

No. 25-10830

**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

(Dist. Ct. No. 4:25-CV-153-P)

APPELLANT'S BRIEF

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth 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.

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The Defendant-Appellee is the Federal Government. The rule does not require any further certification regarding it or its attorneys.

Respectfully Submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument would aid the Court because the case raises important questions regarding the First Amendment rights to associate and speak anonymously about election matters, which are at the core of the First Amendment, and the standing required to assert those rights.

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JURISDICTIONAL STATEMENT

(a) The district court had subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 52 U.S.C. § 30110, as the Plaintiff brings a constitutional challenge to a provision of the Federal Election Campaign Act.

(b) Plaintiff Tony McDonald appeals from the district court's memorandum opinion and order granting Defendants' motion to dismiss without prejudice and separate final judgment. ROA 146-151, 152. This Court has jurisdiction over the appeal pursuant to 28 U.S.C. § 1291. *See also United States v. Wallace & Tiernan Co.*, 336 U.S. 793, 794 n.1 (1949) (dismissal without prejudice appealable); 19 Moore's Federal Practice - Civil § 202.11 (2024) (involuntary dismissal without prejudice is appealable if it ends action in district court).

(c) The judgment and order appealed from were entered on July 9, 2025. ROA 146-151, 152. Plaintiff filed his notice of appeal on July 14, 2025. ROA 153. The appeal is timely pursuant to Fed. R. App. P. 4(a)(1)(A).

STATEMENT OF THE ISSUE

For purposes of Article III standing, does the Federal Election Commission injure a campaign contributor by publicly disclosing the details of his contribution?

STATEMENT OF THE CASE

A. The Regulatory Regime

Candidate committees must report to the FEC “the identification of each [] person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution[.]” 52 U.S.C. § 30104(b)(3). “Identification” is defined as: “(A) in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and (B) in the case of any other person, the full name and address of such person.” 52 U.S.C. § 30101(13).

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

B. Tony McDonald

Tony McDonald donated \$50 to support a federal candidate on June 30, 2023. ROA 12. McDonald chose to limit the amounts to below \$200, in part, so that his donation would remain anonymous. *Id.* However, unbeknownst to Plaintiff at the time of his donation, his chosen recipient routed donations through a conduit PAC used by many Republican candidate—WinRed. *Id.* As a result, McDonald’s identity was publicly reported to the FEC as making a contribution to a superPAC. *Id.*

McDonald sometimes donates to candidates for reasons other than his support for their candidacy. *Id.* For example, McDonald has donated, and will donate in the future, simply to assist a candidate qualify for a debate, or because the candidate offered donation incentives. ROA at 13. These types of donations do not indicate personal support for the candidate, yet disclosure of the donation would imply such support. *Id.* Plaintiff does not want to explain or justify such contributions. *Id.*

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

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

McDonald is concerned that if information about his donations

remain on the FEC website, it will adversely impact his political activities, including his future giving. *Id.* Due to his involvement in party politics, McDonald has various reasons for wanting to keep his small dollar donations private. *Id.* Some of McDonald's donations will be made to candidates in contested primaries, including in Texas where he lives and works. *Id.* McDonald is General Counsel for the Tarrant County Republican Party. *Id.* He would not want his personal support for a candidate to imply that the Tarrant County Republican Party as an institution supports any candidate to which he donates. *Id.*

If McDonald's small donations were revealed, he fears repercussions for himself and the Tarrant County Republican Party, in the form of demands for similar donations from other candidates, confusion over the Tarrant County Republican Party's stance in primary races, and misunderstandings regarding the intent and implications of McDonald's donations. ROA 14. McDonald wants to make additional small dollar donations in the future but is afraid to do so because such donations might be disclosed simply based upon the manner in which candidates processes donations. *Id.* Thus, McDonald is chilled in his ability to express his political views through donations to his chosen political

candidates. *Id.* McDonald is forced to choose between freely voicing support for candidates and policy through monetary donations and maintaining his privacy. *Id.*

C. Procedural History

Tony McDonald filed this lawsuit in the U.S. District Court for the Northern District of Texas, Ft. Worth Division, on February 18, 2025, challenging the constitutionality of 52 U.S.C. § 30116(a)(8). ROA 6-13. The FEC moved to dismiss the case on April 22, 2025. ROA 80. After full briefing, but without argument, the district court granted the motion on July 9, 2025. ROA at 146-151.

The District Court incorrectly reasoned:

McDonald argues that the disclosure of his past contributions is sufficient. Based on these pleadings, McDonald must show a concrete injury in fact just like any other plaintiff.

...
The “disclosure of donor information” is not a “constitutional injury in and of itself.”

ROA 149-150. McDonald appealed on July 14, 2025. ROA 153.

