

EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR., an individual, *et al.*,

Plaintiffs,

v.

JOCELYN BENSON, in her official
capacity as the Secretary of State of
Michigan, *et al.*;

Defendants.

Case No. 1:22-cv-00272

**Three-Judge Panel Appointed
Pursuant to 28 U.S.C. § 2284(a)**

AFFIDAVIT OF REBECCA A. SZETELA

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, Rebecca A. Szetela, having been first duly sworn, deposes and states as follows:

1. I have personal knowledge concerning the statements contained in this Affidavit, and if called to testify, can testify competently to the facts stated in this Affidavit.

2. I have served as a Commissioner with the Michigan Independent Citizens Redistricting Commission ("MICRC") since November of 2020.

3. There are thirteen commissioners on the MICRC, including Commissioner Anthony Eid.

4. From September of 2021 through March of 2022, I served as the Chairperson for the MICRC.

5. In my role as Chairperson, I had authority to sign documents, including agreements, on the behalf of the MICRC.

6. Julianna Pastula was the General Counsel of the MICRC in October of 2021.

7. Bruce Adelson is a consultant retained as the Voting Rights Act Legal Counsel for the MICRC.

8. On October 27, 2021 at 10:20 a.m., Ms. Pastula sent commissioners an email entitled, "P&C - Potential Closed Session/VRA" (the "Email").

9. A true copy of this Email is attached as Exhibit A to this Affidavit.

10. The Email had a document entitled, "2021 MICRC Confidentiality Agreement.pdf," attached.

11. In the Email, Ms. Pastula stated that commissioners "needed" to sign the confidentiality agreement attached to the email.

12. In the Email, Ms. Pastula also stated that "Staff and consultants will also be asked to execute" the confidentiality agreement.

13. Ms. Pastula also indicated that Executive Director Sueann Hammersmith would circulate hard copies of the confidentiality agreement during the MICRC's October 27, 2021 meeting that day.

14. Before the start of the MICRC's meeting on October 27, 2021, Ms. Hammersmith distributed printed copies of the confidentiality agreement to me and several other commissioners.

15. Ms. Hammersmith then requested that we sign the confidentiality agreement.

16. After Ms. Hammersmith distributed the confidentiality agreements, I witnessed Ms. Pastula walk around the room and collect documents from the commissioners, consultants, and staff present in the meeting room.

17. Ms. Pastula handed me the stack of documents she had collected.

18. The stack of documents handed to me by Ms. Pastula consisted solely of partially executed confidentiality agreements signed by staff, consultants, and commissioners (the "Confidentiality Agreements").

19. Ms. Pastula directed me to countersign the Confidentiality Agreements.

20. Instead, I placed the Confidentiality Agreements in a folder for review later in the day.

21. I did not counter-sign the Confidentiality Agreements handed to me by Ms. Pastula.

22. Since October 27, 2021, I have maintained possession of the partially executed Confidentiality Agreements within my MICRC business records.

23. The Confidentiality Agreements handed to me by Ms. Pastula included a partially executed Confidentiality Agreement signed by Commissioner Anthony Eid.

24. A true copy of Commissioner Eid's partially executed Confidentiality Agreement is attached as Exhibit B to this Affidavit.

25. The Confidentiality Agreements handed to me by Ms. Pastula included a partially executed Confidentiality Agreement signed by consultant Bruce Adelson.

26. A true copy of Mr. Adelson's partially executed Confidentiality Agreement is attached as Exhibit C to this Affidavit.

FURTHER AFFIANT SAYETH NOT.

I DECLARE THE ABOVE STATEMENTS TO BE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Dated: Dec. 1, 2023

R. Sztetela
Rebecca A. Sztetela

Subscribed and sworn to before me
this 1st day of December 2023.

