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

TONY MCDONALD, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	)	Civ. No. 25-153 (P) MOTION

DEFENDANT FEDERAL ELECTION COMMISSION'S
MOTION TO DISMISS

Defendant Federal Election Commission ("FEC" or "Commission") respectfully moves the Court for an order dismissing plaintiff Tony McDonald's complaint for lack of jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. The Commission is filing the accompanying brief in support of this motion and a proposed order. *See* LCvR 7.1.

Respectfully submitted,

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TONY MCDONALD, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	)	Civ. No. 25-153 (P) MEMORANDUM

DEFENDANT FEDERAL ELECTION COMMISSION'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

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INTRODUCTION

In this action, plaintiff Tony McDonald challenges the constitutionality of certain reporting requirements in the Federal Election Campaign Act ("FECA"), 52 U.S.C. §§ 30101-30145 for contributions made through conduit platforms. He asserts that this provision, 52 U.S.C. § 30116(a)(8), is unconstitutional because it requires the disclosure of contributors of under $200, if made through conduits, while at the same time, contributions below that threshold made directly to candidate committees are not disclosed. The Federal Election Commission ("FEC" or "Commission") moves to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1) because plaintiff fails to show a judicially cognizable injury and therefore lacks standing.

Plaintiff alleges he made contributions to federal candidates through conduits twice — in 2019 and 2023 — and that at that time he had a mistaken understanding that his contributions would remain anonymous, only to find out later the conduit committees disclosed these donations to the FEC. Plaintiff claims that he does not wish to be disclosed as the source of these contributions because it could affect his standing as general counsel to the Tarrant County Republican party and could affect the county party itself, by prompting questions about his political leanings and leading to requests he might not otherwise receive for additional contributions. He further alleges that, moving forward, the conduit reporting requirement chills his ability to express his political views through contributions.

These allegations do not give rise to an injury for Article III standing purposes. Plaintiff's allegations of adverse consequences as a result of his two past contributions are speculative. Moreover, many of these speculative allegations of injury concern a third party (the Tarrant County Republican Party), plaintiff does not seek third-party standing, and third-party standing is nevertheless inappropriate. Any allegations of the chilling of plaintiff's speech in the future equally lack merit because he has not expressed a concrete desire to contribute via conduit

committees in the future, and only speculates about eschewing the available option of anonymously donating directly to candidates (rather than through a conduit committee) in the same dollar amounts that gave rise to this suit. Moreover, he raises only a "subjective chill" of his future speech, which is insufficient to establish injury.

Plaintiff further does not seek an exemption from FECA's disclosure requirements based on threats of reprisals, nor would such relief be appropriate here. Plaintiff's speculative allegations of harm do not establish the kind of systematic, specific, and serious threats of harassment and reprisals that would warrant an exception to the generally applicable disclosure rules. Plaintiff's Complaint should be dismissed.

BACKGROUND

I. THE PARTIES

Plaintiff Tony McDonald is a resident of Fort Worth, Texas, and eligible to vote for the office of the President. (Pl.'s Compl. for Declaratory and Injunctive Relief ("Compl.") (ECF No. 1) ¶ 3.) He describes himself as "actively involved in partisan politics" and a "sophisticated political insider." (*Id.* pp. 1-2.) Plaintiff is an attorney and the general counsel for the Tarrant County Republican Party, an entity that is not a party to this lawsuit. (*Id.* ¶ 25).

Defendant FEC is a six-member, 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 also 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), 3019(a)(6).

II. FACTUAL AND PROCEDURAL HISTORY

A. FECA's Disclosure Provisions, Including the Conduit Disclosure Provisions Challenged by Plaintiff

FECA requires every "political committee" — which includes candidate campaigns, political parties, and other political organizations — to file reports that detail the committee's 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 is for contributions made directly to political committees. 52 U.S.C. § 30104. Subsection (b)(3)(A) requires that political committees must identify 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." *Id.* § 30104(b)(3)(A). Second, FECA provides 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.[1] *Id.* § 110.6(b)(2). Because FECA includes committees in the

[1] Commission regulations distinguish between contributions to conduits to the extent that for earmarked contributions, the conduit must report the contributor's name and mailing address

definition of "'person[,]'" committees may serve as conduits for campaign contributions. 52 U.S.C. § 30101(11) ("The term 'person' includes an individual, partnership, committee, ..."). Two such committees are WinRed and Act Blue. WinRed consolidates contributions to Republican-affiliated candidates and Republican-affiliated committees. (*See* Compl. ¶¶ 11-16.); *see also WinRed, Inc. v. Ellison*, 59 F.4th 934, 936-37 (8th Cir. 2023) ("WinRed, a 'conduit' political action committee (PAC), centralizes donations to Republican-affiliated candidates and committees."). ActBlue performs the same function for candidates and committees associated with the Democratic Party. (*See* Compl. ¶ 17.)*; see also Ready for Ron v. FEC*, No. 22-3282, 2023 WL 3539633, at *14 (D.D.C. May 17, 2023).

