UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

TONY MCDONALD, *Plaintiff*, v. FEDERAL ELECTION COMMISSION, *Defendant*.	Case No. 4:25-cv-00153-P MEMORANDUM OPPOSING MOTION TO DISMISS

INTRODUCTION

This is a rare case, with a unique procedure: A constitutional challenge to a provision of the Federal Elections Campaign Act. ("FECA"). In these cases, "[t]he district court *immediately shall certify* all questions of constitutionality of this Act to the United States court of appeals for the circuit involved". 52 U.S.C. § 30110 (emphasis added). This Court's role is limited. The Court merely kicks the tires to ensure the case is not frivolous. *Cal. Med. Ass'n v. Fed. Election Comm'n*, 453 U.S. 182, 192 n.14 (1981). Once that low bar is cleared, the Court oversees whatever discovery may be necessary, and then immediately certifies the constitutional questions to the Court of Appeals. *Id*. Here, no discovery is warranted, making certification upon the FEC answering appropriate. *Nat'l Republican Senatorial Comm. v. FEC*, 712 F. Supp. 3d 1017, 1033 (S.D. Ohio 2024) ("the Court finds itself in the unenviable position of concluding, as explained further below, that the expedited discovery period the FEC requested was largely for naught.").

There simply are no disputed adjudicative facts to be discovered. The relevant facts here are all "legislative facts" that are presented to the adjudicating court via briefs. It makes no sense for this court to spend time and resources building a record of legislative facts, when the Court of

Appeals will be free to disregard them all, and determine the appropriate set of legislative facts itself. *See id*. at 1035 ("[A]ny so-called findings of legislative facts that the Court could make here would be reviewed de novo by the en banc court of appeals because it is integral to the legal analysis of the constitutional issues raised.").

The adjudicative facts here are minimal. Plaintiff has made donations to federal candidates in amounts of $200 or less. *See* Complaint (Doc 1) at PageID 8-9. Some of these donations were processed through conduits, and as such were required to be reported to the FEC under 52 U.S.C. § 30116(a)(8), the challenged statute. *Id*. The FEC maintains a database that lists these donations under Plaintiff's name and associated address and employer. *Id* at 6, n. 1-5. *See also* Motion to Dismiss (Doc 21) at PageID 115-116. Plaintiff desires to make additional small dollar donations in the future, and requests relief in the form of a declaration that the challenged reporting requirement is unconstitutional. *Id* at 9. He requests mitigation of the past wrong. Specifically, he requests an order removing record of his past small-dollar donations from the FEC database because every time his information in returned in a search of the FEC database, he is injured again. *Id* at 8, 12. Finally, he requests an injunction against the prospective collection of the offending data to prevent future injury. *Id* at 12.

Despite the straightforward case, the FEC has filed a Rule 12(b)(1) motion contesting standing, arguing that there is no injury in fact. *See* Doc 21. The motion can readily be denied.

FACTS

Tony McDonald, a voter and small-dollar donor, challenges the constitutionality of the statute that requires differing disclosure of small dollar donations ($200 and below) to federal candidates based on how the candidate elects to process donations received in response to the candidate's solicitations. Doc 1 at 1-3. Identifying information of small-dollar donors whose

donations are deposited directly into a candidate's account is not required to be disclosed to the FEC. 52 U.S.C. § 30104(b)(3). But this same information is required to be disclosed to the FEC if the candidate has the donation processed through a conduit, such as ActBlue or WinRed. 52 U.S.C. § 30116(a)(8); Doc 1 at 5-7. McDonald alleges the conduit disclosure requirement infringes his rights to free speech and association. Doc 1 at 11.The FEC has recognized this statutory anomaly and many difficulties it has caused, and twice requested Congress to amend FECA to no longer require the reporting of small-dollar conduit donations. *Id.* at nn. 9, 11.

Quite simply, mandating the disclosure of small-dollar conduit donations cannot be narrowly tailored to serve a compelling government interest in preventing quid pro quo corruption when an equal, direct, small-dollar donation is subject to less disclosure. *Id.* at 11. Nor can the FEC argue it has a completing need for the information when the FEC has repeatedly told Congress it doesn't want the data. *Id.* at 10-11.