Angie Theile
Angie Theile, Notary Public
Wayne County, State of Michigan.
My Commission Expires: 7-18-2027
Acting in the county of: Wayne

ANGIE THEILE
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Jul 18, 2027
ACTING IN COUNTY OF Wayne



Exhibit A

Szetela, Rebecca (MICRC)

From: Pastula, Julianne (MICRC)
Sent: Wednesday, October 27, 2021 10:20 AM
To: Pastula, Julianne (MICRC)
Subject: P&C - Potential Closed Session/VRA
Attachments: 2021 MICRC Confidentiality Agreement.pdf; Closed Session Reference Information Oct 27.pdf; Reso_Closed_Session_VRA_DRAFT.pdf; P&C One Pager The Voting Rights Act Oct 14.pdf; P&C Memorandum on Voting Discrimination Distributed Oct 26.pdf

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

THIS EMAIL IS A PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION THAT CONSTITUTES ATTORNEY WORK PRODUCT AND CONTAINS LEGAL ADVICE. **PLEASE DO NOT COPY, DISTRIBUTE, SHARE OR DISCLOSE THE PRIVILEGED & CONFIDENTIAL INFORMATION IN THIS EMAIL.** PLEASE DO NOT "REPLY ALL" OR CREATE "CONSTRUCTIVE QUORUMS" AMONG A QUORUM OF THE PUBLIC BODY THROUGH CONVERSATIONS WITH OTHER COMMISSIONERS OR THROUGH SHARED ELECTRONIC COMMUNICATIONS. DELIBERATIONS BETWEEN A QUORUM OF COMMISSIONERS CAN ONLY OCCUR AT AN OPEN MEETING. PLEASE DO CONTACT JULIANNE AT 517.331.6318 WITH QUESTIONS ABOUT THESE DISCLAIMERS.

Dear Commissioners Only,

Some Commissioners have expressed an interest in holding a closed session to discuss the privileged and confidential memos regarding the VRA. Specifically, the privileged and confidential memoranda titled *Voting Rights Act* of October 14, 2021, and *The History of Discrimination in the State of Michigan and its Influence on Voting* of October 26, 2021 (both attached for your convenience).

Given the expressed interest, attached please find a proposed resolution and script/reference information for your consideration. While the reference information covers the authority and procedure, I wanted to highlight again that the discussion in closed session can only address what is delineated in the reso - the legal memoranda and the VRA topic. Particularly as it relates to compliance, legal risk and an opportunity for your attorneys to advise the full MICRC on this critical issue and respond to questions. No actions can be taken in closed session, no planning on "how to vote" in open session can occur in closed session and if the discussion veers from the legally accepted boundaries of the closed session the Commission returns to open session.

It is the Commission's choice (by roll call 2/3 majority vote or 9 members voting yes) whether to call a closed session for the purpose of discussing the privileged and confidential memoranda from legal counsel. If the majority do not support the closed session Bruce and I will continue to have one-on-one discussions and fulfill our ethical obligations to advise our client, the MICRC, in open session. I acknowledge there are pros/cons to either approach.

The attached Confidentiality Agreement is needed regardless of whether the Commission takes action in the near future on any potential closed session as it covers confidentiality more broadly. Sue will have hard copies for distribution today. Staff and consultants will also be asked to execute these agreements.

As always, please do not hesitate to reach out to me with any questions or concerns. I will be available via phone driving to Lansing in advance of the meeting. I also plan to be at lunch but I will be late as my morning meetings ran late.

Sincerely,

Julianne Pastula

General Counsel

State of Michigan

Independent Citizens Redistricting Commission

517.331.6318

PastulaJ1@Michigan.gov

Exhibit B

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is made and becomes effective on this 27 day of October 2021, by and between _____, (First and Last Name) the "Named Individual" and the Michigan Independent Redistricting Commission ("MICRC").

AGREEMENT

The MICRC authorizes Anthony E. I. (First and Last Name) the "Named Individual" to receive confidential information. The MICRC further authorizes the Named Individual to attend closed sessions of the MICRC when requested to attend by the MICRC, held pursuant to the Open Meetings Act, MCL 15.261 *et seq.*, where certain confidential information is to be disclosed. Confidential Information includes all data, financial information, legal opinions and reports, and other information disclosed or submitted, orally, in writing, or by any other media, or as presented at the closed session. The Named Individual shall not disclose any confidential information to any individual or entity.

- A. The Named Individual shall hold the same in confidence and shall not publish or otherwise reveal the Confidential Information other than for the purposes of his or her employment or engagement with the MICRC to an individual similarly bound by applicable confidentiality provisions, as directed by the MICRC.
- B. The Named Individual shall not duplicate any written reports, documents, etc., distributed in advance of, or during, a closed session. Upon the request of the MICRC or its General Counsel, the Named Individual shall return all Confidential Information, including copies, or reproductions or other media containing such Confidential Information, immediately upon request.

