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

BRIEF FOR APPELLEE THE FEDERAL ELECTION COMMISSION

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October 23, 2025

CERTIFICATE OF INTERESTED PERSONS

Tony McDonald v. FEC, No. 25-10830

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Tony McDonald, Plaintiff-Appellant,

2. Federal Election Commission, Defendant-Appellee.

The following attorneys have appeared in this case either before this Court or in the district court:

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STATEMENT REGARDING ORAL ARGUMENT

Because this appeal involves the straightforward application of well-established law to determine Article III standing, appellee Federal Election Commission ("FEC" or "Commission") believes that oral argument is unnecessary to facilitate the resolution of this appeal. The facts and legal arguments are adequately presented in the briefs and district court record to facilitate review of the dismissal of appellant Tony McDonald's ("McDonald" or "Appellant") complaint for lack of subject matter jurisdiction, *see* Fed. R. App. P. 34(a)(2). To the extent the Court determines that oral argument would be helpful, the FEC requests that the parties be allocated equal time to present their position

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INTRODUCTION

This appeal presents the narrow issue of whether Appellant's Complaint meets the first requirement of Article III standing that all plaintiffs must establish to proceed in federal court: injury in fact. Pursuant to Supreme Court and Circuit precedent, the district court properly dismissed McDonald's case against the Federal Election Commission ("FEC" or "Commission") for lack of subject matter jurisdiction because McDonald failed at this fundamental step.

McDonald alleges that the conduit disclosure provision under the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30116(a)(8), is unconstitutional because it requires the disclosure of federal campaign contributions made through conduits or intermediaries, while at the same time, contributions below that threshold made directly to candidate committees are not disclosed. McDonald alleges that years ago he made two campaign contributions to federal candidates through conduits–in this instance conduit committees ActBlue and WinRed–believing that these contributions would remain anonymous, only to later find out that the conduits reported his contributions to the FEC. Yet, McDonald makes no attempt to explain how the disclosure of his two previous conduit contributions caused him any concrete injury, and merely speculates about harm from hypothetical future contributions, which is insufficient to establish injury under current Supreme Court and Circuit precedent.

To avoid specifying any concrete or particularized injury arising from these prior disclosures, as he did in the district court, McDonald asserts in this appeal the flawed theory that disclosure of his contributions alone is sufficient for constitutional standing. To support this theory, McDonald erroneously proffers caselaw from pre-enforcement First Amendment challenges. But this is not a pre-enforcement case in which McDonald is faced with a credible threat of civil or criminal penalties for violating a statute that is being enforced against him. As the district court correctly held, mere speculation of alleged harm is insufficient to establish standing, and the statutorily required disclosure of McDonald's contributions is not a constitutional injury in and of itself.

McDonald's arguments amount to no more than an effort to conjure up an Article III injury where it does not exist. There is no basis for this Court to depart from established standing authority. The district court's dismissal of McDonald's Complaint should be affirmed.

JURISDICTIONAL STATEMENT

This case is an appeal of the district court's order granting the Commission's motion to dismiss, without prejudice, for lack of subject matter jurisdiction. ROA.146-151, 152. A panel of this Court has jurisdiction over the appeal under 28 U.S.C. § 1291. The district court entered final judgment on July 9, 2025.

ROA.146-151, 152. McDonald filed his notice of appeal on July 14, 2025. ROA.153. The appeal is timely filed under Fed. R. App. P. 4(a)(1)(A).

COUNTERSTATEMENT OF THE ISSUE

The district court below granted the FEC's motion to dismiss, finding that appellant Tony McDonald's Complaint failed to allege a concrete and particularized injury arising from the disclosure of two contributions McDonald made years ago to satisfy the requirements of Article III standing. The issue now presented for review is:

> Whether the district court properly held that McDonald lacked standing for failing to allege an injury arising from his publicly disclosed contributions.

COUNTERSTATEMENT OF THE CASE

I. FACTUAL AND REGULATORY BACKGROUND

A. 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. ROA.8. McDonald alleged that he is "actively involved in partisan politics" and a "sophisticated political insider." ROA.6-7. 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. ROA.13.

B. FECA's Disclosure Provisions, Including the Conduit Disclosure Provision Challenged by McDonald

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. 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, 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 political parties. ROA.10-11.

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. In enacting § 30116, Congress sought to prevent the circumvention of other disclosure provisions and limitations in FECA. *See McCutcheon v. FEC*, 572 U.S. 185, 200-01 (2014).

