

ORIGINAL

22-6115
No. _____

Supreme Court, U.S.

FILED

OCT 21 2022

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DANNY FABRICANT — PETITIONER
(Your Name)

VS.

FEDERAL ELECTION COMMISSION — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANNY FABRICANT 84828-012
(Your Name)

3901 Klein Blvd Suite J
(Address)

Lompoc CA 93436-2706
(City, State, Zip Code)

None
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

** 1. Does 52 U.S.C. § 30101's REQUIREMENT that potential candidates for the House of Representatives report (either) the receipt of more than \$5,000 in contributions or expenditures BEFORE they are considered 'Candidates' by the Federal Election Commission, violate Article 1, § 2, Clause 2 of the Constitution, which only lists three qualifications; none of them monetary?

"52 U.S.C. § 30101 Definitions

When used in this Act ...

(2) The term 'candidate' means an individual who seeks nomination for election or election, to Federal office, and for the purposes of this paragraph, an individual shall be deemed to seek nomination for election or election-

(A) if such individual has received contributions aggregating in excess of \$5,000, or has made expenditures aggregating in excess of \$5,000; or
(B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received contributions aggregating in excess of \$5,000 or has made expenditures in excess of \$5,000."

As amended March 27, 2002, P.L. 107-155 116 Stat. 85

Article 1, § 2, Clause 2 [The 'Qualification Clause'] states;

"Qualification of Representatives

No person shall be a Representative who shall not have attained the Age of twenty-five Years, and have been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." [NOTE: Strangely Capitalized words in original.]

** 2. Does 52 U.S.C. § 30110, which, in relevant part, grants 'permission' to "... or any individual eligible to vote in any election for the office of President, may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this act. ..."

violate (separately, as will be explained, post) (1) The Equal Protection Clause of the Constitution and (2) the Article III "standing" or 'injury' requirement (See also: F.R.Civ.P. 12(h)(3))?

** 3. May a district court impose a 28 U.S.C. § 1915(g) "Strike" on a prisoner who relied in 52 U.S.C. § 30110 statutory authorization to file a lawsuit, as part of an Order dismissing the action?

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LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

There are no related cases pending in this Court.

There was a related case in the Court of Appeals for the District of Columbia; Salinas, et al, v. Federal Election Commission, Case No. 21-5034, filed by two persons from Petitioner's Principal Campaign Committee, reported at 2021 U.S.App. LEXIS 10429 and by an unknown 2021 WL number*, which tried to raise the same (first) Constitutional question raised in this Petition.

* 2020 WL 8482685

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Decision of the United States Court of Appeals, for the District of Columbia. 2022 U.S.App. LEXIS 10193 (D.C. Cir.)
APPENDIX B	Decision of the United States District Court for the District of Columbia. 2020 U.S.Dist. LEXIS 69811 (D.D.C.)
APPENDIX C	Decision of the United States District Court for the District of Columbia in <u>Salinas, et al, v. Federal Election Commission</u> , 2020 U.S.Dist. LEXIS 229280 (D.C.Cir. 2020)
APPENDIX D	Decision of the United States Court of Appeals for the District of Columbia in <u>Salinas, et al, v. Federal Election Commission</u> , 2021 U.S.App. LEXIS 10429 (D.C.Cir. 2021)
APPENDIX E	Candidate Overview document downloaded from the FEC website, on 08/23/2019
APPENDIX F	Letter from Respondent FEC dated 03/27/2019 advising Petitioner that he had to file an additional form, identifying his Principal Campaign Committee
APPENDIX G	Forms sent to the CA Secretary of State's Fair Political Practices Commission in early March, 2018 and their March 12, 2018 cover letter, returning the forms
APPENDIX H	November 20, 2019 dated House of Representatives forms E-1 and E-2, with the first box 'checked,' advising that " .. I have not yet raised (either through contributions or loans from myself or others) or spent in excess of \$5,000 for my campaign for the U.S. House of Representatives."

