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As of: March 30, 2022 6:20 PM Z

## [Schulz v. Cong. of the United States](#)

United States Court of Appeals for the District of Columbia Circuit

January 4, 2022, Filed

No. 21-5164 Consolidated with 21-5232

### Reporter

2022 U.S. App. LEXIS 161 \*; 2022 WL 102530

Robert L. Schulz and Anthony Futia, Jr., and all others similarly situated, Appellants v. Congress of the United States, Each member of the Senate and House of Representatives, Appellee

**Notice:** PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Subsequent History:** Rehearing denied by, En banc [Futia v. Cong. of the United States, 2022 U.S. App. LEXIS 7983 \(D.C. Cir., Mar. 25, 2022\)](#)

Rehearing denied by [Futia v. Cong. of the United States, 2022 U.S. App. LEXIS 7981 \(D.C. Cir., Mar. 25, 2022\)](#)

**Prior History:** [\*1] ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. 1:21-cv-00448-DLF.

[Schulz v. Cong. of the United States, 2021 U.S. Dist. LEXIS 112420, 2021 WL 2457881 \(D.D.C., June 16, 2021\)](#)

### Core Terms

district court, motion for leave, alleged failure, per curiam, supplemental, grievance, appendix

**Counsel:** Robert L. Schulz ([21-5164](#), 21-5232), Plaintiff - Appellant, Pro se, Queensbury, NY.

Anthony Futia, Jr., and all others similarly situated ([21-5164](#), 21-5232), Plaintiff - Appellant, Pro se, N. White Plains, NY.

For Congress of the United States, Each member of the Senate and House of Representatives ([21-5164](#), 21-

5232), Defendant - Appellee: R. Craig Lawrence, U.S. Attorney's Office, Washington, DC.

**Judges:** BEFORE: Rogers, Pillard, and Walker, Circuit Judges.

### Opinion

#### JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the appellants. See *Fed. R. App. P. 34(a)(2)*; [D.C. Cir. Rule 34\(j\)](#). Upon consideration of the foregoing, the motions for leave to file a supplemental appendix, and the motion to govern further proceedings, it is

**ORDERED** that the motions for leave to file a supplemental appendix be denied. The documents are not part of the record on appeal. See *Fed. R. App. P. 10(a)(1)* (defining contents of record on appeal). It is

**FURTHER ORDERED AND ADJUDGED** that the district court's October 1, 2021 order be affirmed. The district court properly dismissed the case without prejudice for lack [\*2] of subject matter jurisdiction, because appellants failed to establish their standing to sue. See [Lujan v. Defenders of Wildlife, 504 U.S. 555, 573-74, 112 S. Ct. 2130, 119 L. Ed. 2d 351 \(1992\)](#) ("[A] plaintiff raising only a generally available grievance about government — claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large — does not state an Article III case or controversy."). Appellants do not challenge the district court's conclusion that they did not establish standing

based on their status as taxpayers and have therefore forfeited this argument. See [United States ex rel. Totten v. Bombardier Corp.](#), 380 F.3d 488, 497, 363 U.S. App. D.C. 180 (D.C. Cir. 2004). Although appellants continue to assert they possess standing based on the facts that they voted in the 2020 election and that they took an oath to support and defend the Constitution in connection with their prior military service, they have not identified any particularized injury sufficient to confer standing. See [Lance v. Coffman](#), 549 U.S. 437, 442, 127 S. Ct. 1194, 167 L. Ed. 2d 29 (2007) (per curiam) (an allegation that the law has not been followed is "precisely the kind of undifferentiated, generalized grievance about the conduct of government" that cannot serve as a basis for standing). Appellants also argue they have demonstrated a high [\*3] level of personal commitment and have invested significant personal resources, but "standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy." [Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.](#), 454 U.S. 464, 485, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982). Finally, the district court correctly determined the complaint did not challenge Congress' alleged failure to respond to appellants' petition because the complaint does not set forward such a claim nor seek any relief in connection with the alleged failure to respond. Thus, this argument need not be considered here. See [Keepseagle v. Perdue](#), 856 F.3d 1039, 1053, 429 U.S. App. D.C. 37 (D.C. Cir. 2017) ("It is well settled that issues and legal theories not asserted at the District Court level ordinarily will not be heard on appeal." (citation and internal quotation marks omitted)).

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**