II. PROCEDURAL BACKGROUND

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

On February 18, 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* ROA.8. 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." ROA.147. McDonald's Complaint was based on two alleged contributions.[1] ROA.12-13. First, in June 2019, McDonald contributed $1 to Marianne Williamson for President. ROA.13. 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." ROA.12. 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.*

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. ROA.16. McDonald alleged that he "does not want to explain or justify such contributions," and that the disclosures of his

[1] The Complaint referenced an additional $1 contribution to an unnamed "republican presidential contender" that, for reasons unclear to McDonald, was not reported. ROA.13. As the district court correctly held, because this alleged contribution was not reported or disclosed, it was irrelevant for purposes of determining any alleged harm stemming from it. ROA.147-48 n.1. The district court also properly "d[id] not consider" this third contribution "for McDonald's challenge to 52 U.S.C. § 30116(a)(8)'s reporting requirement." *Id.*

contributions would "adversely impact [his] political activities, including his future giving." ROA.12-13. He also raised concerns about encountering similar requests for contributions from candidates as a result of the disclosures. ROA.14. 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," ROA.13, or prompt "demands for similar donations," or "misunderstandings regarding the intent and implications" of his prior contributions. ROA.14.

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. ROA.17.

B. The District Court's Dismissal of McDonald's Complaint for Lack of Subject Matter Jurisdiction

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 that he suffered a concrete injury in fact from the disclosure of

his two past conduit contributions. ROA.80-109, 146, 148. 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). ROA.99-104.

On July 9, 2025, the district court granted the Commission's motion and dismissed the case without prejudice. ROA.146-151, 152. The court concluded that the Article III standing requirements under the Supreme Court's seminal decision in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), squarely foreclosed McDonald's Complaint. ROA.149-150. The court explained that under *Lujan*, a plaintiff must show an injury that is "'concrete and particularized'" and "'actual or imminent, not conjectural or hypothetical.'" ROA.149. Furthermore, 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 established standing framework, the district court found that McDonald's allegations plainly did not confer standing. ROA.150-151. The 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. ROA.150. 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." ROA.13. However, the 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." ROA.150.

The district court rejected McDonald's argument that the public disclosure of his contributions, by itself, is an injury sufficient to invoke this Court's jurisdiction. McDonald's claim was not a "pre-enforcement" First Amendment challenge where he risked "the threat of an enforcement action for violating FECA"; accordingly, McDonald's allegation of subjective chilling of his speech did not satisfy the injury-in-fact requirement. ROA.149-150. Moreover, the case law McDonald cited in support of his disclosure-centric theory, *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), was inapposite, because neither case addressed standing or even the public disclosure of information by the Commission, "much less hold[s] that, in the context of disclosing donor information, an injury in fact is not necessary." ROA.149-151. Accordingly, the court held pursuant to *Lujan* and Circuit precedent, "McDonald must show a concrete injury in fact just like any other plaintiff." ROA.149-150.

Having concluded that McDonald failed to establish standing, the district court dismissed the Complaint without prejudice. ROA.151, 152. McDonald chose not to amend his Complaint and remedy the defects by alleging a sufficient injury in fact, but instead immediately appealed to this Court on July 15, 2025.[2] ROA.153.

STANDARD OF REVIEW

This Court reviews a district court dismissal of a complaint for lack of subject matter jurisdiction de novo. *League of United Latin Am. Citizens ("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. 2015) (quoting *Rahm & Hass Tex., Inc. v. Ortiz Bros. Insulation, Inc.*, 32 F.3d 205, 208 (5th Cir. 1994)).

[2] 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"). Importantly, such a dismissal, however, substantially 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).

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, 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. 1996). Here, the district court granted the Commission's motion to dismiss based on McDonald's Complaint alone. An appellate court's review of a 12(b)(1) dismissal based only on the face of the complaint 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)), cert. denied, No. 24-7216, 2025 WL 2823925 (-- S. Ct. ----, Oct. 6, 2025).

SUMMARY OF ARGUMENT

The only issue presented in this appeal is whether McDonald has demonstrated an injury in fact for Article III standing. McDonald's Complaint and now this appeal attempt to manufacture standing, seemingly to attain expedited *en banc* review of a provision of FECA, but Appellant's case fails before it leaves the gate. McDonald offers, without support, that this lawsuit imposes a "relaxed" standard for showing an injury in fact; raises an unsubstantiated *per se* theory of

standing; and erroneously supplants caselaw from pre-enforcement First Amendment lawsuits on this case, which raises no such challenge. These efforts underscore the Complaint's jurisdictional flaw: McDonald lacks standing under the well-established framework, which requires that a plaintiff show an injury in fact that is concrete and particularized and actual or imminent, not conjectural or hypothetical. Additionally, McDonald's request for this Court to remand with instructions to certify to a full *en banc* court is premature and improper. Even if McDonald had established an injury in fact, the district court has yet to assess whether McDonald satisfies the remaining components of Article III standing, let alone proceed with discovery and review of McDonald's constitutional claim. Accordingly, this Court should affirm the judgment of the district court dismissing this case for lack of subject matter jurisdiction.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DISMISSED MCDONALD'S COMPLAINT FOR LACK OF STANDING