INDEX OF APPENDICES, Continued

APPENDIX I Order Filed December 8, 2021 Re: OSC of August 31, 2021 and Motion for Leave to File Addendum/Supplement to Opening Brief. OSC discharged. Motion for Leave to File Addendum/Supplement to Opening Brief Granted. New OSC Ordered. 2021 U.S.App. LEXIS 36235 (D.C. Cir. 2021)

APPENDIX J Petitioner's Response to the OSC Filed December 8, 2021, Filed January 31, 2022

APPENDIX K Order discharging OSC Filed December 8, 2022. 2022 U.S.App. LEXIS 8703 (D.C. Cir. 2022), Filed March 31, 2022

APPENDIX L Petition For Panel Rehearing and Rehearing En Banc

APPENDIX M Orders Denying Panel Rehearing and Rehearing En Banc 2022 U.S.App. LEXIS 16538 and 16537, respectively (D.C. Cir.)

APPENDIX N Addendum/Supplement to the OPening Brief, Filed January 31, 2022

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
<u>Fabricant v. FEC</u> , 2020 U.S.Dist. LEXIS 69811 (2020)	1, 5
<u>Salinas v. FEC</u> , 2020 U.S.Dist. LEXIS 229280, 2020 WL 8482685 (D.D.Cir. 2020)	5
<u>Salinas v. FEC</u> , 2021 U.S.App. LEXIS 10429 (D.C.Cir)	6
<u>Fabricant v. FEC</u> , 2021 U.S.App. LEXIS 36235 (D.C.)	6
<u>Fabricant v. FEC</u> , 2022 U.S.App. LEXIS 8703 (D.C.Cir)	7
<u>Fabricant v. FEC</u> , 2022 U.S.App. LEXIS 69811 (D.C.)	7
<u>Fabricant v. FEC</u> , 2022 U.S.App. LEXIS 16537 (D.C.)	App'x M
<u>Fabricant v. FEC</u> , 2022 U.S.App. LEXIS 16538 (D.C.)	App'x M

STATUTES AND RULES

52 U.S.C. § 30101	Passim
52 U.S.C. § 30110	Passim
28 U.S.C. § 1915(g)	3, 5, 8

OTHER

United States Constitution, Article 1, § 2, Cl. 2. 5, 8
United States Constitution, Article 1, § 3, Cl. 3. 5, 8

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at 2022 U.S.App. LEXIS 10193 (2022); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished. [See also: 2021 U.S.App. LEXIS 3623
App. LEXIS 8703, 16537 and 16538 (DC Cir.)

The opinion of the United States district court appears at Appendix B to the petition and is

[x] reported at 2020 U.S. Dist. LEXIS 69811 (2020); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

1.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was April 14, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 15, 2022, and a copy of the order denying rehearing appears at Appendix M.

An extension of time to file the petition for a writ of certiorari was granted to and including November 12, '22 (date) on August 30, 2022 (date) in Application No. 22 A 192.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from state courts:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Constitutionality of 52 U.S.C. § 30101's requirement that a person who wishes to run for either the House of Representatives or the Senate MUST report that he or she (or the other currently used descriptions of the sex of a person), or someone authorized to act for him or her (etc.) has received or spent more than \$5,000, BEFORE that person is deemed a 'Candidate.'
2. The Constitutionality of the part of 52 U.S.C. § 30110 which purports to grant, or deny, standing to any person to file an action in a district court to challenge the Constitutionality of any provision of Title 52 U.S.C.
3. May a district court dismiss an action seeking to challenge the Constitutionality of any part of Title 52 U.S.C. because of the provisions of 52 U.S.C. § 30110, AND impose a 28 U.S.C. § 1915(g) strike on a prisoner who cited the above § as jurisdiction to file his action, which denied the prisoner Equal Protection?

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STATEMENT OF THE CASE

Petitioner is a federal prisoner who, in January, 2019, filed documents with Respondent Federal Election Commission to register to run in the 2020 election cycle for the 30th Congressional District of California.

Respondent FEC assigned Petitioner Candidate ID Number H0CA30139 (Appendix E). By a letter dated March 27, 2019, the FEC requested that an additional form be submitted, identifying Petitioner's Principal Campaign Committee (Appendix F).

