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 REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY AFFIRMANCE

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August 25, 2025

Pursuant to Federal Rule of Appellate Procedure 27(a), appellee Federal Election Commission ("FEC" or "Commission") files this reply in support of its motion for 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.").

INTRODUCTION

This case is well-suited for summary affirmance. *See* Fifth. Cir. Rule 47.6 (judgment may be affirmed without opinion when, *inter alia*, "no reversible error of law appears"). Appellant Tony McDonald failed to demonstrate a concrete and particularized injury in fact from the statute he challenges and thus raises no reversable error to the district court's straightforward dismissal of his suit for lack of Article III standing.[1]

McDonald's Complaint alleged the disclosure of his two past contributions pursuant to the conduit reporting requirement in the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30116(a)(8) violates the First Amendment as applied

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[1] The electronic record on appeal has not yet been prepared. In its Motion for Summary Affirmance, the Commission cited to the docket entries as they appear in the district court record. Two of those docket entries, McDonald's Complaint and the district court's opinion and order, are attached as exhibits to that Motion.

to contributions of less than $200. Nowhere in his Complaint, however, does McDonald offer any alleged injury resulting from these two contributions. As the district court correctly held, the absence of *any* actual injury flowing from the disclosure of those two contributions is fatal to his Complaint. The Commission's motion for summary affirmance ("Mot.") (ECF No. 16) explained that McDonald's allegation of mere speculative harm from the disclosure of these two contributions is insufficient to establish standing under well-established Supreme Court and Fifth Circuit precedent, and the disclosure of McDonald's contributions is not a constitutional injury in and of itself. In his response ("Opp'n") (ECF No. 21), McDonald does not dispute this Circuit's Rule 47.6 standard, nor does he argue that the district court's application of the prevailing injury-in-fact requirements under, *inter alia*, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) amounted to a reversible error. Instead, McDonald reiterates his erroneous arguments about a "relaxed" injury standard for lawsuits challenging the disclosure of campaign contributions. (Opp'n at 7-8.) McDonald further argues, to no avail, that complaints seeking declaratory relief enjoy that same "relaxed" standard. (*See id*.)

McDonald provides no basis to disregard his failure to establish Article III standing, which all plaintiffs must have to proceed in federal court. Accordingly,

the district court made no reversible error of law in dismissing McDonald's Complaint and his claim is foreclosed by precedent. *See* Fifth Cir. Rule 47.6; *see also Fermin v. United States*, 491 F. App'x 472, at *1 (5th Cir. 2012) (per curiam); *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."). Nothing in McDonald's opposition demonstrates otherwise. This Court should therefore summarily affirm.

ARGUMENT

I. THIS COURT MAY SUMMARILY AFFIRM UNDER RULE 47.6

This Court may summarily affirm under Circuit Rule 47.6 where the district court committed no reversible error of law. (Mot. at 11-13.) The Commission provided numerous examples of this Court's having so summarily affirmed. (*See, e.g.*, *id.* at 13 (citing *Sullivan v. Boyd Tunica Inc.*, 291 F. App'x 655, 655-56 (5th Cir. 2008) (per curiam)).) McDonald does not contest this authority or rely on an alternative standard for summary affirmance. (*See generally* Opp'n)[2] The only

[2] McDonald only addresses, in passing, summary disposition in the context of a summary reversal. (*See* Opp'n at 15-16.) However, McDonald has not sought summary reversal, and such a motion is not properly before the Court because McDonald did not give notice to the Commission under Circuit Rule 27.4, and, in any event, McDonald does not squarely address the substantive reasons for the district court's decision. *See* Fifth Cir. Rule 27.4.

remaining question for the Court is whether the district court committed a reversible error in dismissing McDonald's Complaint. For the reasons that follow, it did not.

