No. 18-281

In the Supreme Court of the United States

VIRGINIA HOUSE OF DELEGATES,
M. KIRKLAND COX,
Appellants,

v.

GOLDEN BETHUNE-HILL, *et al.*,
Appellees.

On Appeal from the United States District Court
For the Eastern District of Virginia

BRIEF *AMICI CURIAE* OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL, LAWYERS DEMOCRACY FUND, AND STATE GOVERNMENT LEADERSHIP FOUNDATION IN SUPPORT OF APPELLANTS ON ISSUE OF STANDING

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QUESTION PRESENTED

Whether appellants have standing to bring this appeal.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION

STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

The American Legislative Exchange Council (ALEC) is America's largest nonpartisan, voluntary membership organization of state legislators dedicated to the principles of limited government, free markets and federalism. It is the premier free-market organization that provides elected officials the resources they need to make sound policy. Comprised of nearly one-quarter of the country's state legislators and stakeholders from across the policy spectrum, ALEC members represent more than 60 million Americans and provide jobs to more than 30 million people in the United States. ALEC's interest in this proceeding is the protection of state legislatures' authority over redistricting, including the ability to defend duly enacted redistricting plans at all judicial levels, thereby promoting the vital principle of federalism (ALEC represents *state* legislators) and a sound separation of powers (ALEC represents state *legislators*) in the areas of redistricting and elections — domains traditionally entrusted to the care of the state legislatures. U.S. CONST. art. I, § 4. ALEC has participated as *Amicus Curiae* in another redistricting case before this Court. *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006). ALEC is vitally interested in confirmation of the historic precedent of this Court that

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[1] As required by Rule 37.3(a) of this Court, *amici curiae* have sought and received the written consent of all parties to file this brief. Pursuant to this Court's Rule 37.6, *amici curiae* state that none of the parties authored this brief in whole or in part, and no person or entity, other than the *amici curiae,* its members, or its counsel, made a monetary contribution to the preparation or submission of the brief.

state legislators and legislatures have standing to defend redistricting plans they enacted, including on appeal, and which directly and personally affect their interests and that of their constituents.

Lawyers Democracy Fund (LDF), also an *Amicus Curiae*, is a non-profit organization created to promote social welfare by engaging in activities to promote the role of ethics and legal professionalism/integrity in the electoral process. Its efforts focus on three areas: creating a proposed uniform election code, similar to other uniform codes, to provide guidance to legislators interested in reforming their electoral systems; conducting, funding, and publishing research regarding the effectiveness of current election methods, particularly those reports that fail to receive adequate coverage in the national media; and providing legal education opportunities for lawyers interested in election law. Constitutionally-mandated redistricting is a fundamental aspect of the electoral process. As part of its mission, LDF is a resource for lawyers and others interested in elections, including redistricting.

The actual and perceived integrity of elections depends in part on a level playing field, including at the legislative stage of redistricting, but also when that quintessentially political process is played out in the judicial system. Imposing a procedural disability on key parties in the redistricting process, namely, the legislature and legislators that developed the plan and will be directly affected by it, undermines the perceived, if not actual, fairness of the redistricting process which is, at bottom, a legislative responsibility. Exclusion of legislatures and legislators converts what should be a balanced judicial process into just another

tool for political maneuvering by partisan actors for partisan advantage. Consistent with its mission of promoting integrity in the electoral process, LDF is vitally interested in supporting the precedent and practice of the Supreme Court of the United States permitting legislative bodies and legislators to defend redistricting plans. It is a simple but fundamental principle that legislators and legislatures have standing to defend a plan, including on appeal, that determines the composition of the legislative body and of the voters each elected official represents.

Amicus Curiae, the State Government Leadership Foundation (SGLF), is a 501(c)(4) nonprofit organization dedicated to developing conservative policies and principled leaders by educating policymakers and the public about the benefits of smaller government, lower taxes, balanced budgets and efficient governing at the state-level. SGLF believes that both the right leaders for today's issues and forward-thinking solutions are now, and will continue to be found in state capitals across the country. Thus, SGLF supports and advocates for state-level leadership and solutions. A key focus of SGLF's efforts and specifically funded programs has been redistricting. Starting in 2010, and still continuing, SGLF's role in redistricting has been, and is, to ensure that state leaders have the resources, data, tools, and knowledge to participate effectively in the redistricting process, including recourse to SGLF's vast network of elected leaders who represent all 50 states. Consistent with its redistricting focus and program, and the primacy of state-level leadership and policy choices in the redistricting process, SGLF is vitally interested in supporting the precedent and practice of the Supreme

Court of the United States of permitting state legislative bodies and legislators to defend redistricting plans, including on appeal, designed to govern the composition of the legislative body and of the constituents each elected official represents.

