

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

KAREN DAVIDSON, DEBBIE FLITMAN,  
EUGENE PERRY, SYLVIA WEBER AND  
AMERICAN CIVIL LIBERTIES UNION OF  
RHODE ISLAND, INC.,

Plaintiffs

v.

CITY OF CRANSTON, RHODE ISLAND,

Defendant

C.A. No. 1:14-cv-00091-LDA

**CITY OF CRANSTON, RHODE ISLAND'S RESPONSE TO STATEMENTS OF  
DISPUTED AND UNDISPUTED FACTS**

**DEFENDANT'S FACT NO. 1:**

According to the U.S. Census Bureau's 2010 Census, as of April 1, 2010, the City had a total population of 80,387. *See* The City's Response to Plaintiffs' First Set of Requests for Admissions, Req. No. 1 [Doc. No. 16, Ex. 3]; *see also*, Affidavit of Mayor Fung ¶ 2(a) [Doc. No. 16, Ex. 2]. (City of Cranston, Rhode Island's Response to Plaintiffs' First Set of Request for Admission.)

**PLAINTIFFS' DISPUTED FACT NO. 1:**

Not disputed.

**RESPONSE:**

No response necessary.

**DEFENDANT'S FACT NO. 2:**

The total population for Ward 6 used for redistricting purposes was 13,642. *See* Aff. ¶ 2(b).

**PLAINTIFFS' DISPUTED FACT NO. 2:**

Defendant asserts “The total population for Ward 6 used for redistricting purposes was 13,642.” Plaintiffs do not dispute that this population figure was used by the City in crafting its 2012 districting plan. Plaintiffs do dispute this population figure was *properly and lawfully* used. Plaintiffs assert that the proper population count is 10,227. Cooper Suppl. Decl. Ex. C, Fig. 4 (Ex.9).<sup>1</sup>

**RESPONSE:**

Plaintiffs' Disputed Fact No. 2 should be stricken. Plaintiffs fail to create a dispute of fact to contradict the City's undisputed fact. Accordingly, the City's original fact must be accepted as undisputed.

**DEFENDANT'S FACT NO. 3:**

The total maximum deviation among the six city wards was less than ten (10) percent. *See* Aff. ¶ 2(c).

**PLAINTIFF'S DISPUTED FACT NO. 3:**

Defendant asserts “The total maximum deviation among the six city wards was less than ten (10) percent.” This is true only if the population of the Adult Correctional Institutions (ACI) is improperly counted as part of Ward 6's population base. If the non-resident incarcerated persons incarcerated at the ACI are not counted in Ward 6, the total maximum population among the six city wards is 28.12%. Cooper Suppl. Decl. Ex. C. ¶ 32 (Ex. 9).

---

<sup>1</sup> All Exhibits mentioned herein are annexed to the declaration of Sean J. Young, dated Aug. 6, 2015

**RESPONSE:**

Plaintiffs' Disputed Fact No. 3 should be stricken. Plaintiffs fail to create a dispute of fact to contradict the City's undisputed fact. Accordingly, the City's original fact must be accepted as undisputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 4:**

Plaintiff Karen Davidson lives in the Edgewood neighborhood in Cranston's Ward

1. She is a regular voter. Davidson Dep. 5:20 — 6:3, 13:19 — 14:6, Jan. 29, 2015 (Ex. 1).<sup>2</sup>

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 5:**

Plaintiff Debbie Flitman lives in Cranston's Ward 4. She is a regular voter.

Flitman Dep. 4:16 — 4:21, 11:3 — 11:11, Jan. 30, 2015 (Ex. 2).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 6:**

Plaintiff Sylvia Weber lives in Cranston's Ward 1. She is a regular voter. Weber

Dep. 5:4 — 5:9, 14:16 — 14:21, Jan. 30, 2015 (Ex. 3).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 7:**

Plaintiff Eugene Perry lives in Cranston's Ward 1. He is a regular voter. Perry

Dep. 5:25 — 6:5, 14:7 — 14:14, Jan. 29, 2015 (Ex. 4).

---

<sup>2</sup> All Exhibits mentioned herein are annexed to the declaration of Sean J. Young, dated Aug. 6, 2015.

