



FEDERAL ELECTION COMMISSION
1050 First Street NE
Washington, DC 20463

The Hon. Lyle W. Cayce
Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place, Suite 115
New Orleans, LA 70130-3408

RE: Response to Rule 28(j) Notice of Supplemental Authority (ECF No. 91)
filed in *McDonald v. FEC* (No. 25-10830)

Dear Mr. Cayce:

This letter responds to plaintiff-appellant Tony McDonald's Rule 28(j) notice of the Supreme Court's decision in *First Choice Women's Resource Centers, Inc. v. Davenport*, No. 24-781, 608 U.S. ____, 2026 WL 1153029 (Apr. 29, 2026) ("*First Choice*"), a case challenging a law enforcement subpoena demanding a nonprofit's fundraising information where the group faced contempt of court and other penalties for failure to comply. *First Choice* does not put the Panel's decision into conflict with *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021) ("*AFP*").

McDonald selectively quotes *First Choice* in a way that ignores the distinction between the Court's standing analysis and a determination on the merits of First Amendment claims. *First Choice* at *6, (explaining "heightened First Amendment scrutiny").

McDonald quotes a passage from *First Choice* saying an "official demand for private donor information is enough to discourage reasonable individuals from associating with a group." Importantly, he does not quote following sentence: "It is enough to discourage groups from expressing dissident views." *First Choice* at *21. The Court was referring to its line of cases, unlike McDonald's, concerning advocacy organizations expressing dissident views while acknowledging that "compelled disclosure of affiliation with groups engaged in advocacy" can

‘constitute a[n] effective . . . restraint on freedom of association.’” *Id.* (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958)).

Also, McDonald underplays a crucial difference between this case and *First Choice*. He has not, does not, and cannot allege that the conduit’s disclosure of his campaign contributions exposes him to risks of threats, reprisals, or harassment by virtue of membership in an organization. The *First Choice* Court relied on such well-pleaded allegations in ruling that the plaintiff had standing. *First Choice* at *9 (citing *AFP*, 594 U.S. at 602-03).

The Court should properly take notice of *First Choice* for its ongoing endorsement of the unique set of circumstances faced and pleaded by the plaintiffs from the *NAACP* and pre-enforcement line of cases. It should also note that McDonald is not among those plaintiffs.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume requirements set forth Fed. R. App. P. 28(j) because it contains 341 words.

/s/ Michael D. Contino

Michael D. Contino

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2026, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the Fifth Circuit by using the Court's CM/ECF system, which will serve all counsel of record.

/s/ Michael D. Contino
Michael D. Contino