

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 20-5175**

**September Term, 2021**

**1:20-cv-00765-UNA**

**Filed On:** June 15, 2022

**\*\*[2022 U.S.App. LEXIS 16538]\*\***

Danny Fabricant,

Appellant

v.

Federal Election Commission and Alex  
Padilla, California Secretary of State,

Appellees

**BEFORE:** Henderson and Rogers, Circuit Judges, and Tatel, Senior Circuit  
Judge

**ORDER**

Upon consideration of the petition for rehearing, it is

**ORDERED** that the petition be denied.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Daniel J. Reidy  
Deputy Clerk

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 20-5175**

**September Term, 2021**

**1:20-cv-00765-UNA**

**Filed On: June 15, 2022**

Danny Fabricant,

\*\*[2022 U.S.App. LEXIS 16537]\*\*

Appellant

v.

Federal Election Commission and Alex  
Padilla, California Secretary of State,

Appellees

**BEFORE:** Srinivasan, Chief Judge, Henderson, Rogers, Millett, Pillard,  
Wilkins, Katsas, Rao, Walker, and Jackson\*, Circuit Judges, and  
Tatel, Senior Circuit Judge

**ORDER**

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

**ORDERED** that the petition be denied.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Daniel J. Reidy  
Deputy Clerk

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 20-5175**

**September Term, 2021**

**1:20-cv-00765-UNA**

**Filed On: April 14, 2022**

Danny Fabricant,

Appellant

\*\* Reported at  
2022 U.S.App. LEXIS 10193\*\*

v.

Federal Election Commission and Alex  
Padilla, California Secretary of State,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**BEFORE:** Henderson, Rogers, and Tatel, Circuit Judges

**J U D G M E N T**

This appeal was considered on the record from the United States District Court for the District of Columbia and on appellant's brief, the supplement thereto, and appellant's response to the December 8, 2021 order to show cause. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

**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. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992) (explaining that “the irreducible constitutional minimum of standing” requires “an injury in fact,” “a causal connection between the injury and the conduct complained of,” and a likelihood “that the injury will be redressed by a favorable decision” (internal quotation marks omitted)). 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. See Cal. Elec. Code §§ 8020, 8105, 8106. Consequently, declaring § 30101(2) unconstitutional would not remedy appellant's

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 20-5175**

**September Term, 2021**

alleged injury because he still would have been ineligible to have his name included on the primary ballot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Danny Fabricant,

Plaintiff,

v.

Federal Election Commission *et al.*,

Defendants.

Civil Action No. 20-765 (UNA)

**ORDER**

For the reasons stated in the accompanying Memorandum Opinion, it is

**ORDERED** that plaintiff's application to proceed *in forma pauperis* [Dkt. # 2] is  
**GRANTED**; it is

**FURTHER ORDERED** that all other pending motions [Dkt. ## 4, 5, 6, 7] are **DENIED**;  
it is

**FURTHER ORDERED** that pursuant to 28 U.S.C. § 1915A(b)(1), this action is  
**DISMISSED** with prejudice.<sup>1</sup>

This is a final appealable Order.

Date: April 21, 2020

s/  
AMY BERMAN JACKSON  
United States District Judge

<sup>1</sup> Plaintiff is advised that this dismissal qualifies as a strike under 28 U.S.C. § 1915(g), which limits a prisoner's ability to proceed *in forma pauperis* in federal court when certain conditions are satisfied.

**Danny Fabricant, Plaintiff, v. Federal Election Commission et al., Defendants.**  
**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**  
2020 U.S. Dist. LEXIS 69811  
Civil Action No. 20-765 (UNA)  
April 21, 2020, Decided  
April 21, 2020, Filed

**Editorial Information: Prior History**

United States v. Fabricant, 240 Fed. Appx. 244, 2007 U.S. App. LEXIS 21874 (9th Cir. Cal., Sept. 7, 2007)

Counsel (2020 U.S. Dist. LEXIS 1) DANNY FABRICANT, Plaintiff, Pro se,  
LOMPOC, CA.

Judges: AMY BERMAN JACKSON, United States District Judge.

**Opinion**

Opinion by: AMY BERMAN JACKSON

**Opinion**

**MEMORANDUM OPINION**

This matter, brought *pro se*, is before the Court on review of the complaint and plaintiff's application for leave to proceed *in forma pauperis*. The Court will grant the *in forma pauperis* application and dismiss the complaint pursuant to 28 U.S.C. § 1915A (requiring immediate dismissal of a prisoner's action upon a determination that the complaint fails to state a claim upon which relief may be granted).

A "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). Plaintiff is a federal prisoner incarcerated at the Federal Correctional Center in Lompoc, California. He purports to challenge the constitutionality of 52 U.S.C. § 30101(2)(A)(B), defining "candidate" under the Federal Election Campaign Act ("FECA"), but he has not alleged a constitutional defect. See Compl. at 1. Instead, plaintiff alleges that defendant Federal Election Commission ("FEC") relied on the challenged provision to disqualify him as a 2020 U.S. House of Representatives Republican candidate for the 30th Congressional District of California. (2020 U.S. Dist. LEXIS 2) see Compl. at 1-3, which alone does not raise a constitutional question. In addition, plaintiff has sued California Secretary of State Alex Padilla for allegedly failing to list his name on the "March 3, 2020 [California] Primary Election ballot" since "his name was not on the list provided/transmitted by the FEC." Compl. at 2. Plaintiff alleges that his name will not appear on the [California] November 3, 2020 general election ballot without an Order from this Court." *Id.* The controlling law provides:

The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court

ylcases

1

© 2021 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc. 52 U.S.C. § 30110 (emphasis added). "Under § 30110, district courts do not certify frivolous [or wholly insubstantial] constitutional questions to the en banc court{2020 U.S. Dist. LEXIS 3} of appeals." *Holmes v. F.E.C.*, 823 F.3d 69, 71; 422 U.S. App. D.C. 292 (D.C. Cir. 2016) (internal quotation marks and citations omitted).

Although plaintiff claims to be a "political candidate," Compl. at 1, he also is an incarcerated felon. See *United States v. Fabricant*, No. 03-cr-01257-RSW-1, 2015 U.S. Dist. LEXIS 190379, 2015 WL 12857301, at \*1 (C.D. Cal. Nov. 18, 2015) ("Defendant Danny Joseph Fabricant . . . is currently serving a life sentence after a jury convicted him of five counts of conspiracy to distribute, distribution of, and possession with the intent to distribute methamphetamine[.]") And "California prohibits felons in prison or on parole from voting." *Legal Servs. for Prisoners with Children v. Bowen*, 170 Cal. App. 4th 447, 452, 87 Cal. Rptr. 3d 869, 871 (2009), quoting Cal. Const., art. II, § 4; Cal. Elections Code section 2101. So, plaintiff can obtain no relief under FECA. A separate order of dismissal accompanies this Memorandum Opinion.

Date: April 21, 2020

/s/ Amy Berman Jackson

AMY BERMAN JACKSON

United States District Judge

Appendix B, p. 2 of 3

2

ylcases

© 2021 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

Appendix B, p. 2 of 3

84828012