SUMMARY OF ARGUMENT

"The task of redistricting is best left to state legislatures, elected by the people and as capable as the courts, if not more so, in balancing the myriad factors and traditions in legitimate districting policies." *Abrams v. Johnson*, 521 U.S. 74, 101 (1997). As the body primarily responsible for the design of the redistricting plan governing its composition and the composition of its members' constituents, including the balancing of myriad legal and political goals, the Virginia House of Delegates unquestionably has standing to defend its plan in accordance with the Court's long-established precedent and practice in redistricting cases. *See*, *e.g.*, *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187 (1972); *Karcher v. Daggett*, 462 U.S. 725 (1983).

The House of Delegates is directly affected by the district court's order invalidating its redistricting plan and ordering an alternative redistricting scheme to be designed by a California professor. ECF 275, 276. Reaffirming *Beens* as *stare decisis* in this case serves important goals, including the continued practice of fair representation of all parties in redistricting litigation, and guarding against political maneuvering that frequently arises when the courts must become involved in redistricting. "[A]ny departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). The State

Appellees in their Motion to Dismiss provide no such special justification for up-ending decades-long precedent and principles recognizing the vital role and interest of legislative bodies with regard to redistricting plans and standing to appeal, thus threatening long-established, standard procedure of legislative participation at all stages of redistricting litigation.

ARGUMENT

I. The Virginia House Of Delegates Has Standing Under This Court's Long-Established Precedent And Practice In Redistricting Cases.

The Virginia House of Delegates unquestionably has standing to appeal in this case. The 2011 redistricting legislation at issue was developed and passed by the House of Delegates, determines its composition, and defines the constituents each member will represent. Thus, the House of Delegates has a concrete and particularized interest in the challenged redistricting legislation. That interest was directly injured by the district court's order invalidating the 2011 redistricting plan, and enjoining its future application. But the *status quo ante* is not constitutionally permissible in this case. *Reynolds v. Sims*, 377 U.S. 533 (1964). Given the impasse that was created after the district court invalidated the House's 2011 redistricting plan, and by the executive branch's subsequent refusal to consider a substitute remedial plan designed by the House (*see* JA 2974 – 75; ECF 275, 276), inevitably, the district court is placed in a position of developing its own substitute redistricting plan that will determine the future composition of the House of Delegates and

the relationship of its members to different constituencies. The direct impact on, and injury to the House of Delegates is surely and clearly redressible in this appeal.

Sixty-Seventh Minn. State Senate v. Beens, 406 U.S. 187 (1972) is on point and supports the proposition that "the [House] is directly affected by the District Court's orders [striking down its redistricting plan and substituting a plan drawn by a third party]." *Beens* was decided nearly fifty years ago, and in no way has this Court impliedly overruled *Beens* in *Diamond v. Charles*, 476 U.S. 54 (1986), as suggested in State Appellees' Motion to Dismiss, page 13.[2] In *Beens*, the Minnesota State Senate intervened as a defendant in reapportionment litigation and filed a direct appeal to this Court after a three-judge district court issued orders invalidating state apportionment laws and imposing a court-drawn redistricting plan. Appellees moved to dismiss for lack of standing of the State Senate. The Court rejected that motion. *Beens*' reasoning is simple and unassailable; the Court held:

> Certainly the present appeals are in a federal court action that concerns apportionment "and the orderly process of elections therefrom." And certainly the senate is directly affected by the District Court's orders. That the senate is an

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[2] *Amici* focus herein on the nationwide importance of the precedent set in *Sixty-Seventh Minn. State Senate v. Beens.* *Amici* also support Appellants' arguments under *Karcher v. May*, 484 U.S. 72 (1987) that Virginia law and judicial precedents confirm their standing to file this appeal. *See Vesilind v. Va. State Bd. of Elections*, 813 S.E.2d 739, 742 (Va. 2018).

> appropriate legal entity for purpose of intervention and, as a consequence, of an appeal ***in a case of this kind*** is settled by our affirmance of *Silver* v. *Jordan*, 241 F. Supp. 576 (S.D. Cal. 1964), *aff'd*, 381 U.S. 415 (1965), where it was said:
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> > "The California State Senate's motion to intervene as a substantially interested party was granted because it would be directly affected by the decree of this court." 241 F. Supp., at 579.

