

25-10830

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

TONY MCDONALD,
Plaintiff-Appellant

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Texas,
Fort Worth Division,

District Court No. 4:25-CV-153-P

APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE

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August 11, 2025

CERTIFICATE OF INTERESTED PERSONS

A Certificate of Interested Persons is not required, as appellee Federal Election Commission, is a United States government agency. Fifth Cir. R. 28.2.1.

Pursuant to Federal Rule of Appellate Procedure 27(a), appellee Federal Election Commission (“FEC” or “Commission”) moves this Court to summarily affirm the district court’s opinion and order granting the Commission’s motion to dismiss appellant Tony McDonald’s Complaint for lack of subject-matter jurisdiction. *McDonald v. FEC*, No. 25-153 (N.D. Tex. July 9, 2025) (ECF No. 26) (“Op.”) (Exh. B).

INTRODUCTION

In this appeal, Appellant Tony McDonald challenges the district court’s straightforward conclusion that McDonald failed to demonstrate a concrete injury in fact flowing from the Commission’s disclosure of two small-dollar contributions made through conduit platforms (a single \$50 contribution in 2023 and a single \$1 contribution in 2019) and therefore failed to establish Article III standing.¹ In his Complaint, McDonald alleged that the conduit reporting requirement in the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30116(a)(8), violates the First Amendment as applied to contributions of less than \$200. However, McDonald failed to allege any concrete and particularized harm resulting from his disclosed contributions.

¹ The electronic record on appeal has not yet been prepared. In this Motion, the Commission cites to the docket entries as they appear in the district court record. Those docket entries also appear as exhibits attached to this Motion.

The district court thus made no reversible error of law in dismissing McDonald's Complaint. *See* Fifth Cir. Rule 47.6 (judgment may be affirmed without opinion when, *inter alia*, "no reversible error of law appears"); *see also* *Fermin v. United States*, 491 F. App'x 472, at *1 (5th Cir. 2012) (*per curiam*) (granting summary affirmance for "no reversible error of fact or law"); *Lawrence v. Fidelity Nat'l Ins. Co.*, 279 F. App'x 321, at *1 (5th Cir. 2008) (*per curiam*) ("We find that the district court committed no reversible error and affirm on the basis of the district court opinion."). As the district court correctly held, mere speculation of alleged harm is insufficient to establish standing under Supreme Court precedent, and the disclosure of McDonald's contributions is not a constitutional injury in and of itself. Because the district court correctly determined that it lacked subject matter jurisdiction over McDonald's claim, this Court should summarily affirm.

FACTUAL AND LEGAL BACKGROUND

I. THE PARTIES

The Commission is an independent agency of the United States government with jurisdiction over the administration, interpretation, and civil enforcement of FECA. 52 U.S.C. §§ 30101-45; *see generally* 52 U.S.C. §§ 30106(b)(1), 30107(a), 30109. Congress provided for the Commission to "prepare written rules for the conduct of its activities," 52 U.S.C. § 30106(e), "formulate policy" under FECA,

see, e.g., 52 U.S.C. § 30106(b)(1), and make rules and issue advisory opinions, 52 U.S.C. §§ 30107(a)(7), (8); *id.* §§ 30108; 30111(a)(8); *see also Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*). The Commission is further authorized to institute investigations of possible violations of FECA, 52 U.S.C. § 30109(a)(1)-(2), and to initiate civil enforcement actions in the United States district courts. *Id.* §§ 30106(b)(1), 30107(a)(6), 30107(e), 30109(a)(6).

McDonald is a resident of Fort Worth, Texas, and eligible to vote for the office of the President. (Compl. for Declaratory and Injunctive Relief (*McDonald v. FEC*, No. 25-153 (N.D. Tex. Feb. 18, 2025) (ECF No. 1) ¶ 3 (“Compl.”) (Exh. A).) McDonald alleged that he is “actively involved in partisan politics” and a “sophisticated political insider.” (*Id.* at pp. 1-2.) He is an attorney and the general counsel for the Tarrant County Republican Party, an entity that is not a party to this lawsuit or this appeal. (*Id.* ¶ 25.)

II. FACTUAL AND PROCEDURAL HISTORY

A. FECA’s Disclosure Provisions, Including the Conduit Disclosure Provision Challenged by Appellant

FECA requires certain entities that meet the definition of a political committee to file reports disclosing their receipts and disbursements. *See* 52 U.S.C. § 30101(4)-(6); 52 U.S.C. § 30104(a), (b); *Buckley*, 424 U.S. 1 at 79. FECA contains two disclosure provisions relevant to this case. The first provision

is for contributions made directly to political committees. 52 U.S.C. § 30104.

Subsection (b)(3)(A) requires political committees to identify each “person (other than a political committee)” who contributes to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year. *Id.* § 30104(b)(3)(A).

The second provision, and the one specified in McDonald’s Complaint, is disclosure requirements for “earmarked” contributions sent to a “conduit” or “intermediary.” 52 U.S.C. § 30116(a)(8). Commission regulations define “earmarked” as a “designation, instruction, or encumbrance, . . . which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.” 11 C.F.R. § 110.6(b)(1). Regulations further define a “conduit or intermediary” as “any person who receives and forwards an earmarked contribution to a candidate or a candidate’s authorized committee,” save for exceptions not relevant here. *Id.* § 110.6(b)(2). Committees may serve as conduits for campaign contributions because FECA includes “committee” within the definition of “person.” 52 U.S.C. § 30101(11). Two such conduit committees, WinRed and ActBlue, serve as conduits for candidates from different parties. (*See* Compl. ¶¶ 11-16.).

Under § 30116(a)(8), “contributions made by a person, either directly or indirectly on behalf of a particular candidate, including contributions which are in

any way earmarked or otherwise directed through an intermediary or conduit to such candidate,” are treated as contributions to that particular candidate. 52 U.S.C. § 30116(a)(8). Section 30116 further states that the conduit “shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient, *i.e.*, the candidate. *Id.* Unlike § 30104(b)(3), the FECA provision for contributions to conduit committees does not limit disclosures to contributions above \$200.