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 8:**

The facilities that are part of the Adult Correctional Institutions (ACI) and the addresses where they are located are: Intake Service Center, 18 Slate Hill Road; Minimum Security, 16 Howard Avenue; Medium Security, 51 West Road; Maximum Security, 1375 Pontiac Avenue; High Security, 54 Power Road; Women Minimum Security, 7 Fleming Road; Women Maximum Security, 13 Fleming Road. Although there are other facilities located on the state grounds located in Cranston, only facilities at the above addresses are considered by the Rhode Island Department of Corrections to be part of the ACI. O'Connor Aff. ¶ 3, June 1, 2015 (Ex. 5).

**RESPONSE:**

The City disputes Fact No. 8 to the extent that Plaintiffs characterize the ACI by limiting it to “only facilities at the above addresses”. The Affidavit of O’Connor ¶3 does not so limit. Paragraph 3 of her affidavit indicates the “ACI has always continuously existed at most of the same present locations.”

**PLAINTIFF'S UNDISPUTED FACT NO. 9:**

In addition to the ACI, state property in Cranston houses Eleanor Slater Hospital, a juvenile correctional facility, a nursing home, and a homeless shelter. Cooper Suppl. Decl. Ex. B, Figure 1 (Ex. 6); see also Patalano Dep. 18:22 —19:3, 26:12 — 26:18, Feb. 24, 2015 (Ex. 7).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 10:**

The total population of the Adult Correctional Institutions (ACI) according to 2010 Census data was 3,433. Def.'s Resp. to Pls.' First Req. Admis. No. 3 (Ex. 8).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 11:**

If the population of the ACI is not counted as part of Cranston Ward 6's population base, then the maximum population deviation among the six city wards exceeds ten percent, and is in fact approximately 28%. Cooper Suppl. Decl. Ex. C ¶ 33 (Ex. 9).

**RESPONSE:**

Although the City does not dispute Plaintiffs' mathematics, the City disputes any characterization that the ACI population is not counted or should not be counted. It is an undisputed fact that there is no law or case that would require the City to discount the ACI Population.

**PLAINTIFF'S UNDISPUTED FACT NO.12:**

In terms of population deviation, it makes no material difference whether one considers the relevant ACI population to consist of a) the 3,433 persons listed by the U.S. Census Bureau as the population of the facilities defined as the ACI by the Rhode Island Department of Corrections; b) the 3,280 of these persons who Plaintiffs' Expert Mr. William Cooper identifies as not residing in Cranston; c) the 3,782 persons that City Expert Mr. Kimball Brace reports as the total population of the Census blocks that cover the state grounds where the ACI is located; d) the 3,734 persons Plaintiffs' Expert Mr. William Cooper interprets as the March 31, 2010 population of the ACI as reported by the Rhode Island Department of Corrections; or e) the 3,714 persons that Mr. Brace interprets as the March 31, 2010 population of the ACI as reported

by the Rhode Island Department of Corrections.<sup>2</sup> Brace Dep. 58:16 — 65:3, June 22, 2015 (Ex. 10). No matter which population is used, when that population is not misallocated to the Ward 6 population base, the result is a maximum deviation that substantially exceeds 10%. *Id.*

**RESPONSE:**

Although the City does not dispute Plaintiffs' mathematics, the City disputes any characterization that the ACI population is not counted or should not be counted. The City further disputes Plaintiffs' mischaracterization that any population base was misallocated. It is an undisputed fact that there is no law or case that would require the City to discount the ACI Population. Using Plaintiffs' proposed plan could create an alternative scenario while maintaining the ACI Population as is legally allowed would then overpopulate Ward 6 resulting in a total deviation of 26.5 %. Brace Declaration at ¶25 (Plaintiffs' Exhibit 12).

**PLAINTIFF'S UNDISPUTED FACT NO. 13:**

During public hearings leading to the City's adoption of the current redistricting plan, the ACLU of Rhode Island asked the City not to assign the 3,433 persons the Census counted at the ACI as residents of Ward 6. Brown Dep. 8:4 — 8:20, Feb. 25, 2015 (Ex. 11).

**RESPONSE:**

The City disputes Plaintiffs facts that suggest the ACLU asked the City not to assign the 3,433 persons counted at the ACI in the redistricting at multiple hearings or that the ACI Population are considered "residents" as the Plaintiffs have attempted to use the term. The City Charter requires all inhabitants be counted and apportioned. Further, a staff attorney of the ACLU testified at one hearing providing 3 to 4 minutes of commentary at the very end of the City's districting process. (Favicchio Depo. 35:24 – 36:7) (Defendant's Exhibit D).