ARGUMENT

The FEC challenges McDonald's standing to bring this claim on the narrowest basis. According to the FEC, "Plaintiff fails to allege a cognizable Article III injury." *See* Motion (Doc 21) at PageID 130. This is puzzling because the injury-in-fact requirement, not a high hurdle in donor disclosure cases, is obviously met here.

I. The Injury in Fact Requirement is Easy to Meet in Donor Disclosure Cases

The FEC does not challenge jurisdiction based on the nature of the claim. It concedes McDonald's claim can be brought under Section 30110. Doc 21 at PageID 113-115. The FEC confines its jurisdictional argument to whether Plaintiff suffered an injury in fact. *Id* at 118.

In setting forth the governing standard, the FEC relies principally upon generic law that is not focused on political speech, donor disclosure, or claims against the FEC. *Id*. But cases focusing

on the injury-in-fact requirement in cases like this one show the standard is easily met. "[The injury-in-fact requirement [] helps to ensure that the plaintiff has a personal stake in the outcome of the controversy." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). "[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.,* with the manner and degree of evidence required at the successive stages of the litigation." *Id.* "To establish standing at the motion to dismiss stage, the plaintiff must state a plausible claim that she has suffered an injury in fact fairly traceable to the actions of the defendant that is likely to be redressed by a favorable decision on the merits." *Cruz v. FEC*, No. 19-cv-908, 2019 U.S. Dist. LEXIS 229454, at *14 (D.D.C. Dec. 24, 2019) (cleaned up).

Standing is not difficult to achieve in this First Amendment challenge, where injury requirements are relaxed. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 618-19 (2021) ("The risk of a chilling effect on association is enough"). Moreso here, where the statute under which this case is brought, 52 U.S.C. § 30110, expressly affords declaratory relief. *Buckley v. Valeo*, 424 U.S. 1, 11-12 (1976) ("It is clear that Congress, in enacting [52 U.S.C. § 30110] intended to provide judicial review to the extent permitted by Art. III.").

II. McDonald has Standing to Seek Declaratory Judgment

Plaintiff contends that it is unconstitutional for the FECA to have required the disclosure of his information to the FEC. Plaintiff seeks, *inter alia*, declaratory relief that requiring the disclosure of small-dollar donations made via conduits is unconstitutional, and an order removing these donations from the database. Doc 1 at 12. Because Plaintiff desires to make similar donations in the future, he also seeks a prospective injunction prohibiting the FEC from requiring small-dollar disclosures going forward. *Id*.

To have standing for a declaratory judgment claim under § 30110, a plaintiff must merely have a "personal stake" in the issue and "present a real and substantial controversy admitting of specific relief through a decree of a conclusive character," and not be based on "a hypothetical state of facts." *Buckley v. Valeo*, 424 U.S. 1, 12 (1976). McDonald has an obvious personal stake in whether his name, address, employment, and political donations are reported to the government and exposed to the public at large. *X Corp. v. Media Matters for Am.*, 120 F.4th 190, 196 (5th Cir. 2024) ("once the donor information is disclosed, the First Amendment injury could not be undone"); *Nat'l Rifle Ass'n of Am. v. Magaw,* 132 F.3d 272, 279 (6th Cir. 1997) (holding that an injury sufficient to maintain an action for declaratory relief exists "when a statute … chills protected First Amendment activity") (cleaned up). Thus, standing for declaratory relief is established. The FEC never argues to the contrary.

The central error in the FEC's motion is its failure to acknowledge that disclosure of donor information is a constitutional injury in and of itself. *Id*. This error results in the FEC repeatedly mistakenly arguing that McDonald has not suffered an injury. Thus, the bulk of this response simply highlights that how this central error infects the brief.