B. McDonald’s Complaint Challenging the Conduit Disclosure Provision and Seeking Certification for En Banc Review

On February 19, 2025, McDonald filed his Complaint against the Commission pursuant to 52 U.S.C. § 30110, the FECA provision that provides a special procedure for certain categories of plaintiffs to bring suits “to construe the constitutionality of any provision of [FECA],” and for the district court to certify non-frivolous questions of constitutionality to the court of appeals sitting *en banc*. *See* Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 208(a), 88 Stat. 1263, 1285-1286 (1974); *see also* Compl. ¶¶ 1-2. A key limitation on claims brought under § 30110 is the “constitutional limitation[] on the jurisdiction of the federal courts.” *California Med. Ass’n v. FEC*, 453 U.S. 182, 192 n.14 (1981). A “party seeking to invoke [§ 30110] must have standing to raise the constitutional claim.” *Id.*

The “facts of this case are uncomplicated.” (Op. at 2.) McDonald’s Complaint was based on two alleged contributions.² (Compl. ¶¶ 19, 22) First, in June 2019, McDonald contributed \$1 to Marianne Williamson for President. (*Id.* ¶ 22.) McDonald did not describe how he made this contribution, but alleged the contribution was processed through a conduit, ActBlue, and disclosed to the FEC. (*Id.*) Second, in June 2023, he contributed \$50 to “support a federal candidate.” (*Id.* ¶ 19.) McDonald alleged he kept his contribution below \$200, in part, because he believed it would remain anonymous. (*Id.*) He alleged that his “chosen recipient” routed through a conduit, in this case WinRed, and the contribution was reported to the FEC. (*Id.* ¶ 20.)

McDonald raised a single cause of action, that 52 U.S.C. § 30116(a)(8), as applied to contributions up to \$200, violates the First Amendment right to engage in political speech and association. (*Id.* ¶ 41.) McDonald alleged that he “does not want to explain or justify such contributions,” (*id.* ¶ 21), and that the disclosures of his contributions would “adversely impact [his] political activities, including his

² The Complaint referenced an additional \$1 contribution to an unnamed “republican presidential contender” that, for reasons unclear to McDonald, was not reported. (Compl. ¶ 23.) As the district court correctly held, because this alleged contribution was not reported, it was irrelevant for purposes of determining any alleged harm stemming from it. (Op. at 2 n.1.) The district court therefore “d[id] not consider” this third contribution “for McDonald’s challenge to 52 U.S.C. § 30116(a)(8)’s reporting requirement.” (Op. at 2 n.1.)

future giving.” (*Id.* ¶ 24.) As general counsel for the Tarrant County Republican Party, McDonald claimed that he “would not want his personal support for a candidate to imply that the Tarrant County Republican Party as an institution supports the candidate,” (*id.* ¶ 25), or prompt “demands for similar donations,” or “misunderstandings regarding the intent and implications” of his prior contributions. (*Id.* ¶ 26.)

McDonald sought, *inter alia*: (1) a declaration that disclosure of contributor names and addresses under § 30116(a)(8) for contributions under \$200 violates the First Amendment; (2) permanent injunctive relief barring the FEC from requiring conduit committees to disclose McDonald’s name and address when reporting conduit contributions not exceeding \$200; and (3) an order that the Commission remove McDonald’s past conduit contributions under \$200 from its public report. (*Id.* at p. 12.)

C. District Court’s Dismissal of McDonald’s Complaint

On April 22, 2025, the Commission moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1), asserting that McDonald lacked standing by failing to establish he suffered a concrete injury in fact from the disclosure of his two past conduit contributions. (*See Op.* at 1, 3, citing Motion to Dismiss, *McDonald v. FEC*, No. 25-153 (N.D. Tex. Apr. 22, 2025) (ECF No. 21).) Specifically, the Commission explained that McDonald’s allegations of adverse

consequences resulting from his past or future contributions were speculative and did not set forth any concrete injury, and many concerned a third party (the Tarrant County Republican Party). Furthermore, McDonald's alleged subjective chill on the exercise of his speech rights was not enough to show standing. (*See id.*)

On July 9, 2025, the district court granted the Commission's motion and dismissed the case without prejudice. (*Id.* at 4-6.) The court concluded that the Article III standing requirements under the Supreme Court's seminal decision in *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992), squarely foreclosed McDonald's Complaint. (*Id.*) The district court explained that under *Lujan*, a plaintiff must show an injury that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." (*Id.*) This injury-in-fact standard is the same in cases involving the disclosure of campaign contributions. (*Id.* (citing *FEC v. Akins*, 524 U.S. 11, 21 (1998)).)

Applying the traditional standing framework, the district court found that McDonald's allegations plainly did not confer standing. (*Id.*) The district court reasoned that, although McDonald expressed speculative concerns about having to explain or justify his two past contributions, he pointed to no instance where he was forced to explain or justify his contributions or how such an explanation constitutes concrete and particularized harm. (*Id.* at 5.) McDonald's Complaint also speculated that "his personal support for a candidate [could] imply that the

Tarrant County Republican Party as an institution supports the candidate.”

(Compl. ¶ 25.) However, the district court explained that McDonald did not demonstrate “an actual injury nor how such an implication would constitute an injury to him rather than the Tarrant County Republican Party.” (Op. at 5.)

The court rejected McDonald’s argument that the public disclosure of his contributions, in and of itself without any claim of concrete harm as a result, is an injury sufficient to invoke this Court’s jurisdiction. McDonald’s claim was not a “pre-enforcement” First Amendment challenge in which he risked “the threat of an enforcement action for violating FECA”; accordingly, McDonald’s allegation of subjective chilling of his speech was not adequate to satisfy the injury-in-fact requirement. (*Id.* at 4.) Moreover, the case law McDonald cited in support of this disclosure-centric theory, *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021), and *X Corp. v. Media Matters for Am.*, 120 F.4th 190 (5th Cir. 2024) (*per curiam*), was inapposite, because neither case addressed standing or even the public disclosure of information by the Commission, “much less hold that, in the context of disclosing donor information, an injury in fact is not necessary.” (Op. at 4-6.) Accordingly, the district court held, “McDonald must show a concrete injury in fact just like any other plaintiff.” (*Id.* at 4-5.)

Having concluded that McDonald failed to establish standing, the district court dismissed the Complaint without prejudice. McDonald did not attempt to

address the deficiencies in his Complaint, but instead immediately appealed to this Court on July 15, 2025.³

STANDARDS OF REVIEW

I. DISMISSALS FOR LACK OF SUBJECT MATTER JURISDICTION

This Court reviews a district court dismissal of a complaint for lack of subject matter jurisdiction *de novo*. *LULAC, Dist. 19 v. City of Boerne*, 659 F.3d 421, 428 (5th Cir. 2011); *Ruiz v. Brennan*, 851 F.3d 464, 472-73 (5th Cir. 2017). The appellant bears the burden of “alleging facts sufficient to demonstrate” standing on appeal. *Fortune Nat. Res. Corp. v. U.S. Dep’t of Interior*, 806 F.3d 363, 366 (5th Cir. 2014) (quoting *Rahm & Hess Tex., Inc. v. Ortiz Bros. Insulation, Inc.*, 32 F.3d 205, 208 (5th Cir. 1994)).

