavits are filed with the Court. We
 3 are calling them E.K. and B.P. All of whom experienced the
 4 exact same deception.

5 They did a Google search. As a result of the
 6 Google ads campaign that you heard testimony about, the
 7 NoLabels.com, defendant's website was the first to appear.
 8 They boosted their search engine results. And these four
 9 people, at a minimum, were deceived and confused and went to
 10 the wrong website, believing it was actually No Labels'
 11 official website.

12 I can almost guarantee you, Your Honor, there
 13 are more. We just didn't have the time. And frankly, a lot
 14 of people weren't interested in talking to us. These are
 15 the four that we found.

16 And that's a remarkable return rate in trademark
 17 infringement case where the website was only up for about
 18 four to six weeks. Powerful evidence. And this evidence
 19 happened again, almost nearly instantaneously. It didn't
 20 take long as all. Just image how much confusion there will
 21 be if that website goes back up.

22 I'm going to skip the rest of these, Your Honor,
 23 because they are very -- they are self-evident.

24 With respect to irreparable harm, you'll
 25 continue to hear this argument, you'll probably hear it

1 again today, the Trademark Modernization Act provides for a
2 rebuttable presumption of irreparable harm under these
3 circumstances. They cannot possibly overcome this
4 presumption.

5 And then you look at the balance of the harms,
6 all we're asking the Court to do is to force them to abide
7 by the law, to prevent them from violating the law by
8 infringing our trademark, our registered and incontestable
9 trademark. All the injunction would do is prevent them from
10 further unlawful conduct.

11 And then finally, the public interest. Of
12 course, there's a strong public interest in protecting
13 consumers against confusion, protecting voters against being
14 deceived.

15 The defendant has asserted four defenses, we'll
16 go through these quickly. The First Amendment right to free
17 speech, a lack of commercial use, genericness, and naked
18 licensing.

19 With respect to the First Amendment defense,
20 Your Honor, we talked about this at the TRO hearing, no one
21 is challenging their right to criticize No Labels. They are
22 free to criticize No Labels. They are free to express to
23 the world that they disagree vehemently with the Unity
24 Ticket, and why they believe that that will lead to an
25 undesirable outcome at the 2024 election. They can tell

1 whomever they want that.

2 They just can't do it using NoLabels.com because
3 they are fooling people, deceiving people into believing
4 that those words are coming from us, and that's where the
5 First Amendment has to yield to the Lanham Act and trademark
6 law.

7 Of course, the second -- we talked about this at
8 the TRO hearing. The Second Circuit has addressed this in a
9 nearly identical set of facts. "To allow Defendant to use
10 No Labels would permit it to appropriate to itself the
11 harvest of those who have sown."

12 They cannot speak these words and express this
13 criticism -- if it is criticism, and we'll talk about
14 that -- pretending to be us, fooling people into believing
15 that these are our words, this is our website. That's where
16 they run afoul of the law.

17 They have no explanation for this, Your Honor.
18 If this political speech, if this political critique and
19 criticism is so important to them, so important to the
20 defendant, why have they not put it back up under a
21 different domain? Why haven't they registered
22 wedisagreewithnolabels.com, or
23 wedodn'tlikethenolabelsunityticket.com, and put up similar
24 content because it speaks the truth.

25 The reality is they are not concerned with

1 political speech, they are not concerned with commentary,
2 they are not concerned with criticizing No Labels. They are
3 concerned with harming No Labels. And that scheme
4 necessarily requires them to fool people into believing that
5 they are us, that their website is ours.

6 And, again, the *United We Stand* case squarely
7 addressed the defense of noncommercial use, right. The
8 argument is unpersuasive and has been roundly rejected by
9 the Second Circuit. Defendant absolutely offered services
10 in commerce. And the Lanham Act is not limited to
11 profit-making activity.

12 With respect to the actual commercial use and
13 expedited discovery has uncovered, here's just a sampling of
14 what we learned. They purchased the domain for \$10,000.
15 They spent \$2,500 on Google AdWords, and planned to spend
16 more before we shut them down. They have a bank account.
17 They received consulting services from American Patriot
18 Project. They received digital consulting services from
19 Break Something and Mr. Solomon.

20 And then they oddly, bizarrely paid Mr. McIntyre
21 \$2,500 to be the client for this litigation, further
22 suggesting that there's mal intent here, Your Honor, because
23 they really tried hard to not be known, to be anonymous in
24 this situation. They paid someone to be the client. And we
25 haven't deposed Mr. McIntyre yet, we ran out of time, but we

1 will.

2 Genericness. Genericness is determined by
3 consumer perception. That's 2020 Supreme Court authority.
4 I think the court was unanimous in that decision. How often
5 does that happen? No Labels, as perceived by consumers, as
6 perceived by voters does not signify a class of services.
7 It is one organization. It is a source identifier
8 associated with one thing, the plaintiff. And the burden is
9 on Defendant to establish genericness.