**PLAINTIFF'S UNDISPUTED FACT NO. 14:**

Defendant could choose to “apportion its wards under a different population base than the State.” Def.'s Mem. Supp. Mot. Dismiss 11, Mar. 13, 2014.

**RESPONSE:**

The City does not dispute that it *could choose* to apportion its wards as long as that apportionment met constitutional standards if the people of the City of Cranston agreed to change the City Charter, which calls for all “inhabitants” within the municipal limits be apportioned into six wards. *See* City of Cranston Charter §2.03(b) (as “validated ratified and confirmed” by Chapter 183 of the Rhode Island Public Laws of 1963, and 12-LA135 and 12-LA 136 that “ratified, confirmed, validated and enacted” the City’s 2012 redistricting).

**PLAINTIFF'S UNDISPUTED FACT NO. 15:**

Defendant's expert witness Mr. Kimball Brace was retained by the State of Rhode Island to draw state House and Senate districts following the 2010 Census. During this project, Mr. Brace split the ACI population among multiple legislative districts. Mr. Brace considered this a reasonable course of action and specifically undertook this strategy to reduce the distortive impact that the ACI might have if its entire population were included in one district. Brace Dep. 139:17 — 142:13, 155:18 — 158:6 (Ex. 10).

**RESPONSE:**

The City disputes Plaintiffs’ loose characterization of Mr. Brace’s testimony. Mr. Brace makes clear in his testimony that it was the legislature’s prerogative to split the ACI Population among two state house districts to lessen its impact to which he had no objection to the legislature’s proposal. Mr. Brace at no point concedes that it was a “reasonable course of action” as mischaracterized by Plaintiffs. Brace Dep. 139:17 — 142:13, 155:18 — 158:6 (Ex. 10).

**PLAINTIFF'S UNDISPUTED FACT NO. 16:**

Plaintiffs' Expert identified 153 persons incarcerated at the ACI on March 31, 2010 (one day before the Census) who reported to the Rhode Island Department of Corrections a residential address that geocodes to a location within the City of Cranston. Cooper Suppl. Decl. Ex. C ¶ 27 (Ex. 9). Defendant's Expert identified 155 such people. Brace Decl. ¶ 39 (Ex. 12). The remaining persons, comprising approximately 95% of the ACI population, remain residents of the communities outside of Cranston where they lived prior to their incarceration, according to Rhode Island law. R.I. Gen. Laws. § 17-1-3.1(a).

**RESPONSE:**

The City does not dispute the numbers or percentages calculated by Mr. Cooper. However, the City disputes the use and application of R.I. Gen. Laws § 17-1-3.1(a). First, the statute speaks for itself. Secondly, the statute only applies to where a person is considered a resident for voting purposes, not for districting purposes. Finally, the statute would, therefore, compel the City and all other legislative bodies throughout the state to likewise omit college students from the districting process pursuant to § 17-1-3.1(a)(4).

**PLAINTIFF'S UNDISPUTED FACT NO. 17:**

Out of the 153 or 155 persons incarcerated at the ACI who reported to the Rhode Island Department of Corrections residential addresses that geocode to a location within the City of Cranston, 18 persons had pre-incarceration addresses in Ward 6. Cooper Suppl. Decl. Ex. C ¶ 35 (Ex. 9).

**RESPONSE:**

Not disputed.



**PLAINTIFF'S UNDISPUTED FACT NO. 18:**

The children of persons incarcerated at the ACI are not permitted to attend public schools in Cranston by claiming residence of the parent at the ACI. Def.'s Resp. to Pls.' 1st Interrog. No. 3 (Ex. 13).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 19:**

Persons incarcerated at the ACI have no choice or discretion as to where they serve their prison sentences or where they are held prior to trial. Dinitto Aff. ¶ 4 (Ex. 14).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 20:**

The median length of stay at the ACI for incarcerated persons who have been sentenced is 99 days. Cooper Suppl. Decl. Ex. C ¶ 26 (Ex. 9).

**RESPONSE:**

The City does not dispute Plaintiffs' mathematics; however, the City disputes that the use of the median is the most accurate calculation to use for length of stay purposes.