A district court may dismiss a case under Fed. R. Civ. P. 12(b)(1) under any one of three separate bases: (1) the complaint, standing alone; (2) the complaint, supplemented by undisputed facts from the record, or (3) the complaint,

³ The dismissal of McDonald’s Complaint under Rule 12(b)(1) without prejudice is a final, appealable order. *See Montemayor v. Chudasama*, No. 21-10988, 2022 WL 485196, at *1 (5th Cir. Feb. 17, 2022) (per curiam) (affirming the “final judgment of dismissal without prejudice” on subject-matter jurisdiction grounds); *cf. Umbrella Inv. Grp., L.L.C. v. Wolters Kluwer Fin. Servs., Inc.*, 972 F.3d 710, 712 (5th Cir. 2020) (per curiam) (ruling that a dismissal of all claims, with or without prejudice, is “final and appealable”). Such a dismissal, however, limits the scope of appellate review because a “lack of subject matter jurisdiction is not a determination of the merits.” *Mitchell v. Bailey*, 982 F.3d 937, 944 (5th Cir. 2020) (quotation marks omitted).

supplemented by undisputed facts as well as disputed facts that the court has resolved. *Moore v. Bryant*, 853 F.3d 245, 248 (5th Cir. 2017); *Barrera-Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1994). Here, the district court granted the Commission’s motion to dismiss based on McDonald’s Complaint alone. In reviewing a 12(b)(1) dismissal based only on the face of the complaint, an appellate court’s “review is limited to determining whether the district court’s application of the law is correct.” *Andrews v. Adams*, No. 23-50841, 2024 WL 4298150, at *1 (5th Cir. Sep. 26, 2024) (per curiam) (quoting *Fort Bend Cnty. v. United States Army Corps of Eng’rs*, 59 F.4th 180, 188 (5th Cir. 2023)).

II. LEGAL STANDARD FOR MOTIONS FOR SUMMARY AFFIRMANCE

Summary affirmance is appropriate where “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *United States v. Lovings*, No. 23-50653, 2024 WL 1637545, at *1 (5th Cir. Apr. 16, 2024) (per curiam) *cert. denied*, 145 S. Ct. 303 (2024) (quoting *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969)); *cf.* Fed. R. App. P. 34(a)(2)(B) (oral argument unnecessary where “dispositive issue or issues have been authoritatively decided”). Summary affirmance is also proper where an appeal is frivolous. *Groendyke Transp., Inc.*,

406 F.2d at 1162. This Court may summarily affirm the district court’s dismissal without an opinion where the Court determines an opinion would have no precedential value and, as relevant here, no reversible error of law appears. *See* Fifth Cir. Rule 47.6; *see also Soadjede v. Ashcroft*, 324 F.3d 830, 832 (5th Cir. 2003) (describing Circuit Rule 47.6 as “providing for affirmance without opinion under enumerated circumstances”). Other factors, not relevant here, concern decisions reached at more advanced procedural postures. *See* Fifth. Cir. Rule 47.6 (describing orders based on findings of fact, jury verdicts, orders of administrative agencies, and summary judgment rulings).

ARGUMENT

I. THE DISTRICT COURT MADE NO REVERSIBLE ERRORS OF LAW IN DISMISSING THE COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

A. The District Court Correctly Held That McDonald’s Speculative Allegations Failed to Demonstrate Injury in Fact

The district court committed no reversible errors of law in dismissing the Complaint, and this Court should summarily affirm. *See Quinlan v. Lopinto*, No. 23-30490, 2024 WL 95367, at *1 (5th Cir. Jan. 9, 2024) (per curiam) (“Appellant has not identified any reversible error of law”) (citing Fifth Cir. Rule 47.6)); *see also Smith v. City of Beaumont*, 856 F. App’x 517, 517 (5th Cir. 2021) (per curiam). McDonald lacks Article III standing, and no further briefing or argument

would cast doubt on this decision. *See Lawrence*, 279 F. App'x 321 at *1; *see also Sullivan v. Boyd Tunica Inc.*, 291 F. App'x 655, 655-56 (5th Cir. 2008) (per curiam) (“We find that the district court committed no reversible error and affirm on the basis of the district court opinion. *See* 5th Cir. Rule 47.6”).

To demonstrate Article III standing, a plaintiff must show that he has (1) “injury-in-fact”; (2) a “causal connection between the injury and the conduct” at issue; and (3) that it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” (Op. at 4 (quoting *Lujan*, 504 U.S. at 560).) A plaintiff must show an injury in fact, which the Supreme Court defines as “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560; *see also Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013); *Ctr. for Biological Diversity v. U.S. Env’t Prot. Agency*, 937 F.3d 533, 537 (5th Cir. 2019). These requirements are no different in challenges involving disclosure of campaign contributions. *See Akins*, 524 U.S. at 21; *Laufer v. Mann Hosp., L.L.C.*, 996 F.3d 269, 272 (5th Cir. 2021) (standing under Article III “requires a concrete injury even in the context of a statutory violation.” (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016))); *Serv. Emps. Int’l Union, Loc. 5 v. City of Houston*, 595 F.3d 588, 597 (5th Cir. 2010) (“First Amendment challenges do not eliminate the need for a party to demonstrate it has constitutional standing.”); *see also* Op. at 4. To show an injury that is

particularized, a plaintiff must allege an injury that affects him in a personal and individual way. *See Tex. Trib. v. Caldwell Cnty.*, 121 F.4th 520, 526 (5th Cir. 2024). Allegations of past harm cannot establish standing for a request for prospective relief. *James v. Hegar*, 86 F.4th 1076, 1081 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1461 (2024).