Under Section 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. *Id.* § 30116(a)(8). This subsection further states 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 donations to conduit committees does not limit disclosures to donations above $200. This is the "conduit reporting requirement" at issue in the Complaint.

Congress enacted what is now 52 U.S.C. § 30116 — "Limitations on contributions and expenditures"— when it passed the FECA Amendments of 1976. Pub. L. No. 94-283, 90 Stat.

(regardless of the dollar amount), and for contributions above $200, the conduit must also report the contributor's occupation and the name of his or her employer. 11 C.F.R. § 110.6(c)(1)(iv)(A).

475, 487 (creating 2 U.S.C. § 441a).[2] Congress sought to close a potential loophole in FECA. *See McCutcheon v. FEC*, 572 U.S. 185, 200-01 (2014). While FECA previously capped contributions from political committees to candidates, the 1976 amendments imposed limits on contributions to political committees. *Id.* at 200. This allowed FECA to avoid circumvention of the contribution limits the Supreme Court had just upheld in *Buckley v. Valeo*. *Id.* at 200-01(citing *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 197-98 (1981)). The disclosure provisions in FECA further "substantial government interests," including, *inter alia*, "provid[ing] the electorate with information as to where political money comes from . . . in order to aid the voters in evaluating those who seek federal office." *Buckley*, 424 U.S. at 66-68 (citation and internal quotation marks omitted). The provisions allow voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. *Id*. at 67. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office. *Id*.; *see also United States v. O'Donnell*, 608 F.3d 546, 549 (9th Cir. 2010) (disclosure of contributors also prevents circumvention of FECA's contribution limits).

B. FECA's Special Judicial Review Provision

Plaintiff brings this action pursuant to 52 U.S.C. § 30110 (formerly codified at 2 U.S.C. § 437h). This provision of FECA provides a special procedure for certain categories of plaintiffs, including eligible voters and national party committees, to bring suits "to construe the constitutionality of any provision of [FECA]," and for the district court to certify questions of constitutionality to the court of appeals sitting en banc. The provision was added to FECA in 1974 to provide special consideration of anticipated constitutional challenges to the extensive

[2] In 2014, Congress relocated the federal campaign finance laws from Title 2 to Title 52 of the U.S. Code.

amendments to FECA that year. *See* Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 208(a), 88 Stat. 1263, 1285-1286 (1974).

Section 30110 claims are "circumscribed by the constitutional limitations on the jurisdiction of the federal courts." *Cal. Med. Ass'n*, 453 U.S. at 192 n.14. A "party seeking to invoke [section 30110] must have standing to raise the constitutional claim." *Id.* If a section 30110 claim passes this and other threshold inquiries, district courts perform three functions. First, a record for appellate review must be made, including findings of fact. *Bread Pol. Action Comm. v. FEC*, 455 U.S. 577, 580 (1982). Second, district courts determine whether the constitutional challenges are "frivolous." *Cal. Med. Ass'n*, 453 U.S. at 192 n.14. And third, assuming any constitutional questions meet the above standards, the district court then certifies the record and all non-frivolous questions to the en banc court of appeals. *Id.*; *see also 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.

Importantly, the Supreme Court has held that use of section 30110 is subject to certain restrictions and should be construed narrowly, in part because it creates "a class of cases that command the immediate attention of . . . the courts of appeals sitting en banc, displacing existing caseloads and calling court of appeals judges away from their normal duties." *Bread Pol. Action Comm.*, 455 U.S. at 580.

