

DOUGLAS N. LETTER  
GENERAL COUNSEL

TODD B. TATELMAN  
DEPUTY GENERAL COUNSEL

MEGAN BARBERO  
ASSOCIATE GENERAL COUNSEL

JOSEPHINE MORSE  
ASSOCIATE GENERAL COUNSEL

U.S. HOUSE OF REPRESENTATIVES  
OFFICE OF GENERAL COUNSEL

219 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6532  
(202) 225-9700  
FAX: (202) 226-1360

KRISTIN A. SHAPIRO  
ASSISTANT GENERAL COUNSEL

BROOKS M. HANNER  
ASSISTANT GENERAL COUNSEL

SARAH E. CLOUSE  
ATTORNEY

June 20, 2019

Deborah S. Hunt, Clerk of the Court  
United States Court of Appeals for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202-3988

Re: Response to Rule 28(j) Letter in *United States v. Nagarwala*, No. 19-1015

Dear Ms. Hunt:

The House of Representatives has established Article III standing to intervene here for the limited purpose of defending the constitutionality of 18 U.S.C. 116(a) on appeal. Nothing in *Virginia House of Delegates v. Bethune-Hill*, No. 18-281 (June 17, 2019), dictates any other conclusion.

The Court's *Bethune-Hill* opinion dealt only with "judicial decision[s] invalidating a state law" and "judgment[s] invalidating a state enactment." Op. 7. In this context, the Court stated that "a single House of a bicameral legislature *generally* lacks standing to appeal in cases *of this order*." Op. 10 (emphases added). The Court's use of the word "generally" reveals that it did not lay down a categorical rule applicable to all legislative bodies in all circumstances.

To be sure, the *Bethune-Hill* decision did not construe *INS v. Chadha*, 462 U.S. 919 (1983), to support unicameral state-legislative standing to defend the constitutionality of state redistricting laws. But *Chadha* does still stand for the proposition that, when the Executive refuses to defend the validity of an Act of Congress, the House and Senate each institutionally may intervene to do so. Indeed, the Supreme Court has explicitly indicated that "the diminution of legislative power" is "a type of institutional injury" suffered by each house of Congress. *Raines v. Byrd*, 521 U.S. 811, 821 (1997). And federal law supports that view, as 28 U.S.C. § 530D(b)(2) requires the Executive to alert both the House and Senate individually in time to enable them "to take action, separately or jointly, to intervene" when the Attorney General declines to defend the constitutionality of an Act of Congress.

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Finally, the district court's decision here, if allowed to stand, would "*permanently* deprive" (Op. 9) the House of its authority to enact certain types of legislation under the Commerce Clause and the Treaty Power. It is precisely because that decision has so restricted the House's constitutional power as an institution that it seeks to intervene for the limited purpose of defending the constitutionality of its enactment, a role the House and Senate have often performed when the Executive has refused to do so.

Respectfully submitted,

*/s/ Douglas N. Letter*

Douglas N. Letter

Counsel for the U.S. House of Representatives

cc: All counsel (via CM/ECF)