IN THE SUPREME COURT OF THE UNITED STATES

No. 18-281

VIRGINIA HOUSE OF DELEGATES, ET AL., APPELLANTS

v.

GOLDEN BETHUNE-HILL, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case and that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae in support of neither party. Appellants have consented to this motion and have agreed to cede five minutes of their argument time to the United States. Appellees agree to cede five minutes of their collective time to the United States so long as the Court also grants appellees' motion to expand the

argument. The United States does not oppose an enlargement of argument time or a division of argument time between appellees, but maintains for the reasons below that it should be allotted ten minutes of argument time regardless of how the Court rules on appellees' motion.

1. This case presents the question whether the district court correctly concluded that 11 challenged majority-minority districts in Virginia's 2011 House of Delegates redistricting plan are racial gerrymanders that violate the Equal Protection Clause. This case also presents the question whether the Virginia legislature has standing to appeal the district court's decision to this Court. The United States filed a brief contending that the legislature lacks standing to appeal but that, if this Court concludes that it has jurisdiction, the Court should vacate the district court's decision.

2. The United States has a substantial interest in the resolution of the questions presented. The Virginia legislature has defended the constitutionality of its 2011 redistricting plan on the basis that the plan was designed in part to comply with the Voting Rights Act of 1965 (VRA), 52 U.S.C. 10301 et seq. (Supp. II 2014). The United States, through the Attorney General, has a direct role in enforcing the VRA and thus has a significant interest in the proper interpretation of the VRA and the constitutional protections against the unjustified use of race in

redistricting. The United States also has an interest in the proper application of constitutional standing principles, including the principles governing legislative standing.

The United States previously presented oral argument as an amicus curiae in this case. See Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (2017). And it has participated in oral argument as an amicus curiae in multiple cases before this Court involving racial gerrymandering claims (some of which have also presented standing questions). See, e.g., Cooper v. Harris, 137 S. Ct. 1455 (2017); Wittman v. Personhuballah, 136 S. Ct. 1732 (2016); Alabama Legislative Black Caucus v. Alabama, 135 S. Ct. 1257 (2015). In light of the substantial federal interests in the questions presented, the United States' participation at oral argument could materially assist the Court in its consideration of this case.

3. Appellees have moved to enlarge the time for argument by five minutes for each side and to divide argument time, allotting 20 minutes to the plaintiff-appellees and ten minutes to the state appellees. The United States does not oppose an enlargement of argument time or a division of argument time between appellees, provided that the United States is allotted ten minutes of argument time.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

FEBRUARY 2019