A. The Well-Established Injury-in-Fact Standard Requires a Concrete and Particularized Injury

As the party invoking federal jurisdiction, McDonald bears the burden of demonstrating he has properly invoked the Court's subject-matter jurisdiction. *Kling v. Hebert*, 60 F.4th 281, 284 (5th Cir. 2023). To establish Article III standing, a plaintiff must show (1) an "'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.'" *Lujan*, 504 U.S. at 560-61; *Louisiana v. Haaland*, 86 F.4th 663, 666 (5th Cir. 2023). These three components of the Article III "case or controversy" requirement are designed to ensure that the "plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal court jurisdiction and to justify [the] exercise of the court's remedial powers on his behalf." *Simon v. E. Ky. Welfare Rights Org*., 426 U.S. 26, 38 (1976) (internal quotation marks omitted).

The Supreme Court defines an injury in fact as one that is "concrete and particularized" and "'actual or imminent, not 'conjectural' or 'hypothetical[.]'" *Lujan*, 504 U.S. at 560; *Texas v. Yellen*, 105 F.4th 755, 763 (5th Cir. 2024); *Shrimpers and Fishermen of RGV v. Tex. Comm'n on Env't Quality*, 968 F.3d 419, 424 (5th Cir. 2020) (per curiam). To be "'concrete[,]'" an 'injury must be *de facto*[,]'" *i.e.*, the injury "'must actually exist,'" and be "'real'" as opposed to "'abstract.'" *Yellen*, 105 F.4th at 764 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016) (internal quotation marks and citations omitted)).

An injury is "particularized" to a plaintiff if it affects the plaintiff in a personal and individual way. *Abbott v. BP Expl. & Prod., LLC*, 851 F.3d 384, 388-89 (5th Cir. 2017). Conversely, a "generalized and undifferentiated" injury is not

particularized. *Id.*; *NAACP v. Tindell*, 95 F.4th 212, 217 (5th Cir. 2024) (per curiam). Thus, "a grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count." *Carney v. Adams*, 592 U.S. 53, 58 (2020) (citing *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013)); *see also LULAC*, 659 F.3d at 428 ("[A] plaintiff raising only a generally available grievance . . . does not state an Article III case or controversy and therefore lacks standing" (internal quotation marks omitted)). For an injury to be "'actual or imminent, not conjectural or hypothetical[,]'" it must have already occurred or be likely to occur soon. *Tex. Tribune v. Caldwell County*, 121 F.4th 520, 526 (5th Cir. 2024) (citing *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024)).

B. McDonald's Speculative Allegations Fail to Demonstrate an Injury in Fact

Rather than being concrete and particularized, and actual or imminent, McDonald's vague assertions of injuries seek "relief that no more directly and tangibly benefits him than it does the public at large[,]" and thus present a risk that this Court would be "deciding a case in which no injury would have occurred at all." *Lujan*, 504 U.S. at 573-74, 564 n.2. McDonald fails to meet this "irreducible constitutional minimum" for accessing federal courts, *id.* at 560, and the Court should affirm dismissal of McDonald's Complaint.

1. McDonald's Allegations of Past Harm Do Not Include an Actual Injury

McDonald made two contributions relevant to this action: a single $50 contribution to an unknown "federal candidate" in 2023 and a $1 contribution to Marianne Williamson in 2019, both processed through conduit committees. ROA.12-13 (Compl. ¶¶ 19-20, 22). McDonald fails to allege any concrete or particularized injury resulting from these two past contributions, instead relying on speculative assertions and generalized claims of injury.

First, McDonald speculates that he might suffer "repercussions" if he had to "explain or justify" those contributions. ROA.13-14. Yet McDonald makes no argument as to how such a vague request to "explain" or "justify" his contributions constitutes an Article III injury. As the district court correctly explained, "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." ROA.150. The lack of any allegation that McDonald has previously been forced to explain or justify his contributions is particularly salient given that one of them was made six years ago and the other two years ago. McDonald also hypothesizes that these two past contributions will result in "demands for similar donations." ROA.14 (Compl. ¶ 26) (speculating he may be injured by requests for similar contributions from other candidates); Brief of Appellant Tony McDonald, Document No. 30 ("App. Br.") at 5. But he has

similarly failed to allege any instance of having received an unsolicited contribution request, even as the contributions continue to appear on the FEC's website.[3] (App. Br. at 4-5, 11-12.) These past injuries do not "'actually exist'" and thus, are not concrete. *E.T. v. Paxton*, 19 F.4th 760, 765-66 (5th Cir. 2021); *see Spokeo*, 578 U.S. at 340 (referring to definitions of "concrete" in Black's Law Dictionary, Webster's Third New International Dictionary, and Random House Dictionary of the English Language). Absent concreteness, these vague and abstract allegations of injury are insufficient to confer standing. *James v. Hegar*, 86 F.4th 1076, 1081 (5th Cir. 2023), cert. denied, 144 S. Ct. 1461 (2024).