C. Plaintiff's Complaint and Challenge to the Conduit Disclosure Requirements

Plaintiff alleges that in June 2023 he contributed $50 to "support a federal candidate." (Compl. ¶ 19.) He does not specify the identity of the candidate, the office the candidate was seeking, the location of the office, or whether the contribution was directed to a primary election or a general election. (*Id.*) Plaintiff "chose to limit the amounts to below $200," in part, because

he believed this contribution would remain anonymous. (*Id*.) Plaintiff alleges that his "chosen recipient routed donations through a conduit PAC," in this case WinRed. (*Id.* ¶ 20.) Plaintiff alleges that his $50 contribution was thus reported to the FEC as making a contribution to a conduit committee. (*Id*.) FEC records show plaintiff as having made a $50 contribution on June 30, 2023, and WinRed, as the recipient. *See* WinRed, Mid-Year Report 2023, (filed July 31, 2023), https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=mcdonald%2C+tony&two_year_transaction_period=2024&min_date=06%2F01%2F2023&max_date=07%2F30%2F2023. The records identify plaintiff as an attorney living in Austin, Texas, and his employer as "Tony McDonald." *Id.* The Tarrant County Republican Party does not appear in the records. *See id.* In June 2019, plaintiff contributed $1 to Marianne Williamson for President. (Compl ¶ 22.) Plaintiff contributed to this campaign "to help [the candidate] qualify for Democratic debates, even though he did not support her candidacy." (*Id.*) He does not describe how he made this contribution but alleges that it was processed through another conduit, ActBlue. (*Id.*) As a result, plaintiff's contribution to Williamson was disclosed.[3] (*Id*.) FEC records show that Tony McDonald, a self-employed attorney contributed $1 earmarked for Marriane Williamson for President, with ActBlue as the recipient information. *See* ActBlue, Mid-Year Report 2019 (filed July 31, 2019), https://www.fec.gov/data/receipts/individual-contributions/?committee_id=C00401224&contributor_name=mcdonald%2C+tony&two_year_t

[3] The Complaint references an additional $1 contribution to a "republican presidential contender" that, for reasons unclear to plaintiff, was not reported. (Compl. ¶ 23 ("[A]pparently because either that candidate did not use a conduit, or the conduit failed to report the donation . . . ."). This contribution is not relevant to the Complaint because the alleged contribution was not reported and there is no alleged harm arising from it. Therefore, the Court should disregard it when considering the FEC's motion to dismiss.

ransaction_period=2020&min_date=06%2F01%2F2019&max_date=07%2F30%2F2019. Once again, the Tarrant County Republican Party is not referenced in this contribution data. *See id.*

Plaintiff states that he "does not want to explain or justify such contributions." (Compl. ¶ 21.) He alleges that the disclosures of these two contributions will "adversely impact [his] political activities, including his future giving." (*Id.* ¶ 24.) Because he is general counsel for the Tarrant County Republican Party, plaintiff claims 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.) Plaintiff also has concerns about future "demands for similar donations from other candidates, confusion over the [county party's] stance in primary races, and misunderstandings regarding the intent and implications" of his prior contributions. (*Id.* ¶ 26.)

While the plaintiff may anonymously contribute directly to a candidate in amounts under $200, he raises concerns about future conduit contributions. (*Id.* ¶¶ 27-28.) He says that while he wishes to make additional small-dollar contributions, he is afraid to do so because the contributions may be disclosed "simply based upon the manner in which the candidates process[] donations." (*Id.* ¶ 27.) Plaintiff contends the disclosures have chilled his ability to express his political views through contributions to his chosen candidates, and that he is "forced to choose between freely voicing support for candidates" and "maintaining his privacy." (*Id.* ¶ 28.)

Plaintiff raises one cause of action, that 52 U.S.C. § 30116(a)(8), as applied to contributions up to $200, violates his First Amendment right to engage in political speech and association. (*Id.* ¶ 41; *see also* Pl's. Civ. Cover Sheet (ECF No. 1-1) at 1 (accompanying Complaint and, under "cause of action" describing claim as "As-applied First Amendment challenge . . .").) He argues that, as applied to contributions to candidates that are earmarked or otherwise directed through a conduit committees, § 30116(a)(8) does not survive any form of heightened First Amendment

scrutiny in that it does not further the government's interest in preventing corruption or the appearance of corruption, and it is not narrowly tailored or substantially related to any sufficiently important government interest. (Compl. ¶ 42.) Plaintiff seeks, *inter alia*: (1) a declaration that disclosure of contributor names and addresses under § 30116(a)(8) for contributions not exceeding $200 violates the First Amendment;[4] (2) permanent injunctive relief barring the FEC from requiring conduit committees to disclose plaintiff's name and address when reporting conduit contributions not exceeding $200; and (3) an order that the FEC remove plaintiff's past small-dollar conduit contributions from its public report.