As the district court found, “McDonald has failed to demonstrate an injury in fact.” (Op. at 5.) McDonald’s Complaint alleged no discrete injury from his alleged disclosures, as opposed to mere speculations “that such an alleged harm may occur.” (*Id.*) McDonald pointed only to vague speculations of having to “justify” or “explain” his contributions, which McDonald never alleged he was forced to do, and do not constitute concrete and particularized harm in any event. *See Lujan*, 504 U.S. at 564. McDonald’s attempt to show a future injury because of his desire to “make additional small dollar donations in the future,” (Compl. ¶ 27), similarly relied only on his generalized and speculative discomfort in the disclosure of his own conduit contributions, rather than any concrete injury.

McDonald’s alleged “ramifications” of his contributions on the Tarrant County Republican Party were equally amorphous and speculative, and would not constitute an injury to him as opposed to a third-party that is not a part of this lawsuit. (Op. at 5.) Ultimately, rather than being concrete and particularized, and actual or imminent, McDonald’s speculative allegations, if allowed to suffice,

would require the district court to “decid[e] a case in which no injury would have occurred at all.” *Lujan*, 504 U.S. at 564 n.2. Under binding Supreme Court and Circuit precedent, McDonald’s Complaint falls far short of establishing the essential elements of constitutional standing, and the district court’s decision should be summarily affirmed. *See Castillo v. O’Malley*, No. 23-50638, 2024 WL 1300283, at *1 (5th Cir. Mar. 27, 2024) (per curiam) (granting summary affirmance where “no arguments on appeal warrant further analysis than what the district court already performed.”).

B. The District Court Correctly Found that Disclosure of McDonald’s Contributions Standing Alone Does Not Amount to An Injury in Fact

As the district court held, “disclosure of donor information” is not a “constitutional injury in and of itself” sufficient to invoke subject matter jurisdiction without a claim of concrete harm as a result. (Op. at 5.) Courts have held that in the pre-enforcement context, a particular circumstance not present here, “[c]hilling a plaintiff’s speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.” *Hous. Chron. Publ’g Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007). However, the district court correctly distinguished McDonald’s Complaint from pre-enforcement challenges rooted in the First Amendment when a plaintiff is faced with a credible threat of a statute being enforced against him and penalties resulting from non-compliance. (See Op. at 4.)

McDonald did “not allege that he faces the threat of an enforcement action for violating FECA,” (*id.*), nor could he, as he is not the subject of the conduit reporting requirement under FECA; the conduits are. Therefore, McDonald has “shown no reason why the Court should abandon an injury-in-fact inquiry [in *Lujan*] solely because his claim involves the disclosure of campaign contributions.” (*Id.* at 5-6.)

The district court also correctly rejected McDonald’s attempt to sidestep the concrete-injury requirement in *Lujan* with his reliance on *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021), and *X Corp. v. Media Matters for America*, 120 F.4th 190 (5th Cir. 2024) (per curiam), and this Court need not weigh in further here. Neither case concerns standing, and would not render reversible the district court’s decision applying the established standing doctrine. *See Bonta*, 594 U.S. at 606 (discussing First Amendment case without mentioning standing); *see also X. Corp.*, 120 F.4th at 194-96 (addressing an appeal of a district court’s order compelling discovery). Controlling Supreme Court and Circuit precedent forecloses McDonald’s assertion of standing based on mere disclosure of campaign contributions, without an attendant concrete harm. *See Lujan*, 504 U.S. at 560); *Serv. Emps. Int’l Union, Loc. 5*, 595 F.3d at 597. Accordingly, summary affirmance is appropriate here. *See Parker v. Woods*, 834 F. App’x 92, 94 (5th Cir. 2020) (per curiam) (“Parker makes no colorable argument that the district court

erred in granting summary judgment. Accordingly, we summarily affirm the judgment as to those claims.”); *United States v. Matlock*, No. 24-10579, 2025 WL 801356, at *2 (5th Cir. Mar. 13, 2025) (per curiam) (granting summary affirmance where “both Supreme Court and circuit precedent foreclose” the appellant’s constitutional challenge); *see also United States v. Pinedo-Nerio*, No. 24-50798, 2025 WL 2105008, at *1 (5th Cir. July 28, 2025) (per curiam).

CONCLUSION

The Court should summarily affirm the district court’s order granting the Commission’s motion to dismiss McDonald’s Complaint. McDonald failed to allege any concrete injury resulting from the disclosure of his past contributions and therefore failed to establish Article III standing under binding Supreme Court and Circuit precedent. Accordingly, the district court committed no reversible error of law in dismissing McDonald’s Complaint.

Respectfully submitted,

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August 11, 2025

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CERTIFICATE OF CONFERENCE

I certify that on August 8, 2025, pursuant to Circuit Rule 27.4, the Commission contacted counsel for appellant Tony McDonald, who stated that he would oppose this motion.

/s/ Greg J. Mueller
Greg J. Mueller

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

I hereby certify, on this 11th day of August, 2025, that:

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. 32(f) and Circuit Rule 32(e), this document contains 3,879 words.
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Times New Roman font.

/s/ Greg J. Mueller
Greg J. Mueller

CERTIFICATE OF SERVICE

I hereby certify that this 11th day of August, 2025, I electronically filed the forgoing document with the Clerk of the United States Court of Appeals for the Fifth Circuit using the Court's ECF system, which thereby electronically served counsel of record.

/s/ Greg J. Mueller

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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TONY MCDONALD,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Case No. 4:25-cv-153

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

Many Americans like to keep their giving private. Some donors have complex motives and interests that they do not want to explain to others. Others seek anonymity out of modesty, or due to religious beliefs. And many donors fear repercussions if the causes they support become known. The First Amendment has long been recognized to permit anonymous association and donation for all these reasons, or for no reason whatsoever. An important part of championing anonymity is *not* requiring an explanation of why an individual seeks anonymity, because explaining one's reasons for being anonymous often destroys the benefit of anonymity and thus chills the anonymous speech one would make.

Tony McDonald donates money to federal candidates. Because he is actively involved in partisan politics (indeed, he serves as general counsel for a county party), McDonald sometimes wants his personal support to be kept private. Thus, McDonald occasionally limits his donations to \$200 or less, the threshold over which direct donations to candidates are publicly disclosed.

But even though McDonald is a sophisticated political insider, some arcane aspects of federal campaign finance laws were unknown even to him. To his surprise, a donation he made was disclosed to the FEC, and in turn the public, simply because the candidate received McDonald's donation through a conduit platform.

McDonald wants to make additional small donations to federal candidates through the platforms of the candidates' choosing, including ubiquitous conduit platforms. But he must hold back, fearing the disclosure of conduit contributions.