Second, McDonald alleges hypothetical scenarios involving non-parties to this action. McDonald characterizes many of his past harms as flowing to the Tarrant County Republican Party. ROA.13 ("He would not want his personal support for a candidate to imply that the Tarrant County Republican Party supports that candidate."). These harms go to a non-party to this case and are not particularized to McDonald. *See BP Expl. & Prod., Inc.*, 851 F.3d at 388 ("Implicit in the first requirement of Article III standing is the notion that the injury in fact is particularized to the Plaintiffs"). McDonald's Complaint does not

[3] McDonald also overlooks 52 U.S.C. § 30111(a), which makes illegal the sale or use of information copied from FEC disclosure reports for solicitation of contributions or for any commercial purpose.

assert third-party standing on behalf of the Tarrant County Republican Party, which would be meritless in any event because McDonald cannot claim injury to another as his basis for standing. Furthermore, there is nothing to prevent the party from independently seeking redress in court for these purported injuries, were they to occur. *See McMahon v. Fenves*, 946 F.3d 266, 270 (5th Cir. 2020) ("Plaintiffs therefore must allege more than an injury to *someone's* concrete, cognizable interest; they must be [themselves] among the injured") (quotation marks omitted). Additionally, the records showing McDonald's two past contributions do not contain any information about the Tarrant County Republican Party, making any such injury to them entirely speculative. To the extent McDonald seeks to tie his contributions to his own role with the County Party, *see* ROA.13-14, 126 (noting unspecified "ramifications to his role with the [Tarrant County] party"), this sort of amorphous undefined injury similarly does not support standing. *James*, 86 F.4th at 1081 (requiring injury be "certainly impending" and rejecting vague allegations of injury).

2. McDonald Lacks Standing to Seek Prospective Relief

McDonald's allegations of harm based on his hypothetical plans to contribute to campaigns in the future are equally insufficient. (App. Br. at 12.) As an initial matter, McDonald's amorphous, future "'someday' intentions" to make contributions that are without a "description of concrete plans" are

inadequate to establish standing. *Lujan*, 504 U.S. at 564. Appellant asserts that he need not identify a candidate to whom he plans to contribute because he has already made multiple contributions via conduits, and candidates regularly accept contributions through conduits. ROA.128-129; App. Br. at 13-14 ("McDonald is not required to know which candidate or candidates in the current election cycle will earn his financial support." (internal citation omitted). But these unspecified plans are neither actual nor imminent, and instead are conjectural or hypothetical. They amount to no more than a "fanciful notion" that McDonald will contribute in the future, let alone incur harm. *See La Union Del Pueblo Entero v. Abbott*, 151 F.4th 273, 286 (5th Cir. 2025) (plaintiffs failed to establish a fear of prosecution for violating a state statute where they offered "no evidence" that they had violated the statute or that the state had investigated or prosecuted them since the statute's enactment).

Even accepting McDonald's assertion that he need not specify a particular candidate, his claims of future injury are still neither actual nor imminent. He does not identify any upcoming election in which he wishes to contribute, which undercuts any argument that this future harm is likely to occur soon. *Tex. Tribune*, 121 F.4th at 526; *Shrimpers and Fishermen of RGV*, 968 F.3d at 424. McDonald's history of campaign contributions via conduits is both discretionary and sporadic. ROA.12-14 (describing two contributions over a five-year period). While

McDonald claims he "will donate in the future," he cannot offer any concrete claim to future activity. These "some day" intentions that could result in some indistinct future harm are insufficient for Article III standing. *Compare Ghedi v. Mayorkas*, 16 F.4th 456, 464 (5th Cir. 2021) (plaintiff plausibly alleged an imminent future injury in fact from "prolonged" airport security detentions because his job required him to travel internationally on a regular basis), *with Lujan,* 504 U.S. at 564 (mere "'some day' intentions[,]" absent any description of concrete plans, could not support an imminent future injury). McDonald's allegations resemble the unsuccessful standing argument in *Lujan*, where plaintiffs, who traveled for pleasure, alleged an injury based on their visit to a destination and announced unspecified plans to return. *Ghedi*, 16 F.4th at 465 (citing *Lujan*, 504 U.S. at 563-64). They fall far short of the allegations in *Ghedi*, where the plaintiff tied his flying-related injuries to "a professional need for habitual travel." *Id.* (finding the standing issues in *Lujan* to be "an apples-to-oranges comparison").