ARGUMENT

I. PLAINTIFF LACKS ARTICLE III STANDING

A. Plaintiff's Burden to Demonstrate Article III Standing

As the party invoking federal jurisdiction, the plaintiff bears the burden of demonstrating he has properly invoked this Court's subject-matter jurisdiction.[5] *Kling v. Hebert*, 60 F.4th 281, 284 (5th Cir. 2023). Federal Rule of Civil Procedure 12(b)(1) allows for dismissal for "lack of subject-jurisdiction" over the subject matter of claims asserted in the complaint. Fed. R. Civ. P. 12(b)(1); *see Poly-Am., L.P. v. Stego Indus., L.L.C.*, 694 F. Supp. 2d 600, 603 (N.D. Tex. 2010).

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[4] Although plaintiff styles his complaint as an as-applied challenge (*see* Compl. ¶¶ 41-43), plaintiff appears to seek not only relief as applied to his own contributions, but facial relief, *i.e.*, a declaration that disclosure of names and addresses for *all* sub-$200 contributions is unconstitutional. (*Id*. at 12; *but see id.* at ¶ 41.)

[5] Regardless of whether plaintiff brings an as-applied challenge or a facial challenge to § 30116(a) this does not bear on the Court's standing analysis. *See Citizens United v. FEC*, 558 U.S. 310, 331 (2010) (explaining that the difference between facial and as-applied challenges "goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint"); *see also Barilla v. City of Houston*, 13 F.4th 427, 432 n.3 (5th Cir. 2021) ("Because we conclude that Barilla satisfies the requirements outlined above, the facial-versus-as-applied distinction does not affect our standing inquiry.")

Courts must consider a motion to dismiss for lack of subject matter jurisdiction before determining the validity of an underlying claim. *Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994).

The Article III standing inquiry comprises three essential elements. First, a plaintiff must show it has "suffered an injury in fact," which the Supreme Court defines as "an invasion of a legally protected interest which is (a) concrete and particularized[;] . . . and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up). Second, a plaintiff must show that there is a "causal connection between the injury and the conduct complained of," which requires the injury to be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Id*. (cleaned up). And third, plaintiff must show that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id*. at 561 (cleaned up). "[E]ach element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Id*. In so doing, the Court "accept[s] all well-pleaded factual allegations in the complaint as true and view[s] them in the light most favorable to the plaintiff." *Abdullah v. Paxton*, 65 F.4th 204, 208 (5th Cir.) (per curiam), cert. denied, 144 S. Ct. 188 (2023).

Injury-in-fact is the "first and foremost of standing's three elements." *Spokeo v. Robins*, 578 U.S. 330, 338-39 (2016); *Ctr. for Biological Diversity v. U.S. Env't Prot. Agency*, 937 F.3d 533, 537 (5th Cir. 2019). Standing under Article III "'requires a concrete injury even in the context of a statutory violation.'" *Laufer v. Mann Hosp., L.L.C.*, 996 F.3d 269, 272 (5th Cir. 2021) (quoting *Spokeo*, 578 U.S. at 331). 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). To establish that an injury is concrete, the injury must be "de

facto," *i.e.*, "it must actually exist." *Id.* (citing *Spokeo*, 578 U.S. at 340) (quotation marks omitted). Finally, as to an injury that is actual or imminent (and not speculative), "'the injury must have already occurred or be likely to occur soon.'" *Id.* (quoting *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). To request prospective injunctive or declaratory relief, 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). The threat of future injury must be "*certainly* impending;" mere allegations of possible future injury will not suffice. *James v. Hegar*, 86 F.4th 1076, 1081 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1461 (2024). Allegations of past harm cannot establish standing for a request for prospective relief. *Id.*

In First Amendment cases, a subjective chill on the exercise of its rights is not enough to convey standing; the plaintiff must allege "specific present objective harm or a threat of specific future harm." *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972) (explaining mere disagreement with government policy was not enough for standing; there must be a direct injury).

B. Disclosure Requirements Further Important Governmental Interests

Plaintiff challenges a FECA disclosure requirement, an area that courts have long recognized as an important government interest. Since the seminal decision in *Buckley*, the Supreme Court has consistently recognized that campaign finance disclosure laws generally advance the "important state interests" of "providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions." *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (discussing *Buckley*); *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("[Campaign finance] transparency enables the electorate to make informed decisions and give proper weight to

different speakers and messages."). While "[d]isclaimer and disclosure requirements may burden the ability to speak," they "'impose no ceiling on campaign-related activities,' and 'do not prevent anyone from speaking.'" *Citizens United*, 558 U.S. at 366 (quoting *Buckley*, 424 U.S. at 64 and *McConnell*, 540 U.S. at 201).