**PLAINTIFF'S UNDISPUTED FACT NO. 21:**

The median length of stay for persons held at the ACI while awaiting trial is three (3) days. Cooper Suppl. Decl. Ex. C ¶ 26 (Ex. 9).

**RESPONSE:**

The City disputes that the use of the median is the most accurate calculation to use for length of stay purposes. Further, Plaintiffs' Fact No. 21 does not identify whether these persons held awaiting trial are also those who are incarcerated for longer sentences that are

transferred to the intake center during trial. *See* Dinitto Aff. at ¶ 3 (Ex. 14). Accordingly, this purported fact has little or no value to an incarcerated individual's length of stay.

**PLAINTIFF'S UNDISPUTED FACT NO. 22:**

Persons awaiting trial account for approximately 34% of the population of the ACI at any given time. O'Connor Aff. ¶ 4 (Ex. 5).

**RESPONSE:**

The City does not dispute the statement by Ms. O'Connor. However, the City disputes the characterization Plaintiffs place on the population awaiting trial.

**PLAINTIFF'S UNDISPUTED FACT NO. 23**

Persons convicted of a felony account for approximately 37% of the population of the ACI at any given time. O'Connor Aff. ¶ 4 (Ex. 5).

**RESPONSE:**

The City does not dispute Plaintiffs' Fact No. 23. The City further states that it is, therefore, undisputed that the remaining 63 % retain the right to vote.

**PLAINTIFF'S UNDISPUTED FACT NO. 24:**

More than two thirds (69%) of all persons incarcerated at the ACI are typically released within six months; and approximately 84% are released within one year. Cooper Suppl. Decl. Ex. C ¶ 26 (Ex. 9).

**RESPONSE:**

The City disputes Plaintiffs' statement as it does not indicate whether this analysis takes into account recidivism rates and repeat offenders.

**PLAINTIFF'S UNDISPUTED FACT NO. 25:**

Approximately 15 to 25 incarcerated persons who are classified to Minimum Security are approved for work release programs at any given time. They must sign out of the ACI at the beginning of the day and sign back in at night. Myers Aff. ¶ 3 (Ex. 15).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 26:**

Approximately 60 to 100 persons incarcerated at the ACI are assigned to work details at any given time. These persons are "generally not permitted to interact with the general public except as necessary to complete their work assignments." Reis Aff. ¶ 2 (Ex. 16).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO.27:**

Persons incarcerated at the ACI "may be furloughed for a specific approved reason such as a funeral or a medical procedure. Furloughed inmates are transported to the relevant destination with no stops permitted. They are not permitted to interact with the general public and are usually accompanied by armed correctional officers." Reis Aff. ¶ 4 (Ex. 16).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 28:**

Persons incarcerated at the ACI cannot visit churches or theatres; patronize local businesses such as restaurants, hotels, grocery stores, or gas stations; or make use of city facilities such as parks, playgrounds, or public transportation. *See* Myers Aff. ¶ 2 (Ex. 15).

**RESPONSE:**

The City disputes this purported fact. The Myers Affidavit makes no such assertion.

**PLAINTIFF'S UNDISPUTED FACT NO. 29:**

The Rhode Island State Police maintains an office at the ACI, and all requests for police services from the ACI are initially directed to the State Police. Catlow Aff. ¶ 2 (Ex. 17); see also Patalano Dep. 51:10 — 53:22 (Ex. 7).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 30:**

No more than 15 persons have been identified as registered to vote at addresses that the Rhode Island Department of Corrections considers part of the ACI. See Brace Dep. 83:10 — 91:5 (Ex. 10).

**RESPONSE:**

The City disputes this fact. Plaintiffs' assertion is not the assertion made by Mr. Brace at the identified exhibit.

**PLAINTIFF'S UNDISPUTED FACT NO. 31:**

No more than ten persons have been identified as registered to vote on the state grounds at addresses that may be part of the ACI. See Brace Dep. 83:10 — 91:5 (Ex. 10).

**RESPONSE:**

The City disputes this fact. Plaintiffs' assertion is not the assertion made by Mr. Brace at the identified exhibit.