This is not to suggest that McDonald will never contribute to campaigns in the future. Rather, McDonald's allegations of future injury also fail because they are too indefinite to constitute imminent harm. *See E.T. v. Paxton*, 41 F.4th 709, 716 (5th Cir. 2022) (expounding that imminence is a somewhat elastic concept, yet one that cannot be stretched beyond its purpose). McDonald hypothesizes on potential events — needing to explain himself or fielding unsolicited requests —

but he can only speculate that any will occur. McDonald's Complaint is devoid of any allegation of future injury that has "'sufficient immediacy and reality[,]'" and there is nothing that "warrant[s] invocation of the jurisdiction of the District Court[,]" including a declaration that the condition disclosure provisions are unconstitutional. *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974) (quoting *Golden v. Zwickler*, 394 U.S. 103, 109 (1969)).[4] Furthermore, the substance of his alleged future harm is insufficient in any event. McDonald does not explain how any of these possible outcomes, which essentially amount to amorphous discomfort with his own contributions, are "concrete" to constitute harm for Article III standing purposes. *Lujan*, 504 U.S. at 566 (requiring showing of perceptible harm).

C. Disclosure of McDonald's Contributions, Standing Alone, Is Not a Concrete and Particularized Article III Injury

Rather than specifying any injury resulting from the disclosure of his past contributions, or any that he anticipates from purported future disclosures,

[4] To request prospective injunctive or declaratory relief as McDonald does, (*see* App. Br. at 10), a litigant must demonstrate "continuing harm or a real and immediate threat of repeated injury in the future." *Soc'y of Separationists, Inc. v. Herman*, 959 F.2d 1283, 1285 (5th Cir. 1992); *James*, 86 F.4th at 1081. The threat of future injury must be "*certainly* impending"; mere allegations of possible future injury will not suffice. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Lujan*, 504 U.S. at 565 n.2). McDonald's speculations do not satisfy the "actual or imminent" standards for seeking this declaratory relief.

McDonald dedicates much of his brief to an unsupported theory that a plaintiff challenging the disclosure of campaign contributions enjoys a "relaxed" showing for injury in fact. (*See* App. Br. at 8-9 (alleging that the disclosures of his two contributions are standalone bases for an Article III injury).) In other words, McDonald seeks to have this Court abandon traditional standing principles and recognize a rule that public disclosure of his past contributions, in and of itself without any claim of concrete harm as a result, is sufficient to establish standing. (App. Br. at 13 ("The disclosure of McDonald's information to the FEC is a cognizable First Amendment injury itself.").) The district court correctly rejected this argument, ROA.149-150 ("McDonald must show a concrete injury in fact just like any other plaintiff"), and for good reason. No such rule exists.

The Supreme Court has set forth that, as a general matter, *Lujan*'s established injury-in-fact standard applies in campaign finance cases. *Akins*, 524 U.S. at 21 (requiring a "concrete and particular" injury under Article III); *Campaign Legal Ctr. v. FEC*, 860 F. App'x 1, 3-4 (D.C. Cir. 2021) (per curiam) (applying Article III injury-in-fact standard in challenge to FECA); *see also* ROA.149 ("Such requirements are no different in challenges involving disclosure of campaign contributions."); *cf. Ctr. for Individual Freedom v. Scott*, 576 F. App'x 324, 326-27 (5th Cir. 2014) (per curiam) (applying injury-in-fact standard in challenge to state campaign finance statute). McDonald provides no legal basis for

this Court to disregard this prevailing law. As in the district court, the only authority McDonald mentions in this Court for his *per se* theory is *Americans for Prosperity Foundation v. Bonta*. (App. Br. at 9.) But *Bonta* does not support McDonald's proposition, either as a matter of fact or a matter of law. As to facts, *Bonta* did not involve the *public* disclosure of information. *See generally* 594 U.S. 595. The statute at issue required non-profit organizations that solicited contributions in California to *confidentially* report their donors to the California attorney general. 594 U.S. at 600-02, 615-16. When the plaintiff non-profits refused to comply with the disclosure requirements, the Attorney General "threatened to suspend their registrations and fine their directors and officers." *Id*. at 603.

