

**IN THE 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. )  
 )  
City of Cranston, Rhode Island )  
 )  
Defendant. )

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**NATURE OF THE CASE**

1. This lawsuit challenges the redistricting plan adopted by the City of Cranston, Rhode Island in 2012 for election of members of the Cranston City Council and of the School Committee (hereafter, “2012 Redistricting Plan” or “Plan”) on the grounds that it violates the rights of Plaintiffs to equal representation under the Fourteenth Amendment to the United States Constitution. The 2012 Redistricting Plan creates serious and unconstitutional inequalities in the voting strength of persons residing in Wards 1, 2, 3, 4 and 5 of the City of Cranston, as compared to the voting strength of persons residing in Ward 6. This inequality results from the fact that, in creating the Plan, Defendants failed to account for the fact that Rhode Island’s sole state prison complex, the Adult Correctional Institutions (“ACI”), is located in Ward 6. The Plan treats the approximately 3,433 persons incarcerated at the ACI as if they were “residents” of Ward 6, even though the overwhelming majority of these individuals are not true

residents of the district, but instead remain residents of their pre-incarceration community for virtually all legal purposes, including voting. Because the incarcerated population constitutes a full 25% of the people who make up Ward 6, that ward has significantly fewer actual residents than any of the other five wards. As a result, every three actual residents of that ward have as much say about city and school affairs as four residents in any other ward. The voting strength of persons residing in Ward 6 is artificially inflated and the voting strength of persons residing in all other wards is consequently diluted, in violation of the one person, one vote principle established by the Fourteenth Amendment. Plaintiffs seek declaratory and injunctive relief to enforce their right to equal protection under the law pursuant to Section 1 of the Fourteenth Amendment to the United States Constitution.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 28 U.S.C. §§ 2201 and 2202. This suit is authorized by 42 U.S.C. § 1983.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

### **THE PARTIES**

4. Plaintiff Karen Davidson resides at 56 Marion Avenue in the City of Cranston, has resided at that address for more than 30 days, is over the age of 18, and is a registered voter in Cranston City Council Ward 1. She regularly votes in Cranston elections. She is a member of the American Civil Liberties Union of Rhode Island (“ACLU RI”).

5. Plaintiff Debbie Flitman resides at 51 Lindsay Lane in the City of Cranston, has resided at that address for more than 30 days, is over the age of 18, and is a registered voter in Cranston City Council Ward 4. She regularly votes in Cranston elections. She is a member of ACLU RI.

6. Plaintiff Eugene Perry resides at 4 Bayamo Lane in the City of Cranston, has resided at that address for more than 30 days, is over the age of 18, and is a registered voter in Cranston City Council Ward 1. He regularly votes in Cranston elections. He is a member of ACLU RI.

7. Plaintiff Sylvia Weber resides at 84 Shaw Avenue in the City of Cranston, has resided at that address for more than 30 days, is over the age of 18, and is a registered voter in Cranston City Council Ward 1. She regularly votes in Cranston elections. She is a member of ACLU RI.

8. Plaintiff American Civil Liberties Union of Rhode Island, Inc. (“ACLU RI”) is a duly organized non-profit, non-partisan corporation with over 1,800 members, including approximately 100 members residing in Cranston, Rhode Island who are adversely affected by the unequal population of the wards created by the 2012 Redistricting Plan. ACLU RI is dedicated to vindicating the principles of liberty embodied in the Bill of Rights to the U.S. Constitution and the right to equal protection of the laws under the Fourteenth Amendment, and submitted testimony to the Cranston City Council on the issue that is the subject of this complaint. ACLU RI brings this action in its representative capacity on behalf of its members who are adversely affected by the unequal population of the wards created by the 2012 Redistricting Plan.

9. Defendant City of Cranston, Rhode Island is a municipal corporation organized under Rhode Island law. It is responsible for establishing voting districts for the City Council of Cranston and for the School Committee. It is also responsible for overseeing the conduct of elections for the City Council of Cranston and for the School Committee, which occur every two years in even-numbered years. The next regular election will be held in September 2014. With respect to the matters complained of herein, the City of Cranston has acted and refused to act under color of state law.

### **FACTUAL ALLEGATIONS**

10. The City Council of Cranston has nine members, six of whom are elected by individual wards and three of whom are elected city-wide.

11. The six individual wards each elect one representative to the City Council of Cranston.

12. The School Committee has seven members, six of whom are elected by individual wards and one of whom is elected city-wide.

13. Each of the six individual wards elects one representative to the School Committee.

14. Rhode Island has only one state correctional complex for the entire state's correctional facilities, known as the Adult Correctional Institutions ("ACI"). It is located in the City of Cranston, in Ward 6.

15. According to 2010 Census data, the ACI houses an estimated 3,433 inmates. A significant majority of those inmates are ineligible to vote in City or School Committee elections because they are incarcerated for a felony conviction. R.I. Const. art. II, § 1. Those incarcerated persons who remain eligible to vote are not permitted to

claim the ACI as their domicile for voting purposes, but must instead vote by absentee ballot from their pre-incarceration domicile. R.I. Gen. Laws Ann. § 17-1-3.1(a) (“[a] person can have only one domicile, and the domicile shall not be considered lost solely by reason of absence for . . . [c]onfinement in a correctional facility.”)