Courts treat disclosure requirements "far more favorably than laws that limit political contributions and expenditures." *Justice v. Hosemann*, 771 F.3d 285, 296-97 (5th Cir. 2014). Unlike laws that burden political speech, which Courts subject to strict scrutiny, courts apply the more deferential "exacting scrutiny" standard to laws that require disclosure. *Citizens United*, 558 U.S. at 340, 366-67. Under the exacting scrutiny standard, the government must show a sufficiently important government interest that bears a substantial relation to the requirement. *Id.* at 366-67. Disclosure provisions that, "[r]equire[e] people to stand up in public for their political acts fosters civic courage, without which democracy is doomed." *See John Doe No. 1 v. Reed*, 561 U.S. 186, 228 (2010) (Scalia J., concurring).

Disclaimer and disclosure laws are subject to lesser scrutiny than other campaign finance regulations because they "in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption…." *Buckley*, 424 U.S. at 68. This comparatively deferential standard has permitted courts to reject First Amendment challenges to disclosure requirements. In *Buckley*, for instance, the Supreme Court said that disclosure requirements could be justified based on a governmental interest in "provid[ing] the electorate with information" about the sources of election-related spending. *Id.* at 66. In *McConnell*, the Supreme Court rejected facial challenges to the Bipartisan Campaign Reform Act, reasoning, *inter alia,* that the provisions at issue bore a "sufficient relationship to the important governmental interests of "shed[ding] the light of publicity' on campaign financing." 540 U.S. at 231 (quoting *Buckley*, 424 U.S. at 81). The

Supreme Court has also commented that disclosure requirements "minimize[] the potential for abuse of the campaign finance system" and "often represent[] a less restrictive alternative to flat bans on certain types or quantities of speech." *McCutcheon*, 572 U.S. at 223-24 (citing *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986)).

The *Buckley* Court cautioned that disclosure requirements will result in at least some curbing of campaign activity. 424 U.S. at 68 ("It is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute. In some instances, disclosure may even expose contributors to harassment or retaliation. These are not insignificant burdens on individual rights."); *see Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 618-19 (2021) ("When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough, because First Amendment freedoms need breathing space to survive.") (internal quotation marks and brackets omitted). This is why, to prevail on a challenge to a disclosure requirement, "'the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.'" *John Doe No. 1*, 561 U.S. at 196 (quoting *Davis v. FEC*, 554 U.S. 724, 744 (2008)).

C. Plaintiff's Vague, Attenuated, and Speculative Allegations Do Not Amount to Actual, Concrete Injury

Plaintiff fails to show the requisite injury under Article III of the Constitution, and therefore, his complaint should be dismissed. Rather than being concrete and particularized, and actual or imminent, plaintiff's vague assertions of injuries 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 564 n.2. This

failure to meet the "irreducible constitutional minimum" for accessing federal courts requires the Court to dismiss plaintiff's Complaint. *Id.* at 560-61.

1. Plaintiff's Allegation of Past Harm Does Not Include an Actual Injury

Plaintiff 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. (Compl. ¶¶ 19-20, 22.) Nowhere in his Complaint, however, does plaintiff offer any alleged injury resulting from these two contributions. *See Citizens United*, 558 U.S. at 370 (Court did not consider chilling effect of donations where plaintiff identified no instance of harassment or retaliation to its donors). Instead, plaintiff explains that he "does not want to explain or justify such contributions," (Compl. ¶¶ 21, 24-25), and speculates that the disclosure of his name as the source of these contributions might cause harm. (*Id.*)

But here, the court need not speculate. The disclosure has happened, and the harm has not followed. The absence of any actual injury flowing from the disclosure of those two contributions is fatal to plaintiff's complaint. Plaintiff merely hypothesizes that these two past contributions will lead to "demands for similar donations" and vague "repercussions" for himself. (*See id.* ¶ 26 (speculating he may be injured by requests for similar contributions from other candidates).) However, none of these consequences plaintiff alleges has yet to occur and may well never happen, and thus, such injuries are not "concrete" for purposes of showing standing. That these events may come to pass at some future point is irrelevant for purposes of standing now, because courts rule on standing at the time of a lawsuit's filing. *See Amerisure Ins. Co. v. Thermacor Process, Inc.*, No. 4:20-cv-01089-P, 2021 WL 2695143, at *2 (N.D. Tex. Apr. 6, 2021); *Lujan*, 504 U.S. at 569 n.4 (emphasis omitted) ("existence of federal jurisdiction ordinarily depends on the facts as they exist when the complaint is filed.").