TERM

The obligations of the Named Individual to maintain confidentiality of any confidential information including the disclosures made during closed session(s) shall be effective from the date this Agreement is executed until the confidential information or substance of the closed session has been publicly disclosed by action of the MICRC or a source other than the Named Individual.

GOVERNING LAW AND EQUITABLE RELIEF

This Agreement shall be governed and construed in accordance with the laws of the State of Michigan and the parties consent to the exclusive jurisdiction of the State of Michigan Court of Claims for any dispute arising out of this Agreement. The Named Individual agrees that in the event of any alleged breach or threatened breach by the Named Individual, the MICRC may obtain, in addition to any other legal remedies which may be

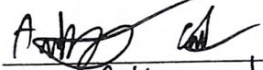
available, such equitable relief as may be necessary to protect the MICRC and any Individual MICRC Member against any such breach or threatened breach.

NO ASSIGNMENT

A Named Individual may not assign this Agreement to any other person, as each Named Individual that is to be governed by this Confidentiality Agreement must sign his or own separate agreement.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included. The MICRC's failure to insist in any one or more instances upon strict performance by the Named Individual of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above-written.

By (signature): 
Printed Name: Anthony E. L.
Chairperson, MICRC

By Named Individual (signature): _____
Printed Name: _____
Title: _____

Exhibit C

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is made and becomes effective on this 21st day of October, 2021, by and between Bruce Nelson, (First and Last Name) the "Named Individual" and the Michigan Independent Redistricting Commission ("MICRC").

AGREEMENT

The MICRC authorizes Bruce Nelson (First and Last Name) the "Named Individual" to receive confidential information. The MICRC further authorizes the Named Individual to attend closed sessions of the MICRC when requested to attend by the MICRC, held pursuant to the Open Meetings Act, MCL 15.261 *et seq.*, where certain confidential information is to be disclosed. Confidential Information includes all data, financial information, legal opinions and reports, and other information disclosed or submitted, orally, in writing, or by any other media, or as presented at the closed session. The Named Individual shall not disclose any confidential information to any individual or entity.

- A. The Named Individual shall hold the same in confidence and shall not publish or otherwise reveal the Confidential Information other than for the purposes of his or her employment or engagement with the MICRC to an individual similarly bound by applicable confidentiality provisions, as directed by the MICRC.
- B. The Named Individual shall not duplicate any written reports, documents, etc., distributed in advance of, or during, a closed session. Upon the request of the MICRC or its General Counsel, the Named Individual shall return all Confidential Information, including copies, or reproductions or other media containing such Confidential Information, immediately upon request.

TERM

The obligations of the Named Individual to maintain confidentiality of any confidential information including the disclosures made during closed session(s) shall be effective from the date this Agreement is executed until the confidential information or substance of the closed session has been publicly disclosed by action of the MICRC or a source other than the Named Individual.

GOVERNING LAW AND EQUITABLE RELIEF

This Agreement shall be governed and construed in accordance with the laws of the State of Michigan and the parties consent to the exclusive jurisdiction of the State of Michigan Court of Claims for any dispute arising out of this Agreement. The Named Individual agrees that in the event of any alleged breach or threatened breach by the Named Individual, the MICRC may obtain, in addition to any other legal remedies which may be

available, such equitable relief as may be necessary to protect the MICRC and any Individual MICRC Member against any such breach or threatened breach.

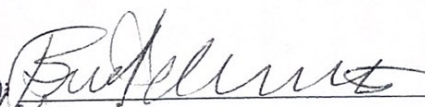
NO ASSIGNMENT

A Named Individual may not assign this Agreement to any other person, as each Named Individual that is to be governed by this Confidentiality Agreement must sign his or own separate agreement.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included. The MICRC's failure to insist in any one or more instances upon strict performance by the Named Individual of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above-written.

By (signature): _____
Printed Name: _____
Chairperson, MICRC

By Named Individual (signature):  _____
Printed Name: Bruce A. Heston
Title: VIA Legal Counsel