**PLAINTIFF'S UNDISPUTED FACT NO. 32:**

The Rhode Island Department of Corrections reimburses the City of Cranston for the full cost of the goods and services it obtains from the City, including "the cost of taxes, sewage, ambulance services or the use/rental of City property." Brodeur Aff. ¶ 3 (Ex. 18); see also Def.'s Reply to Pls.' 2d Interrog. No. 12 (Ex. 19).

**RESPONSE:**

The City vehemently disputes this statement. First, Ms. Brodeur does not have personal knowledge of the full cost of the goods and services provided to the Department of Corrections (the "DoC") and, therefore, she is not competent to testify as to this particular fact. Additionally, Mayor Fung clearly indicated that the City is not made whole for its services to the DoC or for the ACI's impact on the City. *See* Fung Dep. 77: 7 – 80:7 (Defendant's Exhibit C).

**PLAINTIFF'S UNDISPUTED FACT NO. 33:**

Elected officials in Cranston consider interacting with their constituents and responding to their concerns a significant responsibility. Fung Dep. 19:19 — 19:22, Feb. 24, 2015 (Ex. 20); Favicchio Dep. 13:16 — 13:23, 21:19 — 21:23, Feb. 25, 2015 (Ex. 21).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 34:**

Elected officials in Cranston interact with their constituents extensively and by various means including in person, by phone, and through written communications. Fung Dep. 19:23 — 21:20, 30:19 — 30:25 (Ex. 20); Favicchio Dep. 13:24 — 14:10, 24:22 — 25:17 (Ex. 21).

**RESPONSE:**

The City disputes the characterizations made as if elected officials interact with a majority of their constituents “extensively” and the use of the term “extensively” is vague and ambiguous. Moreover, most constituents do not contact the City’s elected officials. Fung Dep. 66:2-18 (Defendant’s Exhibit C) (“there’s a large population that probably doesn’t contact city government at all”).

**PLAINTIFF’S UNDISPUTED FACT NO. 35:**

Elected officials in Cranston consider the views of their constituents when making decisions regarding City business. Fung Dep. 33:13 — 34:19 (Ex. 20).

**RESPONSE:**

Not disputed.

**PLAINTIFF’S UNDISPUTED FACT NO. 36:**

The three current At-Large City Councilmembers, the current Ward 6 School Committee Member, and the current At-Large School Committee member have all had no contact with persons incarcerated at the ACI; and have all had contact with constituents in Cranston. Stipulation of Pls.’ Fed. R. Civ. P. 30(b)(6) Topics 9 1-4 (Ex. 22).

**RESPONSE:**

Not disputed.

**PLAINTIFF’S UNDISPUTED FACT NO. 37**

Current Ward 6 City Councilor Michael Favicchio has not talked to persons incarcerated at the ACI to obtain their views on issues before the City Council, determine their interests, or to advocate on their behalf as a City Council member. His only contact with persons incarcerated at the ACI while he has been a Councilor has consisted of a few visits with

individuals whom he represents as clients in his legal practice. Favicchio Dep. 29:15 — 33:22 (Ex. 21).

**RESPONSE:**

The City disputes that Councilor Favicchio indicated that he does not advocate or consider the views of the ACI Population as a Council member. Favicchio Dep. 31:4-16 (Defendant's Exhibit D).

**PLAINTIFF'S UNDISPUTED FACT NO. 38:**

Ward 6 Councilman Michael Favicchio has run for City Council three times (2010, 2012, and 2014), and conducted significant outreach in the community during these campaigns, including knocking on doors, meeting voters at public places, and distributing flyers. Favicchio Dep.16:24 — 19:6 (Ex. 21).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 39:**

Ward 6 Councilman Michael Favicchio made no effort to campaign for votes at the ACI during any of his three election campaigns. Favicchio Dep. 30:15 — 30:23 (Ex. 21).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 40:**

Ward 6 Councilman Michael Favicchio cannot point to any group of people in Ward 6 who are more isolated than the persons incarcerated at the ACI. "I don't think anyone has more isolation," he said. Favicchio Dep. 41:16 — 41:20 (Ex. 21).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 41:**

Mayor Fung conducted significant outreach in the community to campaign for votes, including knocking on doors, meeting voters in public places, hosting coffee hours, attending organizational meetings, and sending campaign mailers. Fung Dep. 21:21 — 22:19 (Ex. 20).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 42:**

Mayor Fung has never held a campaign event at the ACI or to his knowledge sent a campaign mailer there. Fung Dep. 48:24 — 49:6 (Ex. 20).