II. THE DISTRICT COURT COMMITTED NO REVERSIBLE ERRORS OF LAW

A. The District Court Correctly Articulated the Standard for Showing an Injury in Fact

McDonald's response falls far short of showing an essential element of constitutional standing: injury-in-fact. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-01 (1992). In granting the Commission's Motion to Dismiss, the district court properly stated that to establish 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). An injury in fact is defined by the Supreme Court as "concrete and particularized" and "actual or imminent, not conjectural or hypothetical," and applies with equal measure in First Amendment lawsuits. (*Id.*)

B. The District Court Properly Disposed of McDonald Alternative Theory of Standing

McDonald does not challenge the district court's articulation of this standard. Nor can he. Instead, McDonald reiterates an attempted end run on the

Lujan standard, *i.e.*, in cases challenging the disclosure of campaign contributions, the disclosure itself is an injury sufficient to confer standing. (Opp'n at 2 ("Unwarranted disclosure of a donor's identity is a First Amendment injury."); *id.* at 10 ("McDonald suffered a First Amendment injury when his donor information was disclosed to the FCC [*sic*]").) As he did in the district court, McDonald claims that his standing can be established by *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), but neither decision supports that proposition. (*See* Opp'n at 2-3; 9-10; 12-13.)

As the district court correctly held, McDonald's assertions are simply wrong. The district court differentiated between pre-enforcement First Amendment cases, in which a plaintiff risks penalties or prosecution for violating the challenged law, and McDonald's Complaint, which *is not* a pre-enforcement challenge, nor does he claim that it is. (Op. at 4 ("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.").) Accordingly, the district court correctly held that McDonald's allegation of subjective chilling of his speech fell short of the injury-in-fact standard. (*Id.*) The district court also properly disposed of the case law McDonald cited in support of

his disclosure theory, *Bonta* and *X Corp.*, reasoning that neither case involved the public disclosure of information nor a standing analysis. (*Id.* at 5.)

In a similar vein, McDonald now argues that he has standing because he seeks declaratory relief. (Opp'n at 8-9). Again, McDonald improperly repurposes precedent from pre-enforcement First Amendment challenges and seeks to interpose them in this case, which does not raise a pre-enforcement challenge. (*See id.* at 9, 11.) The district court properly refuted such arguments in dismissing the Complaint, and the Court should do so here.[3]

C. The District Court Correctly Held That McDonald's Speculative Allegations Failed to Demonstrate Injury In Fact

The district court properly dismissed McDonald's Complaint. (Op. at 4-6.) The Complaint alleged no discrete injury from the alleged disclosures and only speculated that he may have to "justify" or "explain" his contributions. (*Id.* at 5.) The district court also found speculative McDonald's allegations of future injury

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[3] McDonald adds to his string of inapposite case law by citing *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020), a decision quoted in *X Corp.* (Opp'n at 2.) *Roman Catholic Diocese of Brooklyn* concerned a motion for injunctive relief from a state executive order imposing occupancy restrictions on houses of worship. *See generally* 592 U.S. 14. The majority opinion does not address standing, and one concurrence comments that the parties did not contest this issue. *Id.* at 31 (Kavanaugh, J., concurring) ("[T]he State does not suggest that the applicants lack standing.").

based on a desire to make additional small dollar contributions, or any reputational harm that may befall the Tarrant County Republican Party, which is not a party to the case. (*Id.*). In response, McDonald argues that "all that is required for standing" is that he has indicated his desire to make contributions in the future. (Opp'n at 12.) Again, McDonald attempts to offer his speculative allegations to avoid the requirement that he allege a concrete and particularized harm to establish standing.

In spending most of his opposition asserting his novel standing theory, McDonald does not, and cannot, satisfy the established injury-in-fact standard. Under both Supreme Court and Fifth-Circuit authority, the district court committed no reversible errors of law in ruling that McDonald lacked standing. *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). No further briefing is necessary to decide this appeal. Accordingly, the Court should summarily affirm the district court's judgment. *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.").

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. His opposition to the Commission's Motion misinterprets the standing requirement and thus fails in the face of that binding precedent. Accordingly, the district court committed no reversible error of law in dismissing McDonald's Complaint.

Respectfully submitted,

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

I hereby certify, on this 25th day of August, 2025, that:

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(C) because, excluding the parts of the document exempted by Fed. R. App. 32(f) and Circuit Rule 32(e), this document contains 1,652 words.

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/s/ Michael D. Contino
Michael D. Contino

CERTIFICATE OF SERVICE

I hereby certify that this 25th 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.

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