

**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,)	
)	
vs.)	
)	Civil Action No. 1:14-cv-00091-L-LDA
)	
City of Cranston, Rhode Island)	
)	
Defendant.)	

STATEMENT OF UNDISPUTED FACTS

In support of its Motion for Summary Judgment, Defendant submitted a Statement of Undisputed Facts. *See* Defendant’s Motion for Summary Judgment at 2-3. Pursuant to Local Rule LR Cv 56, as part of Plaintiffs’ Objection to Defendant’s Motion for Summary Judgment and as part of Plaintiffs’ Cross-Motion for Summary Judgment Plaintiffs hereby submit this Statement of Undisputed Facts.

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).¹

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).

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

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).

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).

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).

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).

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).

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).

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.² 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.*

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).

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.

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

² For simplicity's sake, Plaintiffs will generally refer to the population as 3,433; but nothing Plaintiffs assert will materially change if a different figure is used.

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).

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).

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).

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).

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).

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).

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).

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

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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 ¶¶ 1-4 (Ex. 22).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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.³ 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).

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).

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).

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).

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

³ 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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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).

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.

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).

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).

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

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).

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).

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).

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).

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).

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Plaintiffs,

By their attorneys:

/s/ Lynette Labinger
Lynette Labinger #1645
RONEY & LABINGER LLP
344 Wickenden St.
Providence, RI 02903
(401) 421-9794
(401) 421-0132 (fax)
labinger@ronney-labinger.com
Cooperating counsel,
American Civil Liberties Union of RI

Adam Lioz
Demos
1710 Rhode Island Avenue NW, 12th Floor
Washington, DC 20036
(202) 559-1543x112
alioz@demos.org

Brenda Wright
Demos
358 Chestnut Hill Avenue, Suite 303
Brighton, MA 02135
(617) 232-5885x13
bwright@demos.org

Sean Young
ACLU Voting Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
(212) 284-7359
syoun@aclu.org

Aleks Kajstura
Prison Policy Initiative
69 Garfield Avenue, Floor 1
Easthampton, MA 01027
akajstura@prisonpolicy.org
(Of Counsel)

Attorneys for Plaintiffs

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).

Normand G. Benoit & David J. Pellegrino
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903

/s/ Adam Lioz