As to law, the *Bonta* opinion does not address standing. The Supreme Court held that the "Attorney General's disclosure requirement impose[d] a widespread burden on donors' associational rights" and thus was "facially unconstitutional." *Id*. at 618; *see also id.* at 605-19. *See also* ROA.150 ("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.").[5] McDonald

[5] If McDonald seeks to rely on the Court's dissent in that case for his standing theory, he fails just the same. Justice Sotomayor, writing for the dissent, suggests the majority "presumes (contrary to the evidence, precedent, and common sense) that all disclosure requirements impose associational burdens." *Bonta*, 594 U.S. at 629. The majority did not respond to this comment, and there is nothing in the

similarly fails to point to any cases within this Circuit that cite *Bonta* for the notion that disclosure alone amounts to an Article III injury. Instead, Fifth Circuit precedent firmly reiterates the requirements of *Lujan*. *See, e.g.*, *Louisiana*, 86 F.4th at 666; *see also Jackson v. Wright*, 82 F.4th 362, 368-69 (5th Cir. 2023). Others reference *Bonta* for general First Amendment principles. *See, e.g.*, *Siders v. City of Brandon*, 123 F.4th 293, 301 n.6 (5th Cir. 2024) (citing *Bonta* to describe the standard governing facial challenges); *Healthy Vision Ass'n v. Abbott*, 138 F.4th 385, 406 (5th Cir. 2025) (citing *Bonta* for an overview of the First Amendment's freedom to associate).

What McDonald actually raises is a policy preference, not an injury in fact, (App. Br. at 10-11), and as the Supreme Court has recently emphasized, the injury-in-fact threshold functions so that federal courts may never need address speculative or theoretical questions: "'Our system of government leaves many crucial decisions to the political processes,' where democratic debate can occur and a wide variety of interests and views can be weighed." *Food & Drug Admin.*, 602 U.S. at 380 (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227 (1974)); *see also Murthy v. Missouri*, 603 U.S. 43, 57 (2024) ("[I]f a

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opinion to suggest that it agreed with Justice Sotomayor's contention, or even that it touches upon the general standing requirements. Moreover, whether a law implicates a First Amendment right and whether a plaintiff has established constitutional standing are two separate questions.

dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.") (citation omitted).

II. MCDONALD DOES NOT RAISE A PRE-ENFORCEMENT FIRST AMENDMENT CHALLENGE

A. McDonald's Pre-Enforcement Cases are Inapplicable

Having failed to set forth a sufficient concrete and particularized injury under *Lujan* and its progeny, McDonald seeks to confer standing for his alleged "prospective relief," (App. Br. at 12), by relying on case law that is inapplicable here. There is one subset of First Amendment cases in which "chilling a plaintiff's speech" (*i.e.*, self-censorship) "'is a constitutional harm adequate to satisfy the injury-in-fact requirement.'" *See Pool v. City of Houston*, 978 F.3d 307, 311 (5th Cir. 2020); *Barilla v. City of Houston*, 13 F.4th 427, 431 (5th Cir. 2021). For these plaintiffs, the injury is the anticipated enforcement of the statute against them in the future, and therefore they bring a *pre*-enforcement lawsuit challenging the law. Such cases have a "special standing rule" so that people need not have suffered "an actual arrest, prosecution, or other enforcement action" to establish an Article III injury. *Pool*, 978 F.3d at 311; *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014).[6] Importantly, "not just anyone has standing to bring such a

[6] Courts have used various metaphors to describe the dilemma facing a pre-enforcement plaintiff—"the rock ... and the hard place[,]" *Bland v. Fessler*, 88 F.3d 729, 737 (9th Cir. 1996); "the Scylla ... and the Charybdis," *Steffel v. Thompson*, 415 U.S. 452, 462 (1974); and the choice to comply or "bet the farm."

suit." *Pool*, 978 F.3d at 320. A plaintiff must show "that they are 'seriously interested in disobeying, and the defendant seriously intent on enforcing, the challenged measure.'" *Id*. (internal citation omitted). Furthermore, the chilling effect on speech must have an objective basis, and allegations of a "subjective" chill do not suffice. *Tex. State LULAC v. Elfant*, 52 F.4th 248, 256 (5th Cir. 2022), cert. denied, 144 S. Ct. 70 (2023).

However, "[t]his is not a pre-enforcement challenge." ROA.149. At no point does McDonald allege in his Complaint or assert in briefing before this Court that the Commission will enforce § 30016(a)(8) against *him*, or what the results of that enforcement would be, *i.e.*, a criminal or civil penalty. *Id.* The district court aptly made this observation when granting the Commission's motion to dismiss. ROA.149 ("McDonald does not allege that he faces the threat of an enforcement action for violating FECA."). Apparently recognizing this point, McDonald does not directly argue that this is a pre-enforcement case. Nor could he. McDonald is not the subject of the conduit reporting requirement; the conduits are. There is thus, no "threatened enforcement" of § 30116(a)(8) against McDonald. *See Umphress v. Hall*, 133 F.4th 455, 463 (5th Cir. 2025) (per curiam); *see also Susan*

MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 129 (2007). The point being that, unlike the instant case, this type of plaintiff risks a civil or criminal penalty by engaging in the First Amendment activity that is regulated by the challenged law.