Sixty-Seventh Minn. State Senate v. Beens, 406 U.S. at 194 (emphasis added.)[3]

What "kind" of case was *Beens*? A redistricting case. *Diamond v. Charles* was an entirely different "kind" of case. It had nothing to do with redistricting. Furthermore, *Beens*' citation to *Silver v. Jordan* debunks any theory that standing in *Beens* depended on the extent of the district court's remedial orders, as suggested in the State Appellees' Motion to Dismiss, page 15. The remedial order in *Silver v. Jordan* invalidated California's redistricting plan for its state Senate, and sent the legislature back to the drawing board, a garden-variety remedial order in a

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[3] The lack of recent citation to *Beens* by this Court (Mot. to Dismiss at 13 n.9) may simply mean the law is too well settled to require it: "Although this is a small point, I think the Court is mistaken to place any reliance on the lack of citation to Magna Carta or the English Bill of Rights in *Rookes*. English courts today need not cite those two documents, for the principles set forth in them are now ingrained as part of the common law." *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 293 (1989) (O'Connor, J., dissenting).

redistricting case. *Silver v. Jordan*, 241 F. Supp. at 585-86.

Confirming the House of Delegates' standing in this case would be consistent with the Court's past practice in *Beens*, and in another major redistricting case, *Karcher v. Daggett*, 462 U.S. 725 (1983), permitting New Jersey legislators, intervenors below, to appeal the lower court's ruling invalidating a redistricting plan. *See Daggett v. Kimmelman*, 535 F. Supp. 978, 980 (D.N.J. 1982).

In *Karcher*, the New Jersey legislature drew new congressional district lines after the 1980 census. *Karcher v. Daggett*, 462 U.S. at 727. The Democratic legislature approved legislation adopting new district lines and the outgoing Democratic governor signed the legislation into law. *See Daggett v. Kimmelman*, 535 F. Supp. at 980. Plaintiffs, concerned citizens, representatives of interested groups, incumbent Republican members of Congress, and other individuals with various interests, challenged the constitutionality of the map, and the initial defendants were the Governor, Attorney General and the Secretary of State of New Jersey. *Id.* All three executives were Republicans. The district court permitted "incumbent Democratic members of Congress" as well as the Speaker of the State Assembly and the President of the State Senate, also Democrats, to intervene to defend the plan. *Id.* The District Court found the legislation unconstitutional and instructed the legislature to enact a new apportionment plan. *Id.* at 983.

After the District Court's order, the Democratic legislators appealed to this Court. As Justice Brennan noted in the order granting the application for a stay,

"Applicants, the Speaker of the New Jersey Assembly, the President of the New Jersey Senate, and eight Members of the United States House of Representatives from New Jersey, have applied to me for a stay pending this Court's review on appeal of the judgment of a three-judge District Court for the District of New Jersey entered March 3, 1982. *Daggett v. Kimmelman*, 535 F. Supp. 978. The judgment declared unconstitutional 1982 N. J. Laws, ch. 1, which creates districts for the election of the United States Representatives from New Jersey, and enjoined the defendant state officers from conducting primary or general congressional elections under the terms of that statute." *Karcher v. Daggett*, 455 U.S. 1303, 1303 (1982) (granting stay). The Court also noted probable jurisdiction. *See Karcher v. Daggett*, 457 U.S. 1131 (1982). But, the key principle for purposes of this case is the recognition by this Court of the standing of the legislative parties to appeal.

In the instant case, the district court below recognized that the House of Delegates has standing. "The federal courts are under an independent obligation to examine their own jurisdiction, and standing is 'perhaps the most important of [the jurisdictional] doctrines.'" *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990) (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)). In the stay proceedings below, executive branch defendants opposed the House of Delegates' request for a stay, arguing strenuously and extensively that the House intervenors lacked standing to make that request. The district court below was apparently unpersuaded by the executive branch arguments — the same arguments being made before this Court — and proceeded to rule on the request for

a stay. *See* Emergency Application for Stay Pending Resolution of Direct Appeal to this Court at Apps. A, B, *Va. House of Delegates v. Golden Bethune-Hill*, No. 18-281 (Dec. 13, 2018) (district court orders denying applications for stay); *see also Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) ("[A]n intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing").

