No. 15-680

IN THE

Supreme Court of the United States

GOLDEN BETHUNE-HILL, CHRISTA BROOKS, CHAUNCEY BROWN, ATOY CARRINGTON, DAVINDA DAVIS, ALFREDA GORDON, CHERRELLE HURT, THOMAS CALHOUN, TAVARRIS SPINKS, MATTIE MAE URQUHART, VIVIAN WILLIAMSON, AND SHEPPARD ROLAND WINSTON,

Appellants,

v.

VIRGINIA STATE BOARD OF ELECTIONS, *ET AL.*,

Appellees.

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

NOTICE OF SUPPLEMENTAL AUTHORITY

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Pursuant to Supreme Court Rule 18.10, Appellants respectfully submit this Notice of Supplemental Authority in support of Appellants' Jurisdictional Statement.

After the parties completed briefing on Appellants' Jurisdictional Statement and Appellees' Motion to Dismiss or Affirm, a three-judge court in the Middle District of North Carolina issued a decision supporting Appellants' position. *See Harris v. McCrory*, No. 1:13-cv-949, 2016 WL 482052 (M.D.N.C. Feb. 5, 2016).[1]

In *Harris*, the plaintiffs raised claims similar to the claims raised by Appellants here. The *Harris* plaintiffs "challenge[d] the constitutionality of two North Carolina congressional districts as racial gerrymanders in violation of the Equal Protection Clause of the Fourteenth Amendment." *Harris*, 2016 WL 482052, at *1. As in this case, the record in *Harris* included "overwhelming evidence . . . show[ing] that a BVAP-percentage floor, or a racial quota," was used to draw the challenged districts. *See id.* at *7. And the *Harris* plaintiffs, like the Appellants in this case, argued that the legislature's admitted use of an explicit racial threshold was strong (if not overwhelming) evidence that race predominated in the redistricting process.

The *Harris* majority agreed with the plaintiffs. Noting that this Court recently "cautioned against 'prioritizing mechanical racial targets above all other districting criteria' in redistricting," *id.* at *10 (quoting *Alabama Legislative Black Caucus v. Alabama*, 135 S.

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[1] The *Harris* defendants have filed a Notice of Appeal and applied to Chief Justice Roberts, Circuit Justice for the Fourth Circuit, for a stay pending appeal. As of the filing of this brief, that application remains pending.

Ct. 1257, 1267 (2015)), the Harris majority concluded that race predominated in the drawing of the challenged districts:

> A congressional district necessarily is crafted because of race when a racial quota is the single filter through which all line-drawing decisions are made, and traditional redistricting principles are considered, if at all, solely insofar as they did not interfere with this quota.

Id. at *7 (citing *Shaw v. Hunt* ("*Shaw II*"), 517 U.S. 899, 907 (1996)); *see also id.* at *11 ("Such a racial filter had a discriminatory effect on the configuration of CD 1 because it rendered all traditional criteria that otherwise would have been 'race-neutral' tainted by and subordinated to race."). Because race predominated, and because the legislature's use of race was not narrowly tailored to a compelling interest, the districts at issue in *Harris* failed strict scrutiny and violated the Constitution. *See id.* at *17, *21.

The analysis of the *Harris* majority is consistent with Judge Keenan's dissent in this case—and fundamentally at odds with the novel approach to racial predominance adopted by the majority below. Indeed, the *Harris* majority cites Judge Keenan's dissent as support for its conclusion that race predominated. *See id.* at *8. The *Harris* majority also echoes Judge Keenan's conclusion that race predominates where a racial quota "operate[s] as a filter through which all line-drawing decisions ha[ve] to pass." *Id.* at *11; *compare* J.S. App. 137a-138a (Keenan, J., dissenting) ("Here, because traditional districting criteria were considered solely insofar as they did not interfere with this 55% minimum floor . . . , the quota operated as a

filter through which all line-drawing decisions had to pass.") (citing *Shaw II*, 517 U.S. at 907).

Harris thus provides further support for Appellants' position that this Court should summarily reverse the majority's opinion below or, at a minimum, note probable jurisdiction.

Respectfully submitted,

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