In early March, 2018, Petitioner had attempted to file certain election related documents with the California Secretary Of State's Fair Political Practices Commission, to register his candidacy (Appendix G pp. 1-2).

By letter dated March 12, 2018, the CA Secretary of State's Office returned the forms to Petitioner, advising him to contact the FEC "... to determine what filing duties you may have according to Federal laws." (Appendix G, p. 3)

During the rest of 2019, Petitioner and the treasurer of his Principal Campaign Committee timely filed all required financial disclosure forms, with the FEC and the Clerk of the House of Representatives, including the House Forms E-1 and E-2 (Appendix H, pp. 1 & 2).

Unknown to Petitioner, the filing of the House Forms E-1 and E-2, a couple of weeks prior to the cut-off date for registering his Candidacy in California, caused the FEC to list Petitioner, on their website, as having withdrawn his candidacy.

About a week prior to the California cut-off date (per a Declaration filed in the Court of Appeals, as part of Petitioner's Response to an Order to Show Cause, in January, 2022), Ms. Kelly Koelsch, the treasurer of Petitioner's Principal Campaign Committee, (again) called the Elections Division of the CA Secretary of State's Office, to make sure that she had all of the necessary documents and the cashier's check for \$1,740 in order. While she was on the phone with them, she was asked for Petitioner's name and FEC Registration number, which she provided.

Ms. Koelsch was then advised that per the FEC's website, Petitioner was listed as having withdrawn his candidacy. She was advised to NOT mail in the documents and cashiers check, as they would be returned. She was advised to contact the FEC, to find out WHY Petitioner was listed as having withdrawn his candidacy.

Petitioner initially believed that some unknown person had played a 'Karl Rove' type 'Dirty Trick' on him, by sending the FEC some sort of document which purported to withdraw his candidacy. He sent letters to the FEC, the Clerk of the House of Representatives and the CA Sevretary of State's offices, asking them to investigate the situation and to contact whatever law enforcement agency that would investigate a crime such as this.

Copies of these letters, and a couple of responses, were filed in the district court in Petitioner's Appendix I and that Appendix I was part of the Excerpts on appeal, at pp. 34-39.

STATEMENT OF THE CASE, Continued

Through numerous telephone calls made everywhere by persons on Petitioner's Principal Campaign Committee, it was learned that by Petitioner signing and mailing in the House of Representatives Forms E-1 and E-2, with the first box checked, he effectively, caused his candidacy to be withdrawn, under the provisions on 52 U.S.C. § 30101, which, as explained above, REQUIRES that a person seeking to be considered a 'candidate' for either the Senate or the House, must report that he or she has either received \$5,000 in contributions or spend in excess of \$5,000.

THE DISTRICT COURT LAWSUIT

On March 17, 2020, Petitioner filed a Complaint in the District Court for the District of Columbia, seeking a finding that 52 U.S.C. § 30101 was unconstitutional, as it violated the 'Qualification Clause' set forth in Article 1, § 2, Clause 2 of the Constitution [for Representatives] [NOTE: Article 1, § 3 Cl. 3 also sets forth three qualifications--none of them monetary].

On April 21, 2020, the Honorable Amy Berman Jackson filed an Order dismissing the Complaint (and imposing a 28 U.S.C. § 1915(g) 'strike'), per the provisions of 52 U.S.C. § 30110, which, in relevant part, grants authorization to "or any individual eligible to vote in any election for the office of President, may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this act." because Petitioner was, at the time (and still is) serving a Life prison sentence at the Federal Penitentiary, at Lompoc, CA. (See: Appendix B) and California does not permit prison inmates to vote. [NOTE: Had Petitioner been a resident of Maine, Vermont, the District of Columbia or Puerto Rico prior to his being sentenced to prison, he WOULD have been "eligible to vote in any election for the office of President,"]

Petitioner timely filed a Notice of Appeal.