II. Legislative Standing In Redistricting Litigation Has Been Long-Established In Court Precedent.

Throughout its history, this Court has repeatedly noted the importance of decided law and its own precedent. As early as 1807 the Court opined that "*Stare decisis* is one of [the law's] favourite and most fundamental maxims." *Ex parte Bollman*, 8 U.S. 75, 93 (1807). In *Vasquez v. Hillery*, the Court explained that *stare decisis* is "the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." *Vasquez v. Hillery*, 474 U.S. 254, 265 (1986). "*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee,* 501 U.S. 808, 827 (1991). *Stare Decisis* "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." *Vasquez v. Hillery*, 474 U.S. at 265-66.

Legislative standing, as established in *Beens*, is workable; consistent with the nationwide practice of legislative participation in redistricting cases as defendants, intervenors, and real parties-in-interest; and essential in the unique context of redistricting litigation to ensure that all adverse interests are fairly represented and that political maneuvering does not compromise the legitimate defenses of legislative parties or the orderly development of the law.

A. *Sixty-Seventh Minnesota State Senate v. Beens* Ensures The Fair Prosecution Of Redistricting Cases By Confirming The Standing Of Legislative Parties At All Stages Of The Litigation.

Disallowing standing to appeal by legislative party defendants in redistricting litigation is simply inconsistent with their long-standing, and until now, unquestioned right to participate. An extensive body of law concerning redistricting litigation has developed with the bedrock understanding that legislative entities and legislators are proper defendants and appellants. Legislative parties participate in federal redistricting litigation as a matter of course as defendants, intervenors, and appellants. *See, e.g.*, *Karcher v. Daggett*, 462 U.S. 725; *Cano v. Davis*, 211 F. Supp. 2d 1208, 1213 (C.D. Cal. 2002), *aff'd*, 537 U.S. 1100 (2003); *Keller v. Davidson*, 299 F. Supp. 2d 1171, 1176 (D. Colo. 2004); *Agre v. Wolf*, 284 F. Supp. 3d 591, 592 (E.D. Pa. 2018), *appeal dismissed as moot*, 138 S. Ct. 2576 (2018).

Disallowing standing to appeal by legislative defenders would also create an unjustified and illogical procedural imbalance. *Any* district resident can be a

plaintiff in a redistricting case, and always have standing to appeal an adverse decision regarding a redistricting plan. *See, e.g.*, *Scott v. U.S. Dep't of Justice*, 920 F. Supp. 1248, 1250 (M.D. Fla. 1996) ("C. Martin Lawyer, III, is among the plaintiffs who in the initial complaint allege that District 21 is unconstitutional and who seek relief from District 21 as presently drawn."); *Lawyer v. Dep't of Justice*, 521 U.S. 567, 569 (1997) ("Appellant was one of several plaintiffs in this suit challenging the configuration of a Florida legislative district under the Equal Protection Clause.") The executive branch in this case asserts a novel proposition that if the redistricting plan is invalidated, the legislative defenders cannot appeal. That is nonsensical and serves no valid public policy purpose.

Such a disability is most acute in cases, such as this one, where the executive and legislative branches are adverse with regard to the validity of a redistricting plan. *See, e.g.*, *Keller v. Davidson*, 299 F. Supp. 2d at 1176 (General Assembly and Governor defendants in case challenging Colorado legislatively-enacted redistricting plan and Attorney General intervened for plaintiffs); *Agre v. Wolf*, 284 F. Supp. 3d 591 (legislature intervened and defended plan from partisan gerrymandering claim without the attorney general, who was of a different political party, and won judgment below; legislature defended the plan on appeal and obtained dismissal on jurisdictional grounds in the Supreme Court).

If state legislative parties are not permitted to defend their redistricting plans through intervention and on appeal, the defense of the legislature's interest

may depend on a state attorney general or other state executive whose political party may benefit electorally from no defense at all. In recent redistricting cases, courts have noted the procedural risks posed by potential political changes in state executive officers when permitting intervention by legislators and legislative bodies. *See League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 580 (6th Cir. 2018) (noting that "the Congressmen's case for intervention would be even stronger" if the incoming Secretary of State chose not to defend the state's apportionment scheme); *Whitford v. Gill*, 2018 U.S. Dist. Lexis 193078, at *5 (W.D. Wisc. 2018) (citing *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187 (1972), and permitting the intervention of the Republican-controlled Wisconsin State Assembly, noting: "[T]he recent election in Wisconsin for Attorney General [resulting in the election of a Democrat] introduces potential uncertainty into defendants' future litigation strategy.")