The conduit reporting requirement, 52 U.S.C. § 30116(a)(8), is unconstitutional as applied to donations of up to \$200. So applied, this provision requires conduit committees to report the identity of each donor who donated via the conduit committee starting at a \$0 threshold. This is an unconstitutionally low threshold under the First Amendment. It burdens donors' rights of association and expression of political speech without advancing any important government interest. In contrast, Congress already exempts from disclosure donations of up to \$200 when given directly to a candidate. *Compare* 52 U.S.C. § 30116(a)(8) *with* 52 U.S.C. § 30104(b)(3)(A).

It defies comprehension why the identity of a donor who gives \$3 to a candidate through digital platforms like WinRed or ActBlue must be publicly reported to the FEC, while a donor who physically hands a \$175 check to a congressman at a fundraiser gets to keep his information private. The \$3 digital donor is treated worse not because of the amount, or concerns of transparency, but merely because of the mechanism of the donation.

The courts are empowered to secure McDonald's rights to free political speech and association. Following certification of the important questions raised by this case to the en banc Fifth Circuit, this Court should enjoin Defendant from applying the conduit reporting

requirement to donations that do not exceed \$200 and require Defendant to remove McDonald's past small-dollar donation made via a conduit from its public reports.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 2201, and 2202, as well as 52 U.S.C. § 30110, under which the question of the constitutionality of 52 U.S.C. § 30116(a)(8), must be certified to the United States Court of Appeals for the Fifth Circuit for consideration en banc.

2. Venue is proper in this Court under 52 U.S.C. § 30110 and 28 U.S.C. § 1391(e) because the Federal Election Commission is an entity of the United States and Plaintiff resides in this District.

PARTIES

3. Plaintiff Tony McDonald is an individual, eligible to vote for the office of President, residing in Fort Worth, Texas.

4. Defendant Federal Election Commission ("FEC") is an independent federal agency established by 52 U.S.C. § 30106. The FEC is charged with administering and enforcing the Federal Election Campaign Act ("FECA"), including the provisions challenged in this action. The FEC has exclusive jurisdiction with respect to the civil enforcement of FECA.

STATEMENT OF FACTS

The Regulatory Regime

5. Candidate committees must report to the FEC "the identification of each [] person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee

of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution[.]” 52 U.S.C. § 30104(b)(3).

6. “Identification” is defined as: “(A) in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and (B) in the case of any other person, the full name and address of such person.” 52 U.S.C. § 30101(13).

7. However, conduit committees are subject to a different requirement, which lacks a minimum reporting threshold. “[A]ll contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.” 52 U.S.C. § 30116(a)(8).

8. The Commission regulation implementing the disclosure requirement in 52 U.S.C. 30116(a)(8) for earmarked contributions provides that “[t]he intermediary or conduit of the earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission . . . , and to the recipient candidate committee.” 11 C.F.R. § 110.6(c)(1)(i).

9. And in cases where a political committee receives and forwards earmarked contributions, “[t]he report to the Commission . . . shall be included in the conduit’s or intermediary’s report for the reporting period in which the earmarked contribution was received” *Id.* § 110.6(c)(1)(ii). Itemized reporting of earmarked contributions must include, among other things, “the name and mailing address of each contributor and, for each earmarked

contribution in excess of \$200, the contributor's occupation and the name of his or her employer" *Id.* § 110.6(c)(1)(iv)(A). Thus, under the FEC's existing reporting provision, all earmarked contributions must be individually itemized, including earmarked contributions of \$200 or less.

10. Regarding timing, "[t]he report to the recipient candidate or authorized committee shall be made when the earmarked contribution is forwarded to the recipient candidate or authorized committee pursuant to 11 C.F.R. § 102.8." *Id.* § 110.6(c)(1)(iii). Candidate committees that receive earmarked contributions must "report each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any election cycle." *Id.* § 110.6(c)(2)(i). In other words, while a conduit PAC's report is not subject to the individual contributor itemization threshold (i.e., more than \$200 during an election cycle), a recipient committee's report is.

WinRed and ActBlue

11. WinRed is an internet fundraising platform for conservative political candidates.

12. WinRed exercises no discretion over the timing, recipient, or monetary amount of earmarked contributions it receives from donors.

13. The process works as follows: (1) A political committee contracts to establish a contribution page on the WinRed website, which is hosted and maintained by WinRed's vendor, WinRed Technical Services, LLC; (2) Pursuant to an end-user agreement, the political committee creates a fundraising page in accordance with the committee's specifications; (3) When creating a customized contribution page, the political committee has full discretion to determine how to use the website to solicit donors, including the ability to fully customize the content or the website, and the full authority as to how to share the URL for the site with donors, if at all; (4) Contributions made via the political committee's page on the WinRed site result in a nearly

instantaneous notification being sent to the recipient committee, as designated by the donors; and
(5) Contributions made to the political committee are forwarded by WinRed to the recipient committees within 10 days (often instantaneously) in accordance with FEC rules and regulations.

14. Since January 1, 2023, WinRed has reported routing over \$622 million in earmarked contributions. The two FEC reports it filed for 2023 combined to exceed 10 million pages. Its latest FEC quarterly report (1st Quarter 2024) exceeded 4.5 million pages.

15. Since January 1, 2023 to December 31, 2024, WinRed reported over 501,000 contributions valued at a penny (\$0.01) each.¹ WinRed routed more than 520,000 additional contributions valued at a nickel (\$0.05) or less (but exceeding a penny).²

16. Also, between January 1, 2023 and December 31, 2025, WinRed routed over \$1.6 billion of contributions.³ More than 6.06 million contributions were of \$1 or less.⁴ Over 55 million of WinRed's conduit contributions were of \$200 or less.⁵ Accordingly, each of those donors who did not make any additional contribution that, when combined with these donations, exceeded \$200, would not have to be reported to the FEC by a political committee. However, because of the conduit reporting requirement, WinRed reported these 55+ million donations to the FEC.

17. ActBlue is WinRed's progressive counterpart, a hybrid PAC, and serves a similar role

¹ *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00694323&two_year_transaction_period=2024&min_amount=0&max_amount=.01 (last accessed on Feb. 18, 2025).