SUMMARY OF THE ARGUMENT

An anonymous speaker suffers an injury-in-fact when the government violates the constitutionally protected right to remain unknown. *NAACP v. Alabama*, 357 U.S. 449 (1958). This applies with

equal force to election related speech. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995). Laws that mandate donor disclosure chill speech and association and thus create prospective harm that warrants broad injunctions against enforcement. *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021) (“*AFPF*”).

“Disclosure requirements can chill association ‘even if there [is] no disclosure to the general public.” *Id.* at 616 (citation omitted). “The disclosure requirement creates an unnecessary risk of chilling in violation of the First Amendment.” *Id.* (quotation marks omitted). “The deterrent effect ... is real and pervasive.” *Id.* at 617. Accordingly, the District Court erred when it dismissed McDonald’s complaint.

ARGUMENT

The District Court found that McDonald did not adequately allege an injury in fact, because he did not allege an injury beyond the disclosures themselves. This is puzzling because the injury-in-fact requirement is not a high hurdle in First Amendment cases and is obviously met here. The injuries-in-fact that McDonald alleges are the past disclosures of his constitutionally protected information to the FEC, the FEC’s inclusion of his information in a searchable public database, and the

certainty that absent repeal of the law, or a court order, the FEC will continue to require similar disclosures to it in the future and it will continue to further disclose the reported small-dollar contributor data to the public at large.

I. Standard of Review

A dismissal based on lack of standing is reviewed *de novo*. *Texas v. Yellen*, 105 F.4th 755, 763 (5th Cir. 2024).

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

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

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

McDonald contends that it is unconstitutional to require the disclosure of his small-dollar donor information to the FEC. Plaintiff seeks, *inter alia*, declaratory relief that requiring the disclosure of small-dollar donations made via conduits is unconstitutional, as is the FEC’s further disclosure of this information to the public at large. To remediate McDonald’s injury from the past wrongfully reported information, McDonald seeks an order that the FEC remove his past donations from its database. ROA 17. Because Plaintiff desires to make similar donations again and is currently chilled from doing so, he also seeks a prospective injunction prohibiting the FEC from requiring small-dollar conduit disclosures going forward. *Id.*

III. McDonald has Standing to Seek Declaratory Judgment

To have standing for a declaratory judgment claim under § 30110, a plaintiff must merely have a “personal stake” in the issue and “present a real and substantial controversy admitting of specific relief through a decree of a conclusive character,” and not merely “a hypothetical state of facts.” *Buckley*, 424 U.S. at 12. McDonald has an obvious personal stake in whether his name, address, employment, and political donations are reported to the government and exposed to the public at large. *X Corp. v. Media Matters for America*, 120 F.4th 190, 196 (5th Cir. 2024) (“once the donor information is disclosed, the First Amendment injury could not be undone...”). “Chilling a plaintiff’s speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.” *Hou. Chron. Publ’g Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007); *Nat’l Rifle Ass’n of Am. v. Magaw*, 132 F.3d 272, 279 (6th Cir. 1997) (holding that an injury sufficient to maintain an action for declaratory relief exists “when a statute ... chills protected First Amendment activity...”) (cleaned up). Thus, standing for declaratory relief is established.

The central error in the District Court's decision (and the FEC's argument) is the failure to acknowledge that disclosure of donor information is a constitutional injury in and of itself. *Id.*

IV. McDonald has Standing to Seek Remedy for Past Harms

The District Court reasoned that McDonald did not suffer an injury in fact from the past disclosures of his small donor donations because he did not allege that specific ramifications resulted downstream. ROA 100. However, the mandated disclosure of McDonald's contributions to the FEC was an injury itself. The FEC's further disclosure of McDonald's contributions to the public at large was an additional constitutional injury.

McDonald suffered a First Amendment injury when his donor information was disclosed to the FCC. *AFPP*, 594 U.S. at 617. He was further injured by the FEC placing that information in a public database. He is injured anew every time his small-dollar donation information appears in query results on the FEC website. The FEC demonstrated its ability and willingness to reinjure McDonald when it included URLs in its Motion for FEC database entries that publicly disclose McDonald's contributions that should not have been disclosed.

See ROA 93. Ironically, the FEC’s argument that McDonald wasn’t injured by the disclosure contributes to the very injury the FEC denies by pointing to URLs that publicly reveal the information that should be private. This further harm will end only when these results cannot be returned from the FEC website.

V. McDonald has Standing to Seek Prospective Relief

The District Court also found that McDonald did not allege an adequate injury-in-fact to obtain prospective relief. To obtain prospective relief, “[a] plaintiff has suffered an injury in fact if he (1) has an intention to engage in a course of conduct arguably affected with a constitutional interest, (2) his intended future conduct is arguably proscribed by the policy in question, and (3) the threat of future enforcement of the challenged policies is substantial.” *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020). Here, McDonald has stated his intention to make small-dollar contributions in the future to federal candidates who will utilize conduit platforms, such as ActBlue and WinRed, to accept contributions. ROA 13-14.