The present case represents exactly the sort of risk warned about by the courts in those cases, and threatens the orderly resolution of redistricting cases if legislative defendants are determined to lack standing. The defense of this plan has been primarily prosecuted by the Virginia House of Delegates from the beginning of the litigation. The House of Delegates, with a Republican majority, is represented by privately retained counsel, not the Attorney General, a Democrat. *Bethune-Hill v. Va. State Bd. of Elections*, 326 F. Supp. 3d 128, 139 (E.D. Va. 2018) (the Attorney General declined to present a substantive defense independent of the legislative intervenors). The House has defended its redistricting plan for years, all the

way through the first appeal to this Court and then a second trial, which resulted in an adverse decision regarding the 2011 plan.

Having not represented the House at any stage of these proceedings, the Attorney General now asserts only it can represent the House for the purposes of filing an appeal to this Court, which the Attorney General determined it would not do. While one cannot speculate about the motivations of the Attorney General's decision not to appeal, it is contrary to the clear and direct interests of his newly-claimed client, the Virginia House of Delegates. *See League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 840 & 843 (5th Cir. 1993) ("[The Attorney General] also maintains that in his role as lawyer for the State, he need not represent the State's policymakers; he can ignore them and impose his own views. That is remarkable. . . . Stated another way, the Attorney General's right to represent state officials or state agencies cannot be gainsaid, [citations omitted], but he must in fact represent them. He cannot ignore his clients and bind the State against their wishes.") It further bears noting that the majority Republican party has only a one seat advantage in the Virginia House of Delegates, and if there are changes to the enacted legislative map, it may well benefit politically the Attorney General's party.

Denying legislative standing to appeal poses other procedural problems in the not-uncommon redistricting scenario of a legislative impasse, requiring a court to develop an interim redistricting plan. Impasse occurs when post-Census decennial redistricting is required, but the executive and the legislative majority are from

different political parties. Typically, the legislature will pass redistricting legislation[4], and the executive will exercise a veto, not because redistricting legislation is unnecessary or even invalid, but because of the political impacts. Given constitutional mandates for equipopulous districts, it is not an option simply to maintain the existing redistricting scheme. The courts must become involved. *See Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. at 195 ("The 1971 legislature had endeavored to reapportion and, thus, to fulfill the requirement imposed upon it by Art. IV, § 23, of the State's Constitution. [Citations and footnote omitted.] The legislature's efforts in that direction, however, were nullified by the Governor's veto of the Act it passed, an action the executive had the power to take. [Citations omitted.] The net result was the continuing applicability of the 1966 act. Under these circumstances judicial relief was appropriate.")

In cases of impasse and failure to enact redistricting legislation, generally all interested parties are plaintiffs, named defendants, or intervenors in the ensuing litigation, and by definition, the executive branch and the legislative branch are adverse. *See, e.g.*, *Colleton Cty. Council v. McConnell*, 201 F. Supp. 2d 618, 629 (D.S.C. 2002) ("Simply stated, the General Assembly, in which Republicans hold a majority in both

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[4] "'[L]egislative reapportionment is primarily a matter for legislative consideration and determination,' for a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality." *Connor v. Finch*, 431 U.S. 407, 414-15 (1977) (quoting *Reynolds v. Sims*, 377 U.S. 533, 586 (1964)).

bodies, passed plans that the majority of its members believed were favorable to them, and the incumbent Governor, a Democrat, vetoed those plans in order to advocate the implementation of alternative plans that are favorable to the views of his political party and its legislative and congressional members. . . . Such is the political process . . . all parties are entitled to advocate a legislative redistricting plan that furthers their partisan interests"); *Mellow v. Mitchell*, 530 Pa. 44, 62, 607 A.2d 204, 212 (1992) (several groups of legislators intervene in impasse case adverse to state Attorney General and state election officials); *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1224 (Colo. 2003) (the state Attorney General filed an original action in the state Supreme Court challenging the redistricting plan, the General Assembly intervened to defend its plan, and the General Assembly's standing to defend was not challenged); *Legislature of Cal. v. Reinecke*, 6 Cal. 3d 595, 598 (1972) ("In these mandate proceedings we are called upon to resolve the impasse created by the failure to date of the Legislature to pass legislative and congressional reapportionment bills acceptable to the Governor in time for the upcoming 1972 primary and general elections. . . . The parties to the litigation involving legislative reapportionment are the Governor; the Legislature; various members of the Legislature representing the views of various groups of legislators; the Lieutenant Governor, the Attorney General, the Controller, the Secretary of State, and the Superintendent of Public Instruction acting as members of the Reapportionment Commission; and the Secretary of State acting as chief election official of the state."); *Wilson v. Eu*, 1 Cal. 4th 707 (1992) (same; Republican Governor was petitioner, Democratic Secretary of State and several county elections officials