² *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00694323&two_year_transaction_period=2024&min_amount=.02&max_amount=.05 (last accessed on Feb. 18, 2025)

³ *Financial Summary*, Federal Election Commission, <https://www.fec.gov/data/committee/C00694323/> (last accessed on Feb. 18, 2025)

⁴ *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00694323&two_year_transaction_period=2024&min_amount=0&max_amount=1 (last accessed on Feb. 18, 2025)

⁵ *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00694323&two_year_transaction_period=2024&min_amount=0&max_amount=200 (last accessed on Feb. 18, 2025)

as a conduit committee for Democratic Party candidates. Between January 1, 2023 and December 31, 2024, ActBlue has reported over 115 million conduit contributions of \$200 or less,⁶ over 12 million of which were of \$1 or less.⁷ Had these donations been made directly to a political committee, and the donor did not make any additional contribution(s) that combined exceed \$200, these donations would not have been required to be reported to the FEC.

18. But while ActBlue and WinRed must report the name and address information of small-dollar donors whose donations they forward to the intended recipients, that information is not subsequently required to be included on the reports of the recipients of those same earmarked contributions, which are required to simply report small-dollar donations in bulk. A donor contributing five dollars to a federal candidate committee via ActBlue or WinRed will be itemized on ActBlue or WinRed's report but will not be required to be reported by name on the recipient candidate committee's report.

Tony McDonald

19. Tony McDonald donated \$50 to support a federal candidate on June 30, 2023. McDonald chose to limit the amounts to below \$200, in part, so that his donation would remain anonymous.

20. However, unbeknownst to McDonald at the time of his donation, his chosen recipient routed donations through a conduit PAC—WinRed. As a result, McDonald's identity was publicly reported to the FEC as making a contribution to a superPAC.

21. Sometimes McDonald donates to candidates for reasons other than his support for

⁶ *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00401224&two_year_transaction_period=2024&min_amount=0&max_amount=200 (last accessed on Feb. 18, 2025)

⁷ *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00401224&two_year_transaction_period=2024&min_amount=0&max_amount=1 (last accessed on Feb. 18, 2025)

their candidacy. For example, McDonald has donated, and will donate in the future, simply to assist a candidate qualify for a debate, or to because the candidate offered donation incentives.⁸ These types of donations do not indicate personal support for the candidate, yet disclosure of the donation would imply such support. McDonald does not want to explain or justify such contributions.

22. Specifically, McDonald donated \$1 to Marianne Williamson for President on June 27, 2019, to help her qualify for Democratic debates, even though he did not support her candidacy. This donation was processed through ActBlue. Unbeknownst to McDonald, it was reported as a donation to ActBlue, earmarked for Williamson.

23. McDonald made a similar \$1 donation to a republican presidential contender in the 2024 cycle. However, apparently because either that candidate did not use a conduit, or the conduit failed to report the donation, the 2024 donation was not reported.

24. McDonald is concerned that if information about his donations remain on the FEC website, it will adversely impact McDonald's political activities, including his future giving.

25. Due to his involvement in party politics, McDonald has various reasons for wanting to keep his small dollar donations private. Some of McDonald's donations will be made to candidates in contested primaries, including in Texas where he lives and works. McDonald is General Counsel for the Tarrant County Republican Party. He would not want his personal support for a candidate to imply that the Tarrant County Republican Party as an institution supports the candidate.

⁸ See, e.g., Doan, Laura, *Politics Doug Burgum is giving \$20 gift cards in exchange for campaign donations. Experts split on whether that's legal*, CBS News, <https://www.cbsnews.com/news/doug-burgum-president-campaign-gift-cards-20-donations-legal-experts/> (last accessed on Feb. 18, 2025); Flechas, Joey, *Suarez can get big campaign checks from the wealthy. Can he get \$1 from regular folks?*, Miami Herald, <https://www.miamiherald.com/news/politics-government/state-politics/article277674818.html> (last accessed on Feb. 18, 2025)

26. If McDonald's small donations are revealed, he fears repercussions for himself and the Tarrant County Republican Party, in the form of demands for similar donations from other candidates, confusion over the Tarrant County Republican Party's stance in primary races, and misunderstandings regarding the intent and implications of McDonald's donations.

27. McDonald wants to make additional small dollar donations in the future but is afraid to do so because such donations might be disclosed simply based upon the manner in which candidates processes donations.

28. Thus, McDonald is chilled in his ability to express his political views through donations to his chosen political candidates. McDonald is forced to choose between freely voicing support for candidates and policy through monetary donations and maintaining his privacy.

The FEC Asks Congress to Adopt an Itemization Threshold for Conduit Contributions

29. On December 14, 2023, the FEC unanimously recommended legislative to Congress.⁹

30. The first priority listed under the section titled "Highest Priority Legislative Recommendations" concerned conduit contributions.

31. Specifically, the FEC recommended: "Congress should amend FECA's reporting requirement for conduit contributions to establish an itemization threshold consistent with other FECA reporting requirements."

32. The FEC contrasted Section 30104(b)(3)(A)'s \$200 reporting threshold with the lack of any threshold for conduit contributions in Section 30116(a)(8). According to the FEC, the distinction in the two statutes had "a significant impact on the total number of reported transactions disclosed by all FEC filers." As an example, "[f]rom 2016 to 2020, the FEC saw the

⁹ *Federal Election Commission Legislative Recommendations 2023*, Federal Election Commission, Dec. 14, 2023, <https://www.fec.gov/resources/cms-content/documents/legrec2023.pdf> (last accessed on Feb. 18, 2025).

number of reported transactions increase by more than 400 percent” and “attributes more than eighty percent of the increase to conduit and intermediary reports.”

33. Thus, the FEC recommended that Congress amend 52 U.S.C. § 30116(a)(8) to strike the phrase “to the Commission” and add the following language:

The intermediary or conduit shall report to the Commission the original source and the intended recipient of such contribution for each person who makes a contribution through the intermediary or conduit during the reporting period, whose contribution or contributions through the intermediary or conduit have an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.

34. Several FEC Commissioners wrote statements in support of the legislative recommendation to create an itemization threshold for conduit contributions.

35. Commissioner Dickerson wrote a letter in support on behalf of himself and Commissioner Trainor. They pointed out the significant burden that current law placed on donors and argued that the proposed amendment was constitutional based on Supreme Court precedent.¹⁰ The Commissioners proposed a “temporary Directive” while awaiting amendment of the statute in the form of allowing the Commission to relieve donors of the disclosure requirement so long as a bipartisan majority found a demonstrated need.