With each passing day, the connection between plaintiff's 2023 contribution to the unspecified federal candidate, the 2019 contribution to Marianne Williamson, and imminent future harm becomes more attenuated. This is especially true for the contribution to Williamson, who, since receiving $1 from plaintiff for her 2020 presidential campaign, ran again during the 2024 cycle, yet plaintiff does not allege that this candidate solicited plaintiff for a contribution. Plaintiff also does not allege that he received a request for a contribution from a "similar" candidate to Williamson in the 2024 cycle, or a request for a "similar" $1 contribution, for that matter. (Compl. ¶ 26.) As to the unidentified federal candidate, plaintiff does not allege, nor can the Court determine, whether a "similar" candidate solicited a contribution because of plaintiff's contribution being disclosed. (*Id.* ¶¶ 19, 26). Without knowing whether this contribution went towards a primary or a general election, the Court lacks context for plaintiff's concerns that "[s]ome of [his] donations will be made . . . in contested primaries" and that disclosing them would sow confusion about the Tarrant County Republican Party's stances. (*Id.* ¶ 25). With no identified office, the Court cannot tie this disclosure to plaintiff's concern that some of his contributions "will be made to candidates . . . in Texas where he lives and works." (*Id.*)

Plaintiff further lacks standing to maintain an action based on hypothetical scenarios involving non-parties to this action. To establish standing, a plaintiff must allege harms that are particularized to him. *See Lujan*, 504 U.S. at 560. However, plaintiff's Complaint speaks to harms that might be suffered by a county party, not the plaintiff. (Compl. ¶ 25 ("He would not want his personal support for a candidate [in a contested primary] to imply that the Tarrant County Republican Party *as an institution* supports the candidate.") (emphasis added)). McDonald is the only plaintiff in this action. (*See generally* Compl.) The Complaint does not assert standing on behalf of a third party, and the Court should not construe it as seeking such relief. *See Dominguez-*

Gonzalez v. Clinton, 454 Fed. App'x 287, 290 (5th Cir. 2011) (per curiam) (summary calendar) (discussing the "presumption against third-party standing"). In any event, third-party standing on behalf of the Tarrant County Republican Party would be meritless because the party lacks a "hindrance" to protecting its own interests, as there is nothing to prevent the party from independently seeking redress in court for these purported injuries, were they to occur. *See Vote.org v. Callanen*, 39 F.4th 297, 303-04 (5th Cir. 2022). Furthermore, the records showing plaintiff's two past contributions do not contain any information about the Tarrant County Republican Party, making any such injury to them entirely speculative.

Plaintiff's asserted consequences from his past contributions are also not actual or imminent. He raises only hypothetical scenarios and offers his hypothetical response. (Compl. ¶ 21 ("McDonald does not want to explain or justify such contributions"), *id.* ¶ 24 (McDonald speculates "that *if* information about his donations remain on the FEC website, it will adversely impact McDonald's political activities.") (emphasis added). These are not forthcoming injuries that are "certainly impending." *Clapper*, 568 U.S. at 409. Plaintiff instead presents a vague sense of unease with being associated with his own contributions. (Compl. ¶ 21 (suggesting that he prefers not to "explain or justify" contributions), *id.* ¶ 26 (the possibility of experiencing requests for "similar donations" in the future).) But that professed discomfort falls short of an Article III injury.

Accordingly, plaintiff's purported harm based on prior events lack the requisite features set forth by the Supreme Court — concrete and particularized, actual or imminent — to establish an injury in fact.

2. Plaintiff's Allegation of Future Harm is Speculative and Insufficient

Plaintiff's allegation of future harm is also inadequate. First, it is speculative. Claims of future harm may be sufficient to establish Article III standing "if the threatened injury is certainly

impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014); *Lee v. Verizon Cmmc'ns, Inc.*, 837 F.3d 523, 544 (5th Cir. 2016). While Plaintiff may intend to "make additional small dollar donations in the future," (Compl. ¶ 27), his requested relief concerns wholly prospective conduct for which he provides no details. Given that plaintiff seemingly did not intend to make a conduit contribution to the unidentified federal candidate, (Compl. ¶20 ("However, unbeknownst to McDonald at the time of his donation, his chosen recipient routed donations through a conduit")), it is speculative that he consciously plans to do so in the future. Indeed, the *Buckley* Court rejected an argument that there was an infringement on First Amendment rights when the infringement was "highly speculative." *Buckley*, 424 U.S. at 69-70.

