

EXHIBIT D

**DEFS.' RESP. TO SHOW CAUSE ORDER
REGARDING COURT CONSULTANT, CIR.
CT. ANNE ARUNDEL CNTY.
NO. C-02-CV-21-001816**

**IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY**

KATHRYN SZELIGA, et al.,

*

Plaintiff,

*

No. C-02-CV-21-001816

v.

*

LINDA H. LAMONE, et al.,

*

Defendant.

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NEIL PARROTT, et al.,

*

Plaintiffs,

*

v.

*

No. C-02-CV-21-001773

LINDA LAMONE, et al.,

*

Defendants.

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**DEFENDANTS' RESPONSE TO SHOW CAUSE ORDER
REGARDING COURT CONSULTANT**

Dr. James G. Gimpel should not be appointed to serve as a consultant to this Court because his apparent partisan bias may be seen to deprive him of the impartiality essential for a judicial appointee. His participation in this case as a court consultant would not promote, but instead would potentially diminish, “public confidence in the independence, integrity, and impartiality of the judiciary.” Md. Rule 18-201.2(a).

1. Dr. Gimpel has shown partisan bias through testimony offered in cases directly relevant to the claims pending before this Court. Dr. Gimpel has defended extreme gerrymanders instituted by and for the benefit of Republicans. For example, he testified in support of North Carolina’s 2016 congressional redistricting plan. Exhibit 1, Expert Report of James G. Gimpel, Ph. D. in *Common Cause v. Rucho*, No. 16-1164 (M.D. N.C.) and *League of Women Voters of N. Carolina v. Rucho*, No. 16-1164 (M.D. N.C.). Dr. Gimpel endorsed that plan even though the plan was designed to maximize Republican dominance over an otherwise politically balanced electorate to the point that Rep. Lewis “d[id] not believe it’s possible to draw a map” that was more favorable to Republicans, *Rucho v. Common Cause*, 139 S. Ct. 2484, 2491 (2019); see *Rucho v. Common Cause*, U.S. No. 18-422, Brief of Appellants Robert A. Rucho, David R. Lewis, et al., 2019 WL 629974 *10 (Feb. 8, 2019) (same). The partisan gerrymander that Dr. Gimpel deemed acceptable resulted in Republicans winning 10 of North Carolina’s 13 congressional seats in the 2018 election, though Democratic candidates received the majority of votes cast statewide.¹ *Rucho v. Common Cause*, U.S. No. 18-422, Brief of Appellees League of Women Voters of N. Carolina, 2019 WL 1057909, *3, *15 (Mar. 4, 2019).

2. Dr. Gimpel also served as an expert, both in federal court and state court, defending the 2011 congressional redistricting plan drawn to benefit Republicans in

¹ In one of the races won by a Republican, the North Carolina State Board of Elections refused to certify the result due to evidence of widespread irregularities, and a new election was held for that seat.

Pennsylvania. Exhibit 2, Expert Report of James G. Gimpel, Ph. D. That is, Dr. Gimpel testified in support of the plan that the Supreme Court of Pennsylvania struck down as a partisan gerrymander in *League of Women Voters v. Commonwealth*, 178 A.3d 737, 768 n.40 (2018). The court found that the congressional plan Dr. Gimpel endorsed enabled Republicans in the 2012 election to win 13 of Pennsylvania’s 18 congressional seats, though “Democrats earned a statewide share of 50.8% of the vote, . . . whereas Republicans earned only a statewide share of 49.2% of the vote.” *Id.*, 178 A.3d at 764. The court also noted that, rather than contest a “motion to exclude the expert testimony of Dr. James Gimpel regarding the intended or actual effect of the 2011 Plan on Pennsylvania’s communities of interest,” the Legislative Respondents who were defending the plan “agreed to withdraw the challenged portion of the [*sic*] Dr. Gimpel’s report.” *Id.* at 768 n.40.

3. In the federal proceedings, Dr. Gimpel acknowledged that, based on the number of registered Democratic voters in Pennsylvania, Democrats were theoretically capable of winning 9 congressional seats, rather than the maximum of 5 seats they were able to muster under the Republican-drawn plan. *Agre v. Wolf*, 284 F. Supp. 3d 591, 672 (E.D. Pa. 2018). One member of the three-judge district court observed that “Professor Gimpel was very general in a lot of his answers,” and “as the recorded testimony will show, but the written testimony will not, he raised his voice and started shouting on a number of occasions when his conclusions were under attack during cross examination. This is highly

unusual behavior by an experienced expert, and warrants the Court’s giving low weight to all of his testimony.” *Id.* at 674 (Baylson, J., dissenting).

4. Dr. Gimpel similarly served as an expert in support of Wisconsin’s pro-Republican gerrymander in *Whitford v. Gill*, No. 15–cv–421 (W.D. Wisc.). Exhibit 3, Expert Report of James G. Gimpel. As the Supreme Court noted, in the 2012 election, the state legislative plan supported by Dr. Gimpel’s testimony enabled Republicans to win 60 of Wisconsin’s 99 State Assembly seats “with 48.6% of the two-party statewide vote for Assembly candidates.” *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018). “[T]he mechanism used to wreak that harm is ‘packing’ and ‘cracking,’” meaning “[i]n a relatively few districts, the mapmakers packed supermajorities of Democratic voters—well beyond the number needed for a Democratic candidate to prevail. And in many more districts, dispersed throughout the State, the mapmakers cracked Democratic voters—spreading them sufficiently thin to prevent them from electing their preferred candidates.” *Id.* at 1935 (Kagan, J., concurring). Dr. Gimpel’s expert report, however, sought to justify that extreme gerrymander.

5. Dr. Gimpel’s participation in these three prominent cases, involving redistricting challenges in three different states, consistently showed him to be an advocate for pro-Republican, extreme partisan gerrymandering, where Republicans were able to obtain dominance over politically balanced electorates solely through the mapmaking process. This record provides reason for neutral observers to question whether he would

be an impartial consultant if appointed by this Court. While Dr. Gimpel is free to prioritize support of Republican efforts in connection with his practice as an expert witness retained by litigants, the Court itself should avoid retaining consultants with such clearly defined political preferences when, as here, impartiality is so critical to the Court's function.

6. Dr. Gimpel has also been a frequent contributor of articles to the Center for Immigration Studies. *See* <https://cis.org/James-G-Gimpel>. The Southern Poverty Law Center has designated the Center for Immigration Studies as a hate group due to its “repeated circulation of white nationalist and antisemitic writers in its weekly newsletter and the commissioning of a policy analyst who had previously been pushed out of the conservative Heritage Foundation for his embrace of racist pseudoscience,” as well as “its historical associations, and its record of publishing reports that hype the criminality of immigrants. . . .” <https://www.splcenter.org/fighting-hate/extremist-files/group/center-immigration-studies>.

7. Finally, should the Court proceed to retain the services of Dr. Gimpel notwithstanding the Defendants' objections, it should limit the scope of his services to assistance with understanding technical terms and concepts.

CONCLUSION

For these reasons, Dr. Gimpel should not be appointed as consultant to this Court.

Respectfully submitted,

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