**RESPONSE:**

The City does not dispute that Mayor Fung has never held a campaign event at the ACI; however, it is undisputed that he has not hosted any events at the JWU Cranston campus. Fung Dep. 38:6-13 (Plaintiffs' Exhibit 20).

**PLAINTIFF'S UNDISPUTED FACT NO. 43:**

Mayor Fung has visited the ACI once as Mayor, for Family and Friends Day in May 2014, at the invitation of a correctional officer. Fung Dep. 46:15 — 46:21; 50:13 — 50:16 (Ex. 20).

**RESPONSE:**

The City does not dispute that, in his capacity as Mayor, Mayor Fung visited the ACI once, but he has visited the ACI on other occasions and in other capacities, potentially as City Councilor At-Large. Fung Dep. 46:15 – 48:10 (Defendant's Exhibit C).



**PLAINTIFF'S UNDISPUTED FACT NO. 44:**

During his one visit to the ACI as Mayor, Mr. Fung toured the facility and viewed the workshop room where license plates are made, but did not interact with any incarcerated persons. Fung Dep. 49:15 — 50:6 (Ex. 20).

**RESPONSE:**

The City disputes that Mayor Fung did not interact with any incarcerated individual, his response was that he did not believe so, but could not recall. Fung Dep. 50:4-6 (Plaintiff's Exhibit 20).

**PLAINTIFF'S UNDISPUTED FACT NO. 45:**

Mayor Fung has employed a full time constituent affairs director since he has been mayor, but has never directed that person to interact with persons incarcerated at the ACI in any way. Fung Dep. 34:20 — 35:13, 48:11 — 48:23 (Ex. 20).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 46:**

Prior to the filing of this lawsuit, during his term as mayor Mr. Fung had received just one letter from a person incarcerated at the ACI. The letter, received in December 2012 from Ms. Susan Taylor, sought assistance with inadequate medical care at the ACI facility. Mayor Fung has no record of responding to that letter and stated that if he had responded he would have a record in his correspondence files. Fung Dep. 51:3 — 53:20 (Ex. 20); Def.'s Suppl. Resp. to Pls.' 1st Doc. Req. No, 4 (letter from Susan Taylor) (Ex. 23).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 47:**

Mayor Fung's interactions with persons incarcerated at the ACI have been limited to the two letters he has received and some in-person interaction with incarcerated persons working at a senior center in Cranston.<sup>3</sup> Mr. Fung cannot recall any incarcerated person making any request of him in his official capacity as mayor during any of those in-person interactions. Fung Dep. 56:15 — 57:4 (Ex, 20).

**RESPONSE:**

The City disputes the broad nature with which Plaintiffs couch Mayor Fung's interactions. For example, Mayor Fung indicated that his interactions with incarcerated individuals at the senior center are "[t]oo many to count." Fung Dep. 54:15 – 55:8 (Defendant's Exhibit C).

**PLAINTIFF'S UNDISPUTED FACT NO. 48:**

Other than attorney-client visits, of all the persons who have served as Mayor, Ward 6 City Councilor, or At-Large City Councilor in Cranston since 2003, only three people have made a total of eight visits to four persons incarcerated at the ACI. Def.'s Resp. to Pls.' 2d Interrog. No. 3 (Ex. 19); R.I. Dept. of Corrections Visitor's Address List, dated May 19, 2015 (Ex. 24).

**RESPONSE:**

Not disputed.

---

<sup>3</sup> Mayor Fung was copied on a second letter from an inmate at the ACI that was received by his office the day prior to his deposition. He had not yet read the letter. Fung Dep. 53:1-53-14 (ex. 20).

**PLAINTIFF'S UNDISPUTED FACT NO. 49:**

There is no record of family members or visitors of persons incarcerated at the ACI communicating feedback or concerns to the Mayor or any member of the City Council. Def.'s Resp. to Pls.' 1st Interrog. No. 8 (Ex. 13).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 50:**

There is no record of the Cranston City Council discussing the "needs, interests, and/or welfare of the persons incarcerated at the ACI." Def.'s Resp. to Pls.' 1st Doc. Req. No. 2 (Bates #s 00001 — 00039) (Ex. 25).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 51:**

It is feasible to create a districting plan the reallocates the incarcerated population to their home addresses or one that does not count the population of the ACI that respects traditional districting criteria, meets population equality standards, and requires only minor adjustments to the current plan, regardless of which ACI population figure one uses. The plan created by William Cooper and described in his Expert Declaration is one such plan. Cooper Suppl. Decl. Ex. C ¶¶ 36-48 (Ex. 9).