Plaintiff's amorphous future "'someday' intentions" about wanting to make contributions that are without a "description of concrete plans" are inadequate to establish standing. *Lujan*, 504 U.S. at 564; *Zimmerman v. City of Austin*, 881 F.3d 378, 389 (5th Cir. 2018) (finding plaintiff's plan to *solicit* campaign contributions did not confer standing to challenge city law that placed limits on *accepting* contributions; thus, plaintiff did not "demonstrate a serious intent to violate the statute"); *cf. Justice*, 771 F.3d at 291-92 (finding standing to challenge state disclosure laws because where plaintiff had "legitimate fear of criminal penalties for failure to comply"). Plaintiff's complaint is devoid of any allegation of future injury to himself that has "'sufficient immediacy and reality[,]'" 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)). His allegations that he "wants to make additional small dollar donations in the future" fall far short of concrete plans. Indeed, plaintiff's broad statement about his intent, is

akin to the plaintiffs in *Lujan* who similarly alleged "'inten[t]'" to return to the places they had visited before" where they would incur an injury. But where a plaintiff failed to include "any description of concrete plans" or even any "specification of when[,]" the Court found the plaintiff lacked an "actual or imminent" injury. 504 U.S. at 564.

Second, the substance of his alleged future harm is insufficient in any event. In the pre-enforcement context, "[c]hilling a plaintiff's speech is a constitutional harm adequate to satisfy the injury-in-fact requirement." *Hous. Chronicle Publ'g Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007). But to clear that threshold, a plaintiff must show more than a "subjective chill," *i.e.*, the plaintiff must show he is seriously affected by challenged measure. *Justice*, 771 F.3d at 291 (quotation marks omitted); *see also Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770, 782 (5th Cir.), cert. denied, 145 S. Ct. 140 (2024). Put differently, a plaintiff can have a sufficient injury based on chilled speech, but must not be wholly speculative. *Pool v. City of Houston*, 978 F.3d 307, 311 (5th Cir. 2020) (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 302 (1979)).

Plaintiff's lawsuit falls short of this standard on multiple fronts. Plaintiff is not the subject of the conduit reporting requirement; the conduits are. *See Susan B. Anthony List*, 573 U.S. at 162 (requiring, for injury-in-fact showing, a "credible threat of prosecution"). There is thus, no "threatened enforcement" of § 30116(a)(8) against plaintiff. *See Umphress v. Hall*, --- F.4th ---, No. 20-11216, 2025 WL 1009058, at *3-4 (5th Cir. Apr. 4, 2025) (per curiam). Unlike *Umphress*, this is not a pre-enforcement challenge case, and thus plaintiff has not alleged a "course of conduct" where there is a "credible threat of prosecution." *Id.* at *10. Rather, the only consequence of his speculative future conduct would be that a third party, not before the court, could submit identifying information on a public disclosure report. This is a critical shortcoming

for an as-applied challenge in the pre-enforcement context. *See Speech First, Inc. v. Fenves*, 979 F.3d 319, 334-35 (5th Cir. 2020) ("Whereas '[t]here must be some evidence that [a] rule would be applied to the plaintiff in order for that plaintiff to bring an as-applied challenge,' that is not the case for facial challenges.") (quoting *Susan B. Anthony List*, 573 U.S. at 164). A plaintiff's failure to show any threat of enforcement can be "fatal" to his standing. *See Knife Rights, Inc. v. Garland*, No. 4:23-cv-00547-O, 2024 WL 2819521, at *3 (N.D. Tex. June 3, 2024).

Plaintiff also asserts that the conduit reporting requirement "chill[s]" his ability to express his political views through contributions to political candidates.[6] (Compl. ¶ 28.) But this allegation of subjective chill is "'not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm[.]'" *Clapper*, 568 U.S. at 418; *Glass v. Paxton*, 937 F.3d 233, 239 (5th Cir. 2018). In addition to his claims of future harm being hypothetical, plaintiff's allegations do not establish he is "seriously interested" or that he has an "intention to engage" in making contributions via conduits. Plaintiff refers to his future contributions in general terms. (Compl. ¶ 27 ("McDonald wants to make additional small dollar donations in the future[.]").) He does not, by contrast, express a concrete desire to make contributions through conduits, and does not appear to frequently engage in the conduct giving rise to this Complaint. His activity in the conduit arena amounts to two contributions over the past five years. (Compl. ¶¶ 19, 22). This suggests that plaintiff does not have the requisite "'intention to engage'" in conduit contributions. *See Umphress*, 2025 WL 1009058, at *4 (determining the plaintiff, a county judge, had shown an

[6] FECA only requires committees to disclose to the Commission contributors who contribute $200 or more during the calendar year. 52 U.S.C. § 30104(b)(3)(A), (c)(2)(C). Plaintiff acknowledges this ability to contribute below the $200 directly to a candidate without disclosure. (Compl. ¶¶ 5-10.) In any event, plaintiff only speculates as to how he will contribute to campaigns in the future.