B. Anthony List, 573 U.S. at 160 (requiring, for injury-in-fact showing, a "credible threat of prosecution"). In *Umphress*, the plaintiff alleged an injury for engaging in conduct that was proscribed by the Texas Code of Judicial Conduct. 133 F.4th at 463. The Court explained that the plaintiff had shown a "substantial threat" that the Texas Ethics Commission would enforce the code against him. *Id.* at 465-66. Unlike *Umphress*, plaintiff has not alleged a "course of conduct" where there is a "credible threat of prosecution." *Id.* at 464-65. Rather, the only consequence of his speculative future conduct would be that a third party, not before the court, could submit information for a public disclosure report.

The cases McDonald references involved specific warnings or threats to initiate proceedings against plaintiffs that are necessary for a pre-enforcement challenge, and are ultimately inapplicable and ill-suited for McDonald's claim. For example, McDonald cites *Hous. Chron. Publ'g Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007). (App Br. at 13.) But in that case, the plaintiffs challenged a law that the city defendant stated it would enforce against them. The plaintiffs, the court found, had "shown imminent future prosecution," of the challenged law against them, and thus satisfied the injury in fact requirement. 488 F.3d at 619. Similarly, in *National Rifle Ass'n of America v. Magaw*, (*see* App. Br. at 10), the Sixth Circuit held that the plaintiffs–several firearms manufacturers and dealers–established a well-founded fear of prosecution for violating the statute at

issue. 132 F.3d 272, 289-90 (6th Cir. 1997). The court reasoned that: (1) the statute had "indisputable" applicability to the manufacturers' and dealers' businesses; (2) compliance with the statute was "coerced by the threat of enforcement"; and (3) letters sent out by the government set forth an intent to enforce the statute against the manufacturers and dealers. *Id.* These cases are inapposite to McDonald's Complaint, which contains no such allegations.

B. McDonald Does Not Satisfy the Pre-Enforcement Standing Framework Because There is No Threat of Future Enforcement

Even if McDonald's Complaint had asserted a pre-enforcement challenge, his allegations are nonetheless insufficient to demonstrate injury. In pre-enforcement cases, a plaintiff demonstrates injury by showing 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) (internal quotation marks omitted). Under the first requirement, a plaintiff must demonstrate a "serious intent" to engage in proscribed activity. *Zimmerman v. City of Austin*, 881 F.3d 378, 389 (5th Cir. 2018); *Miss. State Democratic Party v Barbour*, 529 F.3d 538, 545-47 (5th Cir. 2008). Courts caution that a mere "desire" to engage in activity, in the absence of additional "steps[,]" "'concrete

plans[,]'" or "'objective evidence[,]'" is insufficient to confer standing. *Zimmerman*, 881 F.3d at 389 (quoting *Miss. State Democratic Party*, 529 F.3d at 546).

Under the second requirement, the plaintiff must, at a minimum, show that his constitutionally protected speech is "at least arguably regulated" by the policy at issue. *Speech First*, 979 F.3d at 332. For the third requirement, when a plaintiff challenges a statute that facially restricts expressive activity in the class to which the plaintiff belongs, a court will presume "a credible threat of prosecution in the absence of compelling contrary evidence." *Barilla*, 13 F.4th at 432; *Speech First*, 979 F.3d at 335. It follows that a plaintiff may not "'manufacture standing'" based on fears of hypothetical harm that "'is not certainly impending.'" *La Union Del Pueblo Entero*, 151 F.4th at 287.

McDonald's two instances of prior activity and assertions of future conduct do not come close to establishing "concrete plans" required for a pre-enforcement challenge. *Supra* pp. 25-28; *see also Institute for Free Speech v. Johnson* ("*IFS*"), 148 F.4th 318, 328 (5th Cir. 2025) (citing *Miss. State Democratic Party*, 529 F.3d at 546; *Driehaus*, 573 U.S. at 161-62 (concluding that plaintiffs had pre-enforcement standing when they identified "specific statements they intend to make in future election cycles").

