No. 21-1593

In The

Supreme Court of the United States

ROBERT L. SCHULZ, ANTHONY FUTIA, Jr.,
and all others similarly situated,

Petitioners,

v.

CONGRESS OF THE UNITED STATES OF AMERICA,
each member of the Senate and House of Representatives,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Robert L. Schulz, pro se and Anthony Futia, Jr., pro se ("we," "our," "petitioners"), respectfully petition for a rehearing of the Court's order that denied certiorari in this case.

I. SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED

A. Congress' Silence Equates to Fraud

Given its duty to respond, it's only fair, correct and reasonable that Congress' silence throughout this case be considered by this Court as an admission of the facts presented in our thoroughly professional First Amendment Petitions for Redress and follow-up Complaint, **and as fraud – a wrongful deception intended to result in an unlawful gain of political power.**

Congress had a legal and moral duty to respond not only to our Petitions for Redress of the widespread violations of the Electors Clause but also to our follow-up Complaint **which was a continuation of that Petition process**.

Congress ignored the matter, deciding not to respond to either of the two Petitions for Redress that were properly served on Congress between December 18, 2020 and January 4, 2021, detailing 63 violations of the Electors Clause that occurred across 31 States between March and November of 2020. Then, **in further support of its unlawful gain**, Congress decided not to appear or provide any response whatsoever to

our Complaint in the District Court and Court of Appeals and waived its opportunity in this Court to respond to our Certiorari Petition.

In sum, having been properly served, Congress had a legal duty to respond but chose not to respond to:

a. Petitioner's December 18, 2020 First Amendment Petition for Redress of violations of the Electors and Guarantee Clauses of the Constitution; see copy at Appendix L (App. 282-326),

b. Petitioners' January 4, 2021 First Amendment Petition for Redress of violations of the Electors and Guarantee Clauses of the Constitution signed by 1,058 citizens; see copy at Appendix K (App. 169-281),

c. Petitioners' February 17, 2021 Complaint and Motion for Expedited Summary Judgment, the District Court's **Summons that ordered Congress to respond to the Complaint or a Default Judgment would be issued**, and Petitioners' motion for a default judgment; see copies at Appendix G, H, I and J (App. 20-168).

d. Petitioners' Appellant Brief and any of the properly served papers produced during the proceedings in the Court of Appeals; see docket.

By their silence, those in control of Congress have deliberately attempted to conceal and hide the truth, in the interest of their political power.

B. The Lower Courts' Decisions Are Complicitous

We served our Complaint on both houses of Congress together with Summonses issued by the Court that clearly stated, "If you fail to respond, judgment by default will be entered against you for the relief demanded in the Complaint." (App. 25-28).

Defendant Congress did not respond to the Complaint and the Court did not enter a default judgment. **Instead, the case proceeded without Congress' participation, contrary to the principles of equality and justice!**

Instead of a typical pleading stage, a process that should have included formal statements **by Congress**, in response to our Complaint, and **to Congress** from us in reply, we were faced with total silence from Congress and the oddity of receiving a response to our Complaint **from the District Court**, contained in a Memorandum Decision and Order (App. 10) and a Minute Order (App. 6) and needing to submit a reply to that response **to the Court of Appeals**.

Acting in the absence of any response to our Complaint from Congress, and seemingly on behalf of the Congress, the District Court responded to our Complaint, declaring in its Memorandum Opinion and

Order that our Complaint included a "claim that 'Congress had a duty to respond to the Petition, and by not doing so, Congress has admitted that the 'electors from 31 states were unconstitutionally chosen.'" **However, in a footnote, the District Court then denied the truth of that statement by asserting the opposite**, saying "Plaintiffs do not challenge Congress' alleged failure to respond to their petition. . . ."[1] (App. 11).[2]

In a further response to our Complaint, the District Court went on to declare, "Because Schulz and Futia have asserted no facts that show an injury particularized to them, they lack standing. In sum, the plaintiffs have failed to establish Article III standing and, as a result, this Court lacks jurisdiction over this action." (App. 13-14). The Court of Appeals affirmed. (App. 2).

Our reply to the District Court's response to our Complaint – the only response submitted or presented, was naturally filed at the Court of Appeals. Besides the mandatory Appendix,[3] our reply consisted of strong arguments included in our Appellant's Brief,[4] which arguments were thoroughly supported by on-point factual

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[1] In their Certiorari Petition, Petitioners responded to said footnote, evidencing Petitioners' inclusion of their Petition Clause claim (page 30-33) and the irrelevancy of the cases cited in said footnote (page 33-40).

[2] The Court of Appeals ruled "this argument need not be considered here." (App 3).

[3] Case 21-5164, docketed 8/23/2021, 121 pages.

[4] Case 21-5164, docketed 8/23/2021: 60 pages.

evidence which of necessity was included in an Affidavit,[5] which was sworn to under penalty of perjury.

The Affidavit contained nine Exhibits with irrefutable factual evidence that our Complaint included a challenge to Congress' failure to respond to our Petitions for Redress,[6] proof of our "personal injury,"[7] evidence that Congress knew it was violating the Electors Clause[8] and evidence of "a conspiracy . . . an informal alliance between left-wing activists and business titans . . . [whose] work touched every aspect of the election . . . [and] got states to change voting systems and laws."[9]

Most egregiously, after directing us to file a motion for permission to file the Affidavit, the Court denied the motion on September 13, 2021, thereby deliberately removing the compelling evidence from the record of the case. We had timely filed the motion, stating briefly and distinctly

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[5] Case 21-5164, docketed 8/23/2021: 113 pages. The docket entry reads, "SUPPLEMENTAL APPENDIX LODGED [1911487] styled as an Affidavit. . . ."

[6] Letter transmitting the Complaint to Congress.