36. Commissioner Lindenbaum also wrote a statement specifically “urging Congress to amend the Federal Election Campaign Act to eliminate the public disclosure of contributors’ street names and street numbers.”¹¹ Although Lindenbaum stated she did not support the proposed “temporary Directive” because of the administrative burdens it would cause, she

¹⁰ *Statement of Commissioner Allen J. Dickerson on Proposed Directive Concerning Requests to Withhold, Redact, or Modify Contributors’ Identifying Information*, available at: <https://www.fec.gov/resources/cms-content/documents/Statement-on-Proposed-Directive-to-Withhold-Redact-or-Modify-Contributors-Information.pdf> (last accessed on Feb. 18, 2025).

¹¹ *Statement of Commissioner Dara Lindenbaum Urging Congress to Amend the Federal Election Campaign Act to Eliminate the Public Disclosure of Contributors’ Street Names and Street Number*, available at: <https://www.fec.gov/resources/cms-content/documents/Statement-Urging-Amend-FECA-to-Eliminate-Disclosure-of-Contributors-Street-Nam.pdf> (last accessed on Feb. 18, 2025).

nonetheless supported amendment to Section 30116(a)(8). Commissioner Lindenbaum proposed that personal donor information still be disclosed to the Commission, to serve transparency interests, but that the Commission not be required to release the information publicly, in order to serve concerns of individual personal safety.

37. The FEC repeated this recommendation as its number one legislative recommendation for the 119th U.S. Congress on December 12, 2024.¹²

38. Since the FEC released its recommendations, the 119th United States Congress began on January 3, 2025. As of the date of this filing, no bill has been introduced in either the House or the Senate that proposes the FEC's suggested amendment to 52 U.S.C. § 30116(a)(8).

39. The FEC continues to apply Section 30116(a)(8) as requiring the public disclosure of donor's personal identifying information.

COUNT ONE
RIGHT TO FREE SPEECH AND ASSOCIATION
U.S. CONST. AMEND. I

40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 of the Complaint as though fully set forth below.

41. Title 52 U.S.C. § 30116(a)(8) violates the First Amendment right to engage in political speech and association as applied to Plaintiff by mandating the reporting and disclosure of the identities and personal information of donors who donate up to \$200 to a federal candidate's campaign through a conduit.

42. As applied to such donations, 52 U.S.C. § 30116(a)(8) does not survive any form of heightened First Amendment scrutiny. It does not further the governmental interest in preventing corruption or the appearance of corruption, nor is its disclosure requirement narrowly tailored,

¹² *Federal Election Commission Legislative Recommendations 2024*, available at: <https://www.fec.gov/resources/cms-content/documents/legrec2024.pdf> (last accessed on Feb. 18, 2025).

nor does it have a substantial relation to any sufficiently important governmental interest.

43. Accordingly, 52 U.S.C. § 30116(a)(8), as applied to contributions of \$200 or less that are earmarked or otherwise directed through an intermediary or conduit to a candidate, violates Plaintiff's First Amendment rights to free speech and association. Plaintiff is thus entitled to declaratory and injunctive relief against Section 30116(a)(8)'s application to his conduit donations of \$200 or less.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in his favor and against Defendant as follows:

- a. A declaration that disclosure of contributor names and addresses pursuant to 52 U.S.C. § 30116(a)(8) of conduit donations not exceeding \$200 violates the First Amendment;
- b. Consistent with such declaration, permanent injunctive relief barring Defendant from requiring fundraising platforms subject to 52 U.S.C. § 30116(a)(8) to disclose Plaintiff's name and address when reporting conduit contributions not exceeding \$200 to the FEC;
- c. An Order that Defendant remove Plaintiff's past small-dollar conduit donations from its public reports;
- d. Costs of suit;
- e. Attorney fees and costs pursuant to 28 U.S.C. § 2412 or any other applicable authority; and,
- f. Any other further relief as the Court may deem just and proper.

Dated: February 18, 2025

Respectfully submitted.

/s/ Courtney Corbello
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EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TONY MCDONALD,

Plaintiff,

v.

No. 4:25-cv-00153-P

FEDERAL ELECTION COMMISSION,

Defendant.

MEMORANDUM OPINION & ORDER

Before the Court is Defendant Federal Election Commission's (FEC) Motion to Dismiss for Lack of Jurisdiction (Motion). Having considered the Motion, relevant docket filings, and the applicable law, the Court will **GRANT** the Motion.

BACKGROUND

This case arises out of two political contributions subject to the Federal Election Campaign Act (FECA). For context, the Court begins with the statutory framework and then provides the factual background of the case.

FECA requires "political committees," which includes candidate campaigns, political parties, and other political organizations, to report certain receipts and disbursements. *See* 52 U.S.C. § 30101(4)–(6). There are two disclosure provisions relevant to this case. The first relates to contributions made directly to political committees. *Id.* § 30104(b)(3)(A). Section 30104(b)(3)(A) imposes reporting requirements on the identification of any "person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year" *Id.* The second relates to contributions "earmarked or otherwise directed through an intermediary or conduit to such candidate." *Id.* § 30116(a)(8). For these

types of contributions, the “intermediary or conduit shall report the original source and the intended recipient of such contribution.” *Id.* Unlike § 30104(b)(3)(A), there is no minimum threshold for disclosure of a contribution when routed through a conduit under § 30116(a)(8).

For challenges brought under FECA, the district court merely certifies a record to an *en banc* court of appeals rather than ruling on the merits. Before certification, however, the district court performs several functions. To begin, the court determines whether the constitutional challenge is “frivolous.” *Cal. Med. Ass’n v. FEC*, 453 U.S. 182, 192 n.14 (1981). The court also determines whether there is standing. *Id.* Then, the court creates a record for appellate review, including making findings of fact. *See Bread Pol. Action Comm. v. FEC*, 455 U.S. 577, 580 (1982). After allowing discovery and creating a record, the court then certifies the record and all non-frivolous questions to the *en banc* court of appeals. *See Mariani v. United States*, 212 F.3d 761, 769 (3d Cir. 2000) (*en banc*); *Buckley v. Valeo*, 519 F.2d 817, 818 (D.C. Cir. 1975) (*en banc*) (*per curiam*), *aff’d in part and rev’d in part on other grounds*, 424 U.S. 1 (1976); 52 U.S.C. § 30110.

The facts of this case are uncomplicated. In June 2019, McDonald contributed \$1 to Marianne Williamson’s presidential campaign. McDonald alleges that this contribution was to help Williamson qualify for Democratic debates rather than to support her candidacy. The \$1 contribution was processed through a conduit called ActBlue. Thus, as required by § 30116(a)(8), McDonald’s contribution was disclosed.