Assuming, *arguendo*, that these past contributions and an aspiration to make future contributions combine to establish a "serious intent," McDonald still fails under the second element of the pre-enforcement framework because he has not alleged that he intends to engage in conduct proscribed by law. *See Zimmerman*, 881 F.3d at 389 ("Zimmerman did not take steps towards reaching or exceeding the aggregate limit of the kind that would demonstrate a serious intent to violate the statute."). McDonald is not prohibited by FECA from making small-dollar contributions. He faces no civil or criminal repercussions for these contributions should he wish to make them. *See Elfant*, 52 F.4th at 256 ("[N]either S.B. 1111 nor any other law cited by Plaintiffs arguably prohibits Plaintiffs' activities."). He is therefore not "one step removed from unlawful conduct," *IFS*, 148 F.4th at 328. There is accordingly no objective "chill" of McDonald's speech on which he can base a pre-enforcement claim.

For similar reasons, McDonald would also fail on the third element. McDonald does not, and cannot, claim to face any credible threat of enforcement. *See IFS*, 148 F.4th at 329 (plaintiffs alleged a credible threat of future enforcement because they faced criminal penalties for violating the provision at issue and a government entity "decline[d] to give assurances against enforcement"). McDonald, by contrast, can only offer a "'subjective chill'" in an attempt to

"'manufacture standing'" in the absence of a credible threat of enforcement. *La Union Del Pueblo Entero*, 151 F.4th at 286.[7]

III. MCDONALD'S REMAND REQUEST IS PROCEDURALLY IMPROPER

McDonald has not established Article III standing and the district court's dismissal of his Complaint should be affirmed. However, even if McDonald had alleged sufficient facts to establish standing, McDonald's request for this Court to remand this case to the district court "with instructions to immediately certify this case to this Court, *en banc*, upon the Government's expeditious answer," (App. Br. at 18), is procedurally improper, premature, and without legal basis.

McDonald brought this action pursuant to 52 U.S.C. § 30110, a provision that sets a specific procedure the district court must follow in this case before it certifies questions of constitutionality to the *en banc* court of appeals. The district court properly took the initial step and evaluated whether it had subject matter

[7] McDonald's Complaint is also distinguishable from the type of harm recognized by the Supreme Court that may arise from disclosure when "reasonable probability that [a] group's members would face threats, harassment, or reprisals if their names were disclosed." *Citizens United v. FEC*, 558 U.S. 310, 370 (2010). This type of narrow exemption to generally applicable disclosure rules has been upheld in only a few cases, and McDonald makes no attempt at such allegations or even a request for such an exemption here. *See, e.g.*, *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87, 102 (1982); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 466 (1958).

jurisdiction, concluded that it did not, and dismissed the case without prejudice. ROA.149-151.

Supreme Court and Circuit precedent dictates that on any remand, the district court would be required to take the following three steps: (1) the district court must develop a factual record sufficient to support appellate review by making findings of fact; (2) the district court must then determine whether the constitutional challenges are frivolous or insubstantial; and (3) only upon completing the first two functions, the court should certify any nonfrivolous questions along with the factual record to the *en banc* Court of Appeals. *See Cal. Med. Ass'n*, 453 U.S. at 192 n.14; *In re Cao*, 619 F.3d 410, 414-15 (5th Cir. 2010) (*en banc*); *Khachaturian v. FEC*, 980 F.2d 330, 331 (5th Cir. 1992) (*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).

Appellate courts have remanded cases to develop a full factual record, and so the appellate court could have a sufficient basis to rule on the question before it. *See Holmes v. FEC*, No. 14-5281, slip op. (D.C. Cir. Jan. 30, 2015), *available at* http://www.fec.gov/law/litigation/holmes_ac_order.pdf; *FEC v. Cent. Long Island Tax Reform Immediately Comm'n*, 616 F.2d 45, 47 (2d Cir. 1980) ("[W]e remanded the case to the district court for amplification of the record through findings of fact after an evidentiary hearing, to be followed by certification of the

record and questions to us"); *In re Cao*, 619 F.3d at 414(5th Cir. 2010) (finding "district court, abid[ed] its proper role" including "evidentiary hearings concerning those issues" and making "necessary findings of fact"); *Bread Pol. Action Comm. v. FEC*, 591 F.3d 29, 36 (7th Cir. 1979) (directing the district court on remand to take evidence on factual issues and certify the "assembled record"). McDonald provides no basis for this Court to ignore this precedent should the case be remanded.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that this Court affirm the judgment of the district court dismissing McDonald's Complaint for lack of subject matter jurisdiction. McDonald fails to allege a cognizable Article III injury in fact resulting from the disclosure of his past contributions, or possible future contributions.

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CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)

I hereby certify, on this 23rd day of October, 2025, that:

1. document complies with the length limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. 32(f) and Circuit Rule 32(e), this brief is 7,606 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/ Michael D. Contino
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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd of October, 2025, I electronically filed the Brief for the Federal Election Commission using the Court's CM/ECF system, which thereby electronically served counsel of record.

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