[7] Official documents showing that Petitioner Futia, as a registered Democrat, voted in the 2020 presidential election, and Petitioner Schulz, as a registered Republican, voted in the 2020 presidential election and that both Futia and Schulz voted for Donald Trump.

[8] Congressional Record: Jan. 6, 2021, Senate and House of Representatives.

[9] Time magazine article published 2/15/21, titled "The Secret History of the Shadow Campaign That Saved the 2020 Election."

that the evidence contained in the Affidavit supports the issues and arguments presented in our Appellants' Brief.

Removing our evidence from the record of the case enabled the Court of Appeals to agree with the District Court, and on behalf of the Defendant Congress, unfairly de-emphasize the importance of our First Amendment Petitions for Redress claim and dismiss our Electors Clause claim for lack of standing.

C. Judicial Repeal of the Judicial Power Clause

Besides Petitioners' Petition Clause claim, Petitioners' Complaint includes a challenge to Congress' violation of Article II, Section 1, Clause 2 of the United States Constitution (the Electors Clause) because Congress included in its count of the votes for President and Vice President, votes of electors known to have been unconstitutionally chosen, thereby displacing the responsibility placed on the State Legislatures by the Constitution's Electors Clause.

In our complaint, under the heading JURISDICTION AND VENUE, we stated:

> "The claims arise under the Constitution of the United States of America. The controversy involves violations of the Constitution. The Court has subject matter jurisdiction under Article III, Section 2 of the federal Constitution, which reads in relevant part: 'The

> judicial power shall extend to all cases, in law and equity, arising under this Constitution.' (See Appendix at App. 38)

In our Complaint under JURISDICTION AND VENUE we also stated:

> "This court has jurisdiction also under 28 U.S.C. Section 1331 which reads, 'The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.'" (See Appendix at App. 38)

Relying on *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and *Lance v. Coffman*, 549 U.S. 464, the lower court dismissed the case for lack of jurisdiction saying Petitioners lacked standing because they did not claim any harm particular to them, only harm to every citizen's interest in proper application of the Constitution and laws and seeking relief that no more benefits them than the public at large. (App. 2-3).

Optimistically, because such a rule would be an insult to the Constitution, showing contempt, disrespect and a lack of reverence, we believe the judiciary did not intend to adopt a commandment that declares it lacks the power to hear a citizen's challenge to an act of Congress that most assuredly and by all means, in a clear and detailed manner, leaving no room for confusion or doubt, violates a general mandate of the United States Constitution **unless the citizen can prove his or her harm is particularized – that is, harm that is different in kind and degree from**

that of the public at large, and that the relief sought would more directly and tangibly benefit him or her than the public at large, as if it were possible to detect and measure the benefits and dis-benefits to individuals who make up the public at large.

In this case, even if by our Affidavit we had not proven particularized harm, such a rule would effectively repeal the mandate of the Judicial Power Clause and would be treasonous to the Constitution on the ground that the repeal was not the result of a constitutional amendment approved by the People.

By its action thus far in this case the judiciary has adopted such a rule.

On the record of this case, absent a rehearing by this Court, the judiciary has, in fact, repealed Article III, Section 2, Clause 1 of the Constitution (the Judicial Power Clause) and nullified 28 U.S.C. Section 1331.

In our Certiorari Petition at pages 16-24, we argued the issue of our standing, including the inapplicability of *Lujan*, a case unlike this case, that arose not under the Constitution but under the Laws of the United States, not due to any alleged violation of the Constitution, but due to the Secretary of Interior's changing interpretation of a statute – the Endangered Species Act of 1973.

Likewise, *Lance* is also inapplicable as it consisted of a challenge by certain Colorado citizens to a provision of their State Constitution which was approved by the voters of the State.

Petitioners add the following in support of our standing and the Courts' jurisdiction:

> "Cases arising under the Constitution are cases that require an interpretation of the Constitution for their correct decision. See *Cohens v Virginia*, 19 U.S. 264, 378 (1821). They arise when a litigant claims as actual or threatened invasion of his constitutional rights by the enforcement of some act of public authority, usually an act of Congress or of a state legislature, and asks or judicial relief. **The clause furnishes the principal textual basis for the implied power of judicial review of the constitutionality of legislation and other official acts** . . . [I]n 1875 [Congress] conferred general federal question jurisdiction on the lower federal courts. 28 U.S.C. 1331(a)."[10] (emphasis added).

Congress' act of counting the votes of the Electoral College in presidential elections is just such an official act and our case requires an interpretation of the United States Constitution for its correct decision.

We Petitioners have constitutional injury and standing. Thus, the courts have constitutional jurisdiction – that is, constitutionally derived judicial power to hear and decide this case on its merits.

This case is worthy of a rehearing by this Court.

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[10] **https://www.law.cornell.edu/constitution-conan/article-3/section-2/clause-1/arising-under-jurisdiction-overview**

CONCLUSION

This is a first impression case of exceptional constitutional importance.

On rehearing, Petitioners respectfully request the Court vacate the Judgments of the Courts below and remand to the D.C. District Court for further proceedings after declaring:

a. Petitioners' Complaint includes a challenge to Congress' failure to respond to Petitioners' FIRST AMENDMENT PETITIONS FOR REDRESS OF VIOLATIONS OF THE GUARANTEE AND ELECTORS CLAUSES OF THE CONSTITUTION FOR THE UNITED STATES OF AMERICA and Congress is obligated to respond, and

b. Petitioners have constitutional standing to maintain their claims, and

c. Such other relief as the Court may deem just and fair.

Respectfully submitted,

October 25, 2022

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CERTIFICATE OF GOOD FAITH

Petitioners Robert L. Schulz and Anthony Futia state under penalty of perjury that the foregoing Petition for Rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

/s/ _____
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