**RESPONSE:**

The City disputes this statement. In the first instance, the contention erroneously assumes that the current district plan does not meet population equality standards. Also, the Cooper Plan fails to count the ACI Population anywhere for local representational purposes. 52.9 % of the ACI Population consists of minorities that would not be counted. Brace

Declaration at ¶25 (Plaintiffs' Exhibit 12). The City disputes the feasibility and the lawfulness of the Cooper Plan. The Plaintiffs' proposed plan would not require merely minor adjustments. It would impact every City ward. Cooper Declaration ¶ 42 (Plaintiffs' Exhibit 9). Further, Cooper's summary is ambiguous and vague in its results as it adjusts for a purported "Ward 7" which does not exist. *Id.* at ¶ 49. There are only 6 wards in the City.

**PLAINTIFF'S UNDISPUTED FACT NO. 52:**

Persons incarcerated at the ACI are not permitted to or able to make direct calls to the Cranston Police Department or Cranston Fire Department to request assistance for themselves or their visitors. Catlow Aff. ¶ 5 (Ex. 17); Patalano Dep. 64:19 — 64:23 (Ex. 7).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 53:**

The budget of the Cranston Police Department is not divided up in any way by city ward; rather it is one unified budget. Fung Dep. 94:12 — 94:16 (Ex. 20); Def.'s Resp. to Pls.' 2d Interrog. No. 9 (Ex. 19).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 54:**

The "beats" or territories of Cranston police are not related in any way to city wards, but rather are divided up by call volume. Patalano Dep. 24:12 — 24:18 (Ex. 7).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 55:**

The Cranston Police Department received and/or responded to a total of 467,361 calls for assistance between and including the years 2003 and 2009. Def.'s Resp. to Pls.' 2d Interrog. No. 6 (Ex. 19).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 56:**

Between and including 2003 and 2014, 370 calls to the Cranston Police Department were in some way related to the ACI or to the other facilities on the state grounds. Def.'s Resp. to Pls.' 1st Interrog. No. 3 (Bates # 00072) (Ex. 25); *see also* Patalano Dep. 12:19 — 13:13, Ex. 3 (Ex. 7).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 57:**

Of the 370 calls to the Cranston Police Department that are related to the ACI or other facilities on the state grounds, 225 involve the police taking a person from the police department to the ACI to be detained or incarcerated. Def.'s Resp. to Pls.' 1st Interrog. No. 3 (Bates # 00072) (Ex. 25); Patalano Dep. 39:21 — 40:2; 42:10 — 42:15, 82:7 — 82:17 (Ex. 7).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 58:**

Of the calls to the Cranston Police Department listed as related to the ACI, these calls would "quite frequently" be related to Harrington Hall, a homeless shelter on state grounds. Patalano Dep. 26:10 — 27:8 (Ex. 7).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 59:**

Of the 370 calls to the Cranston Police Department listed as related to the ACI, "few, if any, are related to people incarcerated" at the facility. Patalano Dep. 76:20 — 77:4 (Ex. 7).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 60:**

The budget of the Cranston Fire Department is not divided up in any way by city ward; rather it is one unified budget. Fung Dep. 94:17 — 94:20 (Ex. 20); Def.'s Resp. to Pls.' 2d Interrog. No. 11 (Ex. 19).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 61:**

The Cranston Fire Department is funded through the City's General Fund, and is in no way divided by city ward. McKenna Dep. 33:15 — 33:25, Feb. 23, 2015 (Ex. 26).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 62:**

The Cranston Fire Department divides the City of Cranston into six fire districts. These districts were last altered in 1984 when the last fire station was added. They are not related in any way to the City's six wards. McKenna Dep. 31:21 — 33:10 (Ex. 26).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 63:**

The average number of calls the Cranston Fire Department responded to annually between 2003 and 2012 was 14,121. See Def.'s Resp. to Pls.' 2d Interrog. No. 7 (Ex. 19). The Cranston Fire Department responded to approximately 1,300 calls related to the ACI between 2008 and 2014, for an average of approximately 186 calls per year. McKenna Dep. 19:8 — 19:14 (Ex. 26). Hence, in a typical year, approximately 1.3% (186 / 14,121) of the calls the Cranston Fire Department responds to are related to the ACI.