THE SALINAS/CALLAWAY DISTRICT COURT LAWSUIT

On August 8, 2020, Mr. Salinas and Ms. Callaway (members of Petitioner's Campaign Committee), who were then and are presently "individual[s] eligible to vote in any election for the office of President," filed an action in the District Court for the District of Columbia seeking a declaratory judgement as to the Constitutionality of 52 U.S.C. § 30101(A) and (B)' \$5,000 monetary requirement, vis-a-vis Article 1, § 2, Clause 2 of the Constitution.

By an Order filed November 27, 2020, the Honorable Ketanji Brown Jackson Dismissing the lawsuit, "for lack of subject matter jurisdiction." in a Memorandum Opinion reported as Salinas, et al., v. Federal Election Commission, 2020 U.S. Dist. LEXIS 229280; 2020 WL 8482685; (then) Judge Jackson stated; "Neither plaintiff is a candidate for office, and it is unclear whether or how plaintiffs have sustained harm because the Commission disqualified Fabricant as a candidate for office."

Although the Memorandum Opinion does not specifically mention 52 U.S.C. 30110, it was cited in the Jurisdictional Statement in the Complaint.

STATEMENT OF THE CASE, Continued

THE SALINAS/CALLAWAY APPEAL

The Plaintiffs in that case filed a timely Notice of Appeal and thereafter a Motion for Summary Reversal, in the Court of Appeals for the District of Columbia.

In an Order filed April 5, 2021, the Court of Appeals Denied the Motion for Summary Reversal and summarily Affirmed the Order appealed from (citing from a couple of earlier cases).

"Although appellants have identified a statutory basis for their cause of action, 52 U.S.C. § 30110, they have not shown that they satisfy the 'irreducible constitutional minimum of standing,' including "an" "injury in fact," necessary to establish the district court's subject matter jurisdiction. (citation omitted) ... and it is settled that Congress cannot erase Article III's standing requirement by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.") ... "

Salinas, pp. 1-2 in Appendix D

THE HEREIN COURT OF APPEALS RULING

After Petitioner had filed his Opening Brief in the herein matter, he learned of the ruling in Salinas. He thereafter prepared an Addendum to his Opening Brief and sought leave to have same filed, by those documents being filed on July 8, 2021. The Court of Appeals Ordered the Addendum filed on December 8, 2021. For reasons unknown to Petitioner, this Order was 'published' at 2021 U.S.App. LEXIS 36235 (DC Cir. 2021). (See: Appendix I)

Petitioner's three (3) page Addendum, at pp. 2-3, argued;

"Reading between the lines, Judge Katanji Jackson (then a district court Judge) and the panel who issued the above Opinion, all agreed that (at least) part of 52 U.S.C. § 30110, is unconstitutional, although neither Opinion mentions § 30110.

That part is (at least) the part which purports to allow 'any individual eligible to vote in any election for the *[p. 3]* office of president, ... " to file a lawsuit, and, by its language, made Appellant (who DOES MEET the Title III requirements otherwise) according to Judge Amy Berman's Opinion cited above (which is the basis of the herein appeal) ineligible to file his lawsuit.

Put a simpler way, if Congress cannot say WHO can file a lawsuit, they cannot say WHO can't.

In that (at least the Judges in the Salinas Opinions agree that (at least a part of) § 30110 is unconstitutional (without specifically mentioning, § 30110) it appears to be up to this Court to say so, in an 'Officially' published Opinion, to put the issue to rest and prevent more lawsuits by 'any individual eligible to vote' from filing lawsuits that will eventually be dismissed, on jurisdictional grounds."

Addendum to Appellant's Opening Brief, Appendix N herein, at pp. 2-3

The LEXIS published December 8, 2021 Order (which, in its first part discharged an earlier Order to Show Cause) issued a new OSC as to;

" .. why the district court's Order filed April 21, 2020 should not be affirmed on the alternative ground that appellant lacks standing ..."
Order filed December 8, 2021, pp. 1-2 (Appendix I)

On or about January 31, 2022, Petitioner filed a Response to the December 8, 2021 OSC, which included a Declaration from Ms. Kelly Keolsch, the Treasurer of the Fabricant Victory Committee, Petitioner's

STATEMENT OF THE CASE, Continued

Principal Campaign Committee. The Declaration explained that the CA Secretary of State's Office, while she was on the phone to them in late November, 2019 (a week+ before the December 6, 2019 cut-off date for filing the necessary forms and paying the \$1,740 filing fee) verifying that she had every necessary form and document and that the filing fee amount on a cashier's check was correct, was advised that the FEC's website indicated that Petitioner had withdrawn his candidacy. Ms. Koelsch was instructed to NOT mail the forms in, as they would be rejected and mailed back, as the FEC listed him as having withdrawn his candidacy. Ms. Koelsch was further advised to contact the FEC, to straighten out the situation.