10 And they simply cannot overcome the fact that
11 they have no evidence of consumer perception, right. What
12 does consumer perception show? That No Labels is typically
13 described as the bipartisan group or the centrist group.

14 We have dozens -- we've literally submitted to
15 the Court dozens of news articles showing how No Labels is
16 referred to in the media, unsolicited media coverage. The
17 defendant will not be able to show you a single instance
18 where it's used generically. We have provided the Court
19 with dozens and we can provide the Court with thousands, if
20 you are so inclined.

21 Now, the naked licensing defense is an
22 interesting one. They raised this -- we put that in quotes
23 because this was raised in their brief in a footnote. It
24 has since, apparently, become their last hope.

25 Naked licensing can in fact lead to abandonment,

1 this is a very rare outcome, Your Honor. The defendant has
 2 the burden to show abandonment, and when I say,
 3 "abandonment," it's abandonment by virtue of naked
 4 licensing, licensing without controls.

5 The defendant has the burden to show it and the
 6 standard is stringent, that's from the Third Circuit and
 7 every other circuit. It is a forfeiture of rights and so
 8 the burden is significant, it is stringent. There need not
 9 be former quality control where the particular circumstances
 10 of the licensing arrangement indicate that the public will
 11 not be deceived and, of course, the argument here for the
 12 defendant is, well, you have a national organization, No
 13 Labels, the plaintiff, and then you have all these state
 14 affiliates and the argument is that the state affiliates
 15 don't have appropriate controls, they are -- you're going to
 16 hear terms like "wildfire" and "uncontrolled," this mark is
 17 out of control, it is -- it is being used without
 18 guardrails.

19 All of that is not true, Your Honor, none of
 20 that is true, okay.

21 There is no control requirement when the
 22 trademark owner consents to another parties's defined usage
 23 of the trademark. It is true that there is no trademark
 24 license agreement, that document is not something that
 25 you're going to see in the record for this PI hearing, Your

1 cases. Here are two cases from -- one from the Third
 2 Circuit and one from the District of New Jersey, these cases
 3 are very factually similar to the one we have here, we're a
 4 national organization where there was litigation alleging
 5 naked licensing, and an alleged loss of the trademark rights
 6 by virtue of naked licensing, lack of sufficient controls.

7 And in the *Jaycees* case, that was the
 8 Philadelphia chapter that was accused of going rogue, the
 9 District Court found infringement, but allowed through a
 10 narrow injunction allowed the Philadelphia chapter to
 11 continue using the mark.

12 The Third Circuit reversed and determined
 13 conclusively that the mark still existed even though -- that
 14 the rights in the mark still existed even though the
 15 national organization in that case had waited literally
 16 years before suing while knowing and being -- being actually
 17 supportive of the -- of the local Philadelphia chapter in
 18 continuing to use the mark in a manner that was
 19 inconsistent with the national organization.

20 The *Birthright* case is similar, Your Honor, from
 21 the District of New Jersey in 1993 and defendant's use was
 22 found not to result in a naked license and abandonment by
 23 virtue of that, because the defendant was -- excuse me, the
 24 local chapter was subject to policy directives that were
 25 monitored and controlled by the plaintiff. That's exactly

1 Honor, that document doesn't exist.

2 But it doesn't have to exist, trademark licenses
 3 can be implied and in this case, they are.

4 The evidence overwhelming shows that No Labels
 5 controls its marks. You heard the testimony of four
 6 different state affiliate chairs and you heard the testimony
 7 of Nick Connors making clear that the state affiliate
 8 activities are limited by bylaws, by officer agreements,
 9 right, so the bylaws tell them what they are authorized to
 10 do, which is a very, very narrow scope of services, they are
 11 authorized to do those actions required to gain ballot
 12 access in their given state and to sign the appropriate
 13 documentation to effectuate that.

14 The officer agreements are designed, among other
 15 things, to make sure the officer does nothing that will
 16 embarrass or injure No Labels, the "mother ship," as Admiral
 17 Blair called it.

18 There is an implied trademark license agreement
 19 which each and every one of these state affiliates. To the
 20 extent they are using the No Labels name, the No Labels
 21 mark, it is done with the permission, the consent and the
 22 blessing of No Labels, the mother ship.

23 And No Labels, the mother ship, dictates every
 24 activity that they take and every action that they take.

25 Courts have found no abandonment in similar

1 what's going on here.

2 THE COURT: All right. Plaintiff, you're down
 3 to 5 minutes.

4 MR. KRAVITZ: Okay. Your Honor, No Labels has
 5 taken steps to protect its mark. The Connor's deposition,
 6 we didn't have a chance to show you these portions but those
 7 portions are designated up there and you have the
 8 transcripts.