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 64:**

The City's tax revenues are deposited into a general fund, and its sewage revenues are deposited into a "sewage enterprise fund." The City does not segregate its general revenues by ward. Fung Dep. 90:3 — 90:11 (Ex. 20).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 65:**

Cranston has never used the population of the ACI as part of a claim to the state for reimbursement through the "payment in lieu of taxes" (PILOT) program for its inability to tax the state grounds that house the ACI. Def.'s Resp. to Pls.' 2d Interrog. No. 13 (Ex. 19); Fung Dep. 82:14 — 82:20 (Ex. 20).

**RESPONSE:**

The City does not dispute that the number of persons incarcerated is not used as a basis to seek reimbursement through the PILOT, but the PILOT does not fully compensate the City for the lost tax revenues and burdens on its services as a result of the ACI. Fung Dep. 63:18 – 64:12 (Defendant’s Exhibit C).

**PLAINTIFF’S UNDISPUTED FACT NO. 66:**

More than 200 jurisdictions in the United States remove incarcerated persons from their apportionment base. Cooper Suppl. Decl. ¶ 18 (Ex. 6).

**RESPONSE:**

The City does not dispute that Mr. Cooper states that there are more than 200 jurisdictions nationwide that have removed incarcerated persons from the apportionment bases. However, the City disputes any characterization that any jurisdiction was constitutionally required to do so and, if they did so remove that population, each jurisdiction did so for its own policy reasons.

**PLAINTIFF’S UNDISPUTED FACT NO. 67:**

The U.S. Census Bureau released its Advanced Group Quarters File on April 20, 2011, which was less than one month after the March 23, 2011 Rhode Island PL94-171 file and in time for the City of Cranston to use the dataset during its redistricting process. Cooper Suppl. Decl. ¶ 10 (Ex. 6).

**RESPONSE:**

The City does not dispute the time of the release of the Advanced Group Quarters File, but disputes the characterization of “in time” for the City’s redistricting process. This fact goes beyond a statement of fact.



**PLAINTIFF'S UNDISPUTED FACT NO. 68:**

Students are free to move about the Cranston community, patronize local businesses, and interact with other Cranston residents. See Fung Dep. 38:14 — 40:17 (Ex. 20).

**RESPONSE:**

Not disputed.

**PLAINTIFF'S UNDISPUTED FACT NO. 69:**

Mayor Allan Fung considers students to be part of the Cranston community, treats them just like any other constituent, and interacts with them in the course of carrying out his official duties. Fung Dep. 36:17 — 42:9 (Ex. 20).

**RESPONSE:**

Not disputed.

**PLAINTIFFS' UNDISPUTED FACT NO. 70:**

Mayor Fung talked to students at Johnson & Wales about "how they could help be part of the community and interact with city government resources if they need to." Fung Dep. 39:4-39:20 (Ex. 20).

**RESPONSE:**

Not disputed.

**PLAINTIFFS' UNDISPUTED FACT NO. 71:**

Mayor Fung considers persons who reside in Cranston and are not U.S. citizens to be part of the Cranston community and feels responsible to represent them. Fung Dep. 42:10 — 43:22 (Ex. 20).

**RESPONSE:**

The City does not dispute this fact; however, Plaintiffs' improperly limit those that the Mayor considers in making decisions about the City. The Mayor specifically indicated

that he tries to “balance what’s in the best interest of all the residents in Cranston, all 80,000.”

Fung Dep. 33:17-21 (Defendant’s Exhibit C).

CITY OF CRANSTON, RHODE ISLAND

By Its Attorneys,

PARTRIDGE SNOW & HAHN LLP

*/s/ David J. Pellegrino*

Normand G. Benoit (#1669)

David J. Pellegrino (#7326)

40 Westminster Street, Suite 1100

Providence, RI 02903

(401) 861-8200

(401) 861-8210 FAX

ngb@psh.com

djp@psh.com

DATED: August 31, 2015

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on August 31, 2015.

2562771\_1/9806-4

/s/ David J. Pellegrino