III. McDonald has Standing to Seek Remedy for Past Harms

The FEC argues that McDonald did not suffer an injury in fact from the disclosures of his past small donor donations because he did not allege specific ramifications resulted. Doc 21 at PageID 122. The FEC also misconstrues McDonald's concern about what could happen to him because of his role as General Counsel for the Tarrant County Republican Party. The FEC claims that McDonald alleges an injury only *to* the county party. Doc 21 at 123. Not true. McDonald alleges his injury is the ramifications to his role *with* the party because of the disclosure of the donations. Doc 1 at 9. Chilled speech resulting from fear of injury to McDonald's reputation is a

cognizable harm. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341-42 (1995) ("The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible."). Disclosure "chills speech by exposing anonymous donors to harassment and threats of reprisal." *Del. Strong Families v. Denn*, 579 U.S. 953, 954 (2016) (Thomas, J., dissenting from denial of certiorari).

McDonald suffered a First Amendment injury when his donor information was disclosed to the FCC. *Bonta,* 594 U.S. at 617. He was further injured by the FEC placing that information in a public database. *Denn*, 579 U.S. at 954. He is injured anew every time his small-dollar donation information appears in query results on the FEC website.

The FEC demonstrated the ongoing nature of the injury when it included URLs in its Motion for FEC database entries that publicly disclose McDonald's contributions that should not have been disclosed. See Doc. 21 at PageID 115-116. Ironically, the FEC's argument that McDonald wasn't injured by the disclosure contributes to the very injury the FEC denies by pointing to URLs that publicly reveal the information that should be private. This further harm will end only when these results cannot be returned from the FEC website.

IV. McDonald has Standing to Seek Prospective Relief

The FEC next argues that McDonald has not alleged an adequate injury in fact to obtain prospective relief. To obtain prospective relief, "[a] plaintiff has suffered an injury in fact if he (1) has an intention to engage in a course of conduct arguably affected with a constitutional interest, (2) his intended future conduct is arguably proscribed by the policy in question, and (3) the threat of future enforcement of the challenged policies is substantial." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020). Here, McDonald has stated his intention to make

small-dollar candidate contributions in the future to federal candidates who will utilize conduit platforms, such as ActBlue and WinRed, to accept these donations. Doc 1 at 8-9.

Campaign donations are unquestionably constitutionally protected. *Driehaus*, 573 U.S. at 162 ("Because petitioners' intended future conduct concerns political speech, it is certainly affected with a constitutional interest."). The conduit donations are subject to mandatory reporting. 52 U.S.C. § 30116(a)(8). Even though the FEC is seeking a legislative fix, the FEC does not dispute that it will enforce § 30116(a)(8) until the law changes. The disclosure of McDonald's information to the FEC is a cognizable First Amendment injury itself. *X Corp. v. Media Matters for Am.*, 120 F.4th at 196. "The pre-enforcement nature of the suit [is] not troubling because the plaintiff[has] alleged an actual and well-founded fear that the law will be enforced against them." *Driehaus*, 573 U.S. at 160 (cleaned up). Therefore, McDonald has established a First Amendment injury for prospective enforcement.

The FEC argues the McDonald's future harm is speculative because he cannot specifically identify the candidates to which he will make small-dollar donations using a conduit platform. However, this level of specificity is not required here. McDonald's allegations show that he has made small-dollar donations to federal candidates in 2019, 2023 and 2024,[1] at least two of whom used conduit platforms to accept donations. McDonald indicated his desire to continue making similar donations in the future. This is all that is required for standing. *Id*. ("a plaintiff could

[1] The FEC argues that the Court should "disregard" the 2024 donation because it wasn't reported to the FEC. Hardly. The 2024 donation is significant because it is part of McDonald's pattern as a small-dollar donor. The donation shows that McDonald is likely to donate again.
Beyond this, the donation should not be discounted simply because it does not appear in the FEC database under McDonald's name. It is possible the donation was inadvertently misreported to the FEC, and thus does not appear as it should. It is also possible the intermediary failed to report the donation even though it intended to do so. If the candidate accepted the donation directly, and thus was not required to report it, the donation is still relevant to show McDonald's small-dollar donor history and as a demonstration of the absurdity of requiring conduit donor disclosures when the direct donation was not reportable.

bring a preenforcement suit when he has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder."). He need not be prescient. McDonald is not required to know which candidate or candidates in the next election cycle will earn his financial support. His desire to remain an active small-dollar donor suffices. *Id*.