"intention to engage" in challenge to Texas Code of Judicial Conduct based on affiliations and his re-election platform).

D. A Disclosure Exemption is Available When Actual Injuries are Threatened, But Plaintiff Has Neither Sought Nor is He Entitled to That Exemption Here

Lastly, although plaintiff vaguely speculates about "fears [of] repercussions" (Compl. ¶ 26), he has not sought an exemption to the disclosure of his contributions, nor has he established the kind of systematic, specific, and serious threats of harassment and reprisals that would warrant an exception to the generally applicable disclosure rules.

The Supreme Court has long recognized that a harm of a constitutional dimension may arise from disclosure when there is a "reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed." *Citizens United*, 558 U.S. at 370. This type of narrow exemption has been upheld in only a few cases. *See Buckley*, 424 U.S. at 31–35; *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87, 102 (1982) (granting exemption to Socialist Worker Party ("SWP") deemed to have minor party status due to its 60 members, little success at the polls, and small amount of financial backing); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 466 (1958) (holding that disclosure of rank and file membership of NAACP would restrain members' exercise of freedom of association). Organizations such as the NAACP and the Socialist Workers Party demonstrated this type of harm when they established that their members faced actual, documented danger during the relevant time. *See Buckley*, 424 U.S. at 69; *see also McConnell*, 540 at 198-99.

In *NAACP* for example, the record included an ongoing history of systemic violence and repression faced by the organization, such as a "[y]ear-long series of bombings and shootings," "major acts of violence," "physical[] attacks," and "Ku Klux Klan activity, demonstrations, and cross burnings." Br. For Pet'r, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) (No.

91), 1957 WL 55387, at *16 n.12. In *Brown*, the Socialist Workers Party recounted a "past history of government harassment," including "massive" FBI surveillance and a concerted effort to meddle with an organization's political activities, and asserting that "in the 12-month period before trial 22 SWP members . . . were fired because of their party membership." 459 U.S. at 99.

As noted above, the Complaint makes no such allegations. (*See generally* Compl.). Regardless, any attempt at exemption from disclosure would lack merit. First, plaintiff is not bringing this action on behalf of an organization, he is suing in his individual capacity. (*Id.* ¶ 3). To apply the doctrine to an individual plaintiff would go beyond the bounds the Supreme Court envisioned when crafting this limited remedy. *See Citizens United*, 558 U.S. at 370 ("In *McConnell*, the Court recognized that § 201 [of the Bipartisan Campaign Reform Act] would be unconstitutional as applied to *an organization* if there were a reasonable probability that *the group's* members would face threats.") (citing 540 U.S. at 198) (emphasis added); *see also Wis. Right to life, Inc. v. Barland*, 751 F.3d 804, 825 (7th Cir. 2014) ("Finally, the Court reaffirmed that the disclosure requirement might be unconstitutional *as applied to particular groups*.") (emphasis added).

Even assuming that plaintiff sought an exemption, it would not be warranted because the Complaint does not set forth any showing of threats, harassment, or reprisals. True, plaintiff contends it would be more convenient for him in his capacity as general counsel for a county party to have his contributions remain anonymous. (Compl. ¶¶ 21, 25). But these optics concerns do not rise to the levels of harm and interference exhibited by past groups who sought this exemption. Faced with whether to provide as-applied relief to the parties in *Buckley*, the Court noted that "fears of reprisal may deter contributions to the point where the movement cannot survive." 424 U.S. at 71. Yet, it concluded that evidence that "one or two persons" had refused to make contributions

to a minor party for fear of being disclosed was insufficient to merit an as-applied exemption. *Id.* at 71-72; id. at 68 ("It is undoubtedly true that public disclosure of contributions . . . will deter some individuals who otherwise might contribute"). Here, such an exemption for plaintiff is inapplicable.

CONCLUSION

The Commission respectfully requests that the Court dismiss the complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Plaintiff fails to allege a cognizable Article III injury. Plaintiff's two prior disclosed contributions and his alleged concern regarding future contributions amount to nothing more than speculation about the possible burden of receiving future solicitations for similar contributions or that contributions he makes could be misunderstood in some way in the future. This is insufficient to invoke this Court's jurisdiction. Plaintiff's speculative allegations of harm do not establish an Article III injury or the systematic, specific, and serious threats of harassment and reprisals that would warrant the available exception to the generally applicable disclosure rules.

Respectfully submitted,

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