In June 2023, McDonald made another contribution, this time \$50 to an unnamed federal candidate. McDonald allegedly donated less than \$200, in part, because he believed the contribution would remain anonymous. The unnamed candidate, however, allegedly routed McDonald’s contribution through another conduit, this time WinRed. Again, as required by § 30116(a)(8), McDonald’s \$50 contribution was disclosed.¹

¹McDonald also alleges a \$1 donation in 2024; however, the Complaint makes clear that this donation “was not reported.” ECF No. 1 ¶ 23. For this

McDonald brought suit on February 18, 2025, arguing that § 30116(a)(8)'s reporting and disclosure requirements are unconstitutional for contributions routed through a conduit up to \$200. On April 22, 2025, FEC filed a Motion to Dismiss. The Court now addresses that Motion.

LEGAL STANDARD

A 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction alleges that the court lacks the authority to hear the dispute. *See* FED. R. CIV. P. 12(b)(1). Federal courts are courts of limited jurisdiction and must have “statutory or constitutional power to adjudicate the case.” *Home Builders Ass’n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). The party invoking the court’s jurisdiction bears the burden of demonstrating that jurisdiction exists. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Courts may dismiss for lack of subject-matter jurisdiction on any of three separate grounds: “(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Kling v. Hebert*, 60 F.4th 281, 284 (5th Cir. 2023) (citation omitted).

To challenge subject-matter jurisdiction under Rule 12(b)(1), a party can make either a facial or factual attack. *See Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981). A 12(b)(1) motion that challenges standing based on the pleadings is considered a facial attack, and the court reviews only the sufficiency of the pleading’s allegations, presuming them to be true. *Id.* If a defendant makes a factual attack on subject-matter jurisdiction by submitting evidence, such as affidavits and testimony, the plaintiff “has the burden of proving by a preponderance of the evidence that the trial court does have subject matter jurisdiction.” *Id.* In a factual attack, the “court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981) (citation omitted). Further, in a factual attack, “no presumptive truthfulness

reason, the Court does not consider this donation for McDonald’s challenge to 52 U.S.C. § 30116(a)(8)’s reporting requirement.

attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Id.*

ANALYSIS

The only issue presented by FEC's Motion is whether McDonald can demonstrate an injury in fact to establish Article III standing. The standing inquiry requires three elements: (1) the plaintiff must show he has "suffered an injury in fact"; (2) the plaintiff must show a "causal connection between the injury and the conduct complained of"; and (3) the plaintiff must show it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992) (citation modified). As the party invoking federal jurisdiction, the plaintiff bears the burden of showing subject-matter jurisdiction. *Kling*, 60 F.4th at 284.

For the first element of standing, a plaintiff must show an injury in fact, which the Supreme Court defines as "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. Such requirements are no different in challenges involving disclosure of campaign contributions. *See FEC v. Akins*, 524 U.S. 11, 21 (1998).

The injury in fact requirement is not necessarily "relaxed" in the context of a First Amendment challenge.² This is not a pre-enforcement challenge. *See Hou. Chron. Publ'g Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007) ("Chilling a plaintiff's speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.") (citation omitted). McDonald does not allege that he faces the threat of an enforcement action for violating FECA. Rather, McDonald argues that the disclosure of his past contributions is sufficient.³ Based on these

²McDonald asserts in his Response that "[s]tanding is not difficult to achieve in this First Amendment challenge, where injury requirements are relaxed." ECF No. 24 at 4.

³*See id.* ("McDonald suffered a First Amendment injury when his donor information was disclosed to the FCC.").

pleadings, McDonald must show a concrete injury in fact just like any other plaintiff.

McDonald has failed to demonstrate an injury in fact. McDonald points to several “ramifications” relating to his two contributions that constitute an injury. ECF No. 24 at 5. For example, McDonald says he “does not want to explain or justify such contributions.” ECF No. 1 ¶ 21. But McDonald does not allege an instance where he was forced to explain or justify his contributions nor how such an explanation constitutes a concrete and particularized harm. McDonald also says “[h]e would not want his personal support for a candidate to imply that the Tarrant County Republican Party as an institution supports the candidate.” ECF No. 1 ¶ 25. Again, McDonald speculates that such an alleged harm may occur, but he provides no evidence of an actual injury nor how such an implication would constitute an injury to him rather than the Tarrant County Republican Party. Such speculative injuries fail to satisfy the hurdle set forth in *Lujan*.

The “disclosure of donor information” is not a “constitutional injury in and of itself.” ECF No. 24 at 5. McDonald cites to two cases to support this contention: *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021), and *X Corp. v. Media Matters for Am.*, 120 F.4th 190 (5th Cir. 2024) (per curiam). Yet *Bonta* did not involve the public disclosure of information. More importantly, the majority in *Bonta* did not address standing much less hold that, in the context of disclosing donor information, an injury in fact is not necessary. As for *X Corp.*, the plaintiff in that case sought discovery concerning the identity of the defendant’s financial donors. 120 F.4th at 194. The question before the Court of Appeals for the Fifth Circuit was whether to stay the district court’s order granting a motion to compel such information. *Id.* at 195. And in making such an inquiry on a motion to compel, the court considered the competing harms between the two parties. *Id.* at 196. But such a framework is inapplicable to the standing analysis, which requires a particularized and concrete harm from a plaintiff.

Ultimately, McDonald has shown no reason why the Court should abandon an injury-in-fact inquiry solely because his claim involves the

disclosure of campaign contributions. For this reason, the Court finds that McDonald lacks Article III standing.

CONCLUSION

For the reasons above, the Court **GRANTS** FEC's Motion. Accordingly, McDonald's sole claim challenging 52 U.S.C. § 30116(a)(8) is **DISMISSED without prejudice**.

SO ORDERED on this **9th day of July 2025**.



MARK T. PITTMAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TONY McDONALD,

Plaintiff,

v.

No. 4:25-cv-00153-P

FEDERAL ELECTION COMMISSION,

Defendant.

FINAL JUDGMENT

This final judgment is issued pursuant to Federal Rule of Civil Procedure 58(a). In accordance with the Court's Memorandum Opinion & Order (ECF No. 26), this case is **DISMISSED without prejudice**. The Clerk of the Court shall transmit a true copy of this judgment to the parties.

SO ORDERED on this **9th day of July 2025**.



MARK T. PITTMAN
UNITED STATES DISTRICT JUDGE