The FEC argues that McDonald's chill is merely subjective. Not so. The Supreme Court has explained that forcing the disclosure of anonymous donors objectively chills. "The disclosure requirement creates an unnecessary risk of chilling in violation of the First Amendment, indiscriminately sweeping up the information of every [small dollar] donor with reason to remain anonymous." *Bonta,* 594 U.S. at 616-617. "Such risks are heightened in the 21st Century and seem to grow with each passing year, as anyone with access to a computer can compile a wealth of information about anyone else, including such sensitive details as a person's home address or the school attended by his children." *Id.* at 617. Chill is presumed because "[w]hen it comes to a person's beliefs and associations, broad and sweeping state inquiries into these protected areas discourage citizens from exercising rights protected by the Constitution." *Id.* at 610. Thus, disclosing donor information objectively chills donations, which are protected political speech and association. *Id*. Even the *Bonta* dissenters noted the conclusive nature of this holding. *Id* at 629 (Sotomayor, J., dissenting) (As a result of the *Bonta* holding, "all disclosure requirements *ipso facto* impose cognizable First Amendment burdens"). This Court cannot find otherwise.

The complaint alleges that due to his involvement in party politics, McDonald has various reasons for wanting to keep his small dollar donations private. Doc 1 at 9. As General Counsel for the Tarrant County Republican Party, McDonald does not want his contributions revealed because he does not want people to know that he sometimes supports candidates in primary

contests.[2] *Id*. Additionally, McDonald does not want people to know about and thereby potentially misconstrue the intent and implications of his donations. *Id.* at 10. The FEC indicated in its motion that it does not view McDonald's reasons to be sufficient under its rules for his identity to be shielded. But, under *Banta*, the sufficiency of individual motivations chilling a plaintiff's donations is not for the government to decide. 594 U.S. at 616. The demand for an explanation of why someone is chilled is itself chilling. The objective chill of the disclosure requirement is enough. "Exacting scrutiny is triggered by state action which *may* have the effect of curtailing the freedom to associate, and by the *possible* deterrent effect of disclosure." *Id.* (internal quotation marks omitted).

To the extent the FEC argues McDonald could avoid future injury by mailing a payment to a candidate instead of using an online donation portal, this argument fails because "[n]one of the cases the FEC cites supports the notion that to avoid causing her own injury a plaintiff must do the very thing she claims she has a right not to do." *Cruz v. FEC*, No. 19-cv-908 (APM), 2019 U.S. Dist. LEXIS 229454, at *20 (D.D.C. Dec. 24, 2019). McDonald wants to use the donation portals candidates have chosen to process donations. Doing so is quick, easy and convenient. Mailing a check or credit card number is less convenient and induces a "pocketbook injury" of paying for postage. Plus, the FEC presumes the candidate will process the contribution directly and not through a conduit. There is no reason for the Court to make this same assumption.

The First Amendment has long been recognized to permit anonymous association and donation for all these reasons, or for no reason whatsoever. *Bonta* at 616-19. An important part of championing anonymity is *not* requiring an explanation of why an individual seeks anonymity,

[2] The FEC discounts McDonald's role with the county party because the party is not listed as his employer—his eponymous law firm is. The FEC misses the point. Anyone searching the FEC donor database for Tony McDonald from Tarrant County will likely already know his affiliation with the Tarrant County Republican Party—or quickly be able to figure it out through a few quick keyboard strokes.

because explaining one's reasons for being anonymous often destroys the benefit of anonymity and thus chills the anonymous speech one would make.

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.

CONCLUSION

The complaint alleges facts, if true, are adequate to establish standing. The Motion to Dismiss should be denied. The FEC should be required to answer, after which the Court should immediately certify the constitutional question in this case to the Fifth Circuit for determination on the merits as required by 52 U.S.C. § 30110.

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Respectfully submitted,

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