9 Mr. Siler's explanation is not credible, Your
 10 Honor. He claims he wanted to expand No Labels' reach by
 11 appealing to a broader audience of swing voters, swing
 12 voters, Your Honor, his website was designed to provide --
 13 to feed people who were interested in learning more about
 14 the real No Labels, his website was designed to feed garbage
 15 to them, untruths, appalling information and to recast No
 16 Labels, the plaintiff in this case, as a right-wing actor.

17 And that's why the pictures that are on the
 18 website are in fact on the website and that's why the
 19 website says what it -- what it says, that's why the content
 20 is what it is.

21 We know from the pitch deck what the reality is,
 22 right, to mirror nolabels.org language while framing the
 23 entire No Labels project as a right-wing shadow effort,
 24 that's exactly what they did.

25 Did they temper it from this initial proposal?

1 Yes, they did, but the about No Labels page up here on slide
2 34, Your Honor, that is a confession of what this website
3 is.

4 And it goes on from there, you saw, Your Honor,
5 the subsequent pages and they are not pretty.

6 And with respect to that disclaimer and the
7 discussion about the disclaimer, Your Honor, also another
8 confession. The disclaimer said NoLabels.com is not
9 affiliated with nolabels.org

10 Mr. Solomon's colleague, a truth-teller, we
11 finally found one, we just haven't had a chance to depose
12 him yet. He observed, "kind of defeats the purpose, huh,"
13 it is an absolute confession because the purpose, as he well
14 knew and as everybody involved in this actually knew,
15 despite what they testified to under oath, the purpose of
16 NoLabels.com was to deceive people into believe anything
17 there was in fact an affiliate with nolabels.org that that
18 is my client's website when it's not.

19 And you saw Donna Brown. You saw how this is
20 going to impact real people in real world. She has a
21 master's degree in education, she taught English for
22 40 years and she was fooled. Just imagine what's going to
23 happen if this website goes back up, Your Honor.

24 Thank you, Your Honor, I will reserve the couple
25 of minutes I still have for rebuttal.

1 THE COURT: All right. Defendant?

2 MR. BILLION: Your Honor, if the Court would be
3 willing, we'd like to take lunch now. We've had some
4 designations that have been played, and we think that by
5 taking a lunch to sort that out, we may streamline the
6 balance of this process.

7 THE COURT: All right. All right. We'll take
8 45 minutes lunch, we'll come back at -- let's come back at
9 1 o'clock.

10 MR. BILLION: Thank you, Your Honor.

11 (Whereupon, lunch recess was taken.)

12 THE COURT: Thank you. You may be seated.

13 MR. BILLION: Your Honor, Mark Billion for the
14 defendant. We appreciate the Court giving us time to look
15 over our designations at lunch and consider a few things.

16 At this time, it is our view that the plaintiff
17 has made its burden for preliminary injunction and it makes
18 more sense to proceed toward litigation so we can fully and
19 finally but we withdraw our request for preliminary
20 injunction.

21 THE COURT: All right. Given the --

22 ATTORNEY 1: Your Honor, may I be seated?

23 THE COURT: Yes. You may be seated. Given the
24 statement by the defendants conceding to plaintiff's motion
25 for preliminary injunction, plaintiff's motion for

1 preliminary injunction is granted. The Court will enter the
2 order granting preliminary injunction in terms of the
3 preliminary injunction in very short order.

4 The parties should meet and confer and submit a
5 proposed scheduling order consistent be the applicable form
6 scheduling order that can be found on the Court's website.
7 If there are any disagreements in terms of scheduling that
8 are not resolved when you submit the joint submission, the
9 parties should indicate what those disagreements are and
10 their respective proposals on those items that are not
11 agreed to. Thereafter, the Court will either decide those
12 or schedule a scheduling conference to discuss it further be
13 the parties.

14 All right. Anything further from plaintiff?

15 MR. KRAVITZ: No, Your Honor, thank you for your
16 time.

17 THE COURT: All right. Thank you.

18 Anything from the defendant?

19 MR. BILLION: No, Your Honor, thank you.

20 THE COURT: All right. We're adjourned.

21 MR. KITTILA: Sorry, Your Honor, Ted Kittila
22 once again. We filed witness list, joint witness list and
23 we realize that the names of the two witnesses that we
24 wanted to protect the identities on were contained on that
25 witness list. Your court officers were very helpful and we

1 pulled it down and we're going to file it under seal, we'll
2 file a redacted version, Your Honor.

3 THE COURT: Okay. You can file a redacted
4 version that redacts those two names and then --

5 MR. KITTILA: And we did file the initial
6 declarations under seal, we'll file redacted versions just
7 taking out their names, Your Honor, just wanted to do that
8 to clean up the record on this. Thank you, Your Honor.

9 THE COURT: That's fine.

10 All right. We are adjourned.

11 (Whereupon, the following proceeding concluded
12 at 1:03 p.m.)

13 I hereby certify the foregoing is a true
14 and accurate transcript from my stenographic notes in the
15 proceeding.

16 /s/ Michele L. Rolfe, RPR, CRR

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