By an Order filed March 31, 2022, the OSC was discharged.

"Upon consideration of appellant's brief, the supplement thereto, the order to show cause filed on December 8, 2021, and the response thereto, it is ORDERED that the order to show cause be discharged. . . ."

Order filed March 31, 2022, Appendix K - 2022 U.S.App. LEXIS 8703

On April 14, 2022, the Court of Appeals filed their Judgment in the appeal, stating;

"ORDERED AND ADJUDGED that the district court's order filed on April 21, 2020, be affirmed as modified to reflect a dismissal without prejudice for lack of standing. Appellant lacks Article III standing to challenge 52 U.S.C. § 30101(2)-under 52 U.S.C. § 30110 or otherwise-because he has not demonstrated causation and redressability. . . . [citation and quote] . . . First, appellant has not shown that § 30101(2), which defines 'candidate' for purposes of the federal Election Campaign Act, imposes qualifications for federal office. Consequently, he has not demonstrated that § 30101(2) caused his alleged injury-i.e., his name not being included on a primary ballot. Second, appellant has effectively conceded that he did not comply with California's requirements that he pay a filing fee (or submit signatures in lieu thereof), submit nomination papers, and submit a declaration of candidacy. . . . Consequently, declaring : 30101(2) unconstitutional would not remedy appellant's alleged injury because he still would have been ineligible to have his name included on the primary ballot. . . ."

The Response to the OSC completely explained the reason(s) relied upon to Affirm the district court, although a 'new' theory/ reason(s) were used by the Court of Appeals in the Opinion. Those questions were the basis of the of the December 8, 2021 OSC.

The panel stated that "Second, appellant has effectively conceded that he that he did not comply with California's requirements that he pay a filing fee (or submit signatures in lieu thereof), submit nomination papers, and submit a declaration of candidacy .. ."

This is completely UNTRUE, as was explained in the Response to the OSC (Appendix J) and its attached Declaration from the Treasurer of Petitioner's Principal Campaign Committee.

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REASONS FOR GRANTING THE PETITION

1. 52 U.S.C. § 30101(2) is unconstitutional on its face, as it clearly violates Article 1, § 2, Clause 2 (as relates to Representatives) and Article 1, § 3, Clause 3 (as relates to Senators) by adding a fourth qualification; that candidates must report either receiving contributions exceeding \$5,000 or spending at least \$5,000 related to their campaigns, BEFORE they are deemed, by the FEC to be an 'Official' candidate for either the House or the Senate.
2. The portion of 52 U.S.C. § 30110 which purports to sidestep the Article III requirement of 'Injury' is unconstitutional on its face.
3. The portion of 52 U.S.C. § 30110 which purports to grant permission to any person who 'is eligible to vote in a Presidential election' is also unconstitutional, as applied to Petitioner, as he is a federal prisoner who lived in California before he was sentenced to prison, and California does not allow prisoners who were California prison inmates to vote, unless they lived in Maine, Vermont, the District of Columbia or Puerto Rico before they were sentenced to prison. This is an obvious Equal Protection situation.
4. The last issue concerns the 28 U.S.C. § 1915(g) 'strike' that the district court imposed on Petitioner, based on the provisions of 52 U.S.C. § 30110. Had Petitioner been a resident of Maine, Vermont, the District of Columbia or Puerto Rico he would have been 'eligible to vote in a Presidential election,' and he certainly met the 'injury' requirement of Article III.

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Danny Fabricant, Petitioner

Date: October 1, 2022