Campaign donations are unquestionably constitutionally protected speech and association. *Driehaus*, 573 U.S. at 162 (“Because petitioners’

intended future conduct concerns political speech, it is certainly affected with a constitutional interest.”). The conduit donations are subject to mandatory reporting. 52 U.S.C. § 30116(a)(8). The disclosure of McDonald’s information to the FEC is a cognizable First Amendment injury itself. *X Corp*, 120 F.4th at 196. “The pre-enforcement nature of the suit [is] not troubling because the plaintiff[has] alleged an actual and well-founded fear that the law will be enforced against them.” *Driehaus*, 573 U.S. at 160 (cleaned up); *see also Hou. Chron. Publ’g Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007) (“Chilling a plaintiff’s speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.”). Therefore, McDonald has established a First Amendment injury for prospective enforcement.

The FEC argues the McDonald’s future harm is speculative because he cannot precisely identify a candidate to which he will make a small-dollar donation using a conduit platform. However, this level of specificity is not required here. McDonald showed that he has made small-dollar donations to federal candidates in 2019, 2023 and 2024,¹ at

¹ The FEC argued below that the 2024 donation should be disregarded because it wasn’t reported to the FEC. Hardly. The 2024 donation is

least two of whom used conduit platforms to accept donations.

McDonald indicated his desire to continue making similar donations in the future, and candidates routinely accept conduit platform donations.

This is all that is required for standing. *Id.* He need not be prescient.

McDonald is not required to know which candidate or candidates in the current election cycle will earn his financial support. His desire to remain an active small-dollar donor suffices. *Id.*

The FEC argues that McDonald's chill is merely subjective. Not so. The Supreme Court has explained that forcing the disclosure of anonymous donors objectively chills. "The disclosure requirement creates an unnecessary risk of chilling in violation of the First Amendment, indiscriminately sweeping up the information of every

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

[small dollar] donor with reason to remain anonymous.” *AFPP*, 594 U.S. at 616-617. “Such risks are heightened in the 21st Century and seem to grow with each passing year, as anyone with access to a computer can compile a wealth of information about anyone else, including such sensitive details as a person’s home address or the school attended by his children.” *Id* at 617. Chill is presumed because “[w]hen it comes to a person’s beliefs and associations, broad and sweeping state inquiries into these protected areas discourage citizens from exercising rights protected by the Constitution.” *Id* at 610. Thus, disclosing donor information objectively chills donations, which are protected political speech and association. *Id*. Even the *AFPP* dissenters noted the conclusive nature of this holding. *Id*. at 629 (Sotomayor, J., dissenting) (As a result of the *AFPP* holding, “all disclosure requirements *ipso facto* impose cognizable First Amendment burdens...”). The District Court erred in finding otherwise.

The complaint alleges that due to his involvement in party politics, McDonald has various reasons for wanting to keep his small dollar donations private. ROA 14. As General Counsel for the Tarrant County Republican Party, McDonald does not want his contributions reviewed

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

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

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

The First Amendment permits anonymous association and donation for any of multiple reasons, or for no reason whatsoever. *AFPP*, 594 U.S. at 617 (“The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.”). An important part of championing anonymity is *not* requiring an explanation of why an individual seeks anonymity,

because explaining one's reasons for being anonymous often destroys the benefit of anonymity and thus chills the anonymous speech the First Amendment seeks to protect.

On the merits, the conduit reporting requirement, 52 U.S.C. § 30116(a)(8), is unconstitutional as applied to donations of up to \$200. So applied, this provision requires conduit committees to report the identity of each donor who donated via the conduit committee starting at a \$0 threshold. This is an unconstitutionally low threshold under the First Amendment especially when contrasted with the fact that identical direct contributions are not required to be disclosed. McDonald, as a past and desirous future small-dollar donor, has standing to bring these claims and seek the relief he's requested.

CONCLUSION

McDonald has standing. The District Court should be reversed. The case should be remanded with instructions to immediately certify this case to this Court, en banc, upon the Government's expeditious answer.

Dated: September 15, 2025

Respectfully submitted,

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

I hereby certify on this 15th day of September, 2025 that:

1. This document complies with the length limit of Fed. R. App. P. 32(a)(7)(A), because the brief is 18 pages long.
2. This document complies with the typeface and type-style requirements of Fed R. App. P. 32(a)(5)-(6), because the document is in a proportionally spaced font using Microsoft Word in a 14-point Century Schoolbook font.

/s/ Charles Miller
Charles M. Miller

CERTIFICATE OF SERVICE

I hereby certify on this 15th Day of September that I electronically filed this document with the Fifth Circuit using its ECF system, which automatically served this document on counsel of record.

/s/ Charles Miller
Charles M. Miller