16. Upon information and belief, the overwhelming majority of the persons incarcerated at the ACI are not residents of Cranston, much less of Ward 6 of Cranston. Instead, they remain residents of the communities where they lived prior to their incarceration. R.I. Gen. Laws § 17-1-3.1(a).

17. Upon information and belief, persons incarcerated at the ACI do not have a choice as to where they will serve their prison sentences.

18. Upon information and belief, incarcerated persons at the ACI cannot voluntarily visit or patronize public or private establishments in Cranston such as restaurants, hotels, grocery stores, gas stations, schools, movie theaters, museums, musical performances, shops, parks, playgrounds, athletic fields, theatres, churches, businesses, recreational centers, or public transportation.

19. Upon information and belief, the children of persons incarcerated at the ACI are not allowed to attend public schools in Cranston by claiming residence of the parent at the ACI.

20. For purposes of municipal and school committee redistricting, the City of Cranston includes incarcerated persons at the ACI as “residents” of the city’s Ward 6. These “residents” make up 25% of Ward 6’s population, according to Census Bureau data.

21. According to Census Bureau data, without the incarcerated population, Ward 6 has only 10,209 true constituents. Yet those constituents now wield the same political power as the roughly 13-14,000 constituents in each of the other wards.

22. According to the population distribution that the City published with its redistricting plan, the total population deviation of the 2012 Redistricting Plan is listed as approximately 5%. But without crediting Ward 6 with the entire state's incarcerated population at the ACI, the total population deviation between the districts with the lowest and highest populations is over 28%, far outside the constitutional limits on population deviation under the one person, one vote requirement of the Fourteenth Amendment.

23. As a result of the 2012 Redistricting Plan, the voting strength of individual residents living in Cranston Ward 6 is inflated and the voting strength of plaintiffs in Wards 1, 2, 3, 4 and 5 is diluted.

24. Plaintiff ACLU RI presented testimony to the City Council during the redistricting process which pointed out the severe population discrepancies that would result from including the incarcerated population of the ACI in the population base for redistricting, and urged the City Council to account for the fact that the incarcerated population in Ward 6 cannot properly be considered residents of Ward 6. The City Council nevertheless adopted a redistricting plan that relies on the ACI to make up 25% of the population in Ward 6, seriously undermining the central redistricting goal of population equality among districts.

25. Plaintiffs are suffering irreparable harm as a result of Defendants' actions complained of herein, and that harm will continue unless defendants' current practice of

counting prison populations for the purpose of apportionment is declared unlawful and enjoined.

26. Plaintiffs have no adequate remedy at law other than this action for declaratory and injunctive relief.

**CAUSE OF ACTION**  
**(Violation of Equal Protection)**

27. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

28. Section 1 of the Fourteenth Amendment to the United States Constitution provides: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

29. The “one person, one vote” principle of the Equal Protection Clause of the Fourteenth Amendment mandates that each person’s vote shall be equal to that of his or her fellow citizens.

30. The reliance on the incarcerated population of the ACI to help make up Ward 6 in the City of Cranston for purposes of drawing municipal districts inflates the voting strength and political influence of the residents in Ward 6 and dilutes the voting strength and political influence of Plaintiffs and other persons residing outside of Ward 6, in violation of the Equal Protection requirements of Section 1 of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully ask this Court to:

(1) Exercise jurisdiction over Plaintiffs’ claims brought under the United States Constitution;

(2) Declare that the 2012 Redistricting Plan adopted by the City of Cranston violates Plaintiffs' right to equal protection under Section 1 of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983;

(3) Enjoin Defendants and their agents, employees, and representatives from conducting elections for the City Council of Cranston and the School Committee under the 2012 Redistricting Plan;

(4) In the event Defendants fail or are unable to implement a redistricting plan that comports with the Constitution of the United States, enforce a court ordered redistricting plan;

(5) Award Plaintiffs the expenses, costs, fees, and other disbursements associated with the filing and maintenance of this action, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;

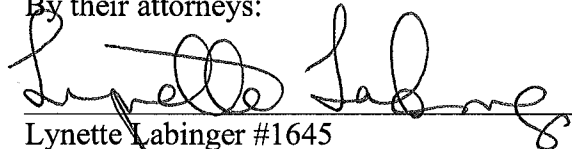
(6) Exercise continuing jurisdiction over this action during the enforcement of its judgment; and

(7) Award any other and further relief this Court deems proper and just.

DATED this 19 day of February 2014.

Plaintiffs,

By their attorneys:



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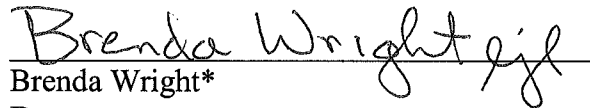
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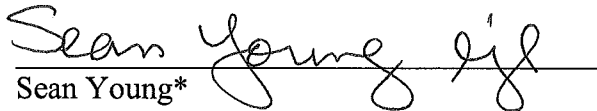
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