were respondents, and both houses of the Legislature, the State Board of Equalization, and individual legislators were real parties-in-interest, while the Republican Attorney General, among others, participated as *Amicus Curiae*).

In such circumstance, it makes no sense to incapacitate the legislature by denying standing and deeming the executive to be the representative of the legislative parties. To do so would make the courts a trump card in the political power struggle between the other two branches that resulted in impasse in the first place. Denying standing to legislative parties to appeal and be heard at every stage of the litigation puts the legislative branch at a distinct and illogical disadvantage. The lower court could reject the legislatively supported map, and impose a map supported by the executive officers that could alter the composition of the legislative body and the constituency of each member, in a manner that suits an executive of a different political party — without allowing the legislative branch the ability to seek appellate review, even on legitimate legal grounds.

Finally, the ripple effects of overruling *Beens* cannot be overstated. It could result in legislative bodies being unable even to intervene in cases in which their interests and remedial goals may be different from those of defending executive parties. *Cf. Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. at 1651 ("[A]n intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing."). Thus, overruling *Beens* threatens even legislative intervention *alongside* other parties. That practice has been common for

decades in state and federal court, especially given the inherent politicization of redistricting. *See, e.g.*, *Lawyer v. Dep't of Justice*, *supra,* 521 U.S. 567; *Fund for Accurate & Informed Representation, Inc. v. Weprin*, 796 F. Supp. 662 (N.D.N.Y. 1992), *summarily aff'd*, 506 U.S. 1017 (1992).

B. State Appellees Have Provided No Special Justification For The Court To Overrule *Beens*.

A party wishing to overrule precedent, "borne[s] the heavy burden of persuading the Court that changes in society or in the law dictate that the values served by *stare decisis* yield in favor of a greater objective." *Vasquez v. Hillery*, 474 U.S. at 266. "[A]ny departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey,* 467 U.S. 203, 212 (1984).

The integrity of *Beens* has in no way been eroded by factual or legal developments in the field of redistricting litigation. Many states have politically divided government, and because of those divisions, many will fail to enact redistricting legislation; or a change of administration from one political party to another, will result in executive refusal to defend validly enacted redistricting legislation. The courts must inevitably become involved because a redistricting plan must be in place to reflect demographic changes in each jurisdiction in accordance with constitutional and voting rights requirements.

The only justification for overruling *Beens* offered by the State Appellees is the mistaken view that *Beens* has been superseded by "modern standing

jurisprudence" (Mot. to Dismiss at 13), and in particular *Diamond v. Charles*, 476 U.S. 54. The only similarity between *Diamond v. Charles* and the procedural status of this case is that the state executives decided not to appeal. Otherwise, the cases are as different as night and day. In addition to having nothing to do with redistricting, the legislation at issue in *Diamond* was in no way similar to redistricting legislation. It was not particularly applicable to the legislature or either of its chambers or its members; the court did not impose a deadline on the Illinois legislature to redesign the invalidated portions of its law — the Illinois legislature had no constitutional obligation to do so, like it does with decennial redistricting; and the court did not propose to substitute new legislative provisions of the court's own design. Factually, *Diamond v. Charles* is inapposite in the analysis of legislative standing in a redistricting case.

Indeed, the holding of *Diamond* is consistent with *Beens*. "[At] an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' *Gladstone, Realtors v. Vill. of Bellwood*, 441 U.S. 91, 99 (1979), and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision,' *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41 (1976)." *Diamond v. Charles*, 476 U.S. at 70. Intervenor Virginia House of Delegates patently has standing to appeal under this standard: "[T]he [House] is directly affected by the District Court's orders [striking down its redistricting plan as illegal, and threatening to

substitute a plan drawn by a third party]." *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. at 194. A favorable decision by this Court could redress that injury.

CONCLUSION

The Court should reaffirm the Virginia House of Delegates' standing to appeal and reject Appellees' arguments to the contrary.

Respectfully submitted,

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