

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 16538]**

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

Appendix M, p. 2 of 2

* Circuit Judge Jackson did not participate in this matter.

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

JUDGMENT

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.) Civil Action No. 20-765 (UNA)
)
 Federal Election Commission *et al.*,)
)
 Defendants.)

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.¹

This is a final appealable Order.

Date: April 21, 2020

s/
AMY BERMAN JACKSON
United States District Judge

¹ 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

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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-RSWI-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

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Appendix B, p. 2 of 3

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