# 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

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

v.

CITY OF CRANSTON, RHODE ISLAND,

Defendant

## THE CITY OF CRANSTON'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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# THE CITY OF CRANSTON'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Now comes the City of Cranston, Rhode Island (the "City" or "Cranston"), through counsel, and submits this memorandum in support of its motion for summary judgment against the above-named plaintiffs ("Plaintiffs"). Requesting judgment in its favor, the City states as follows:

## I. INTRODUCTION

Historically, constitutionally, and statutorily, the United States Census Bureau's (the "Bureau") decennial census has been used as the basis to apportion legislative boundaries from congressional districts to local wards in Rhode Island and in the vast majority of the country. Since the "one person, one vote" doctrine under the Equal Protection Clause was recognized in *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court has unwaveringly found that total population, based on the Bureau's census numbers, is a proper basis to apportion legislative wards.

In 2010, the Bureau conducted its decennial census (the "Census"). Using the Census, as it had done for decades and pursuant to the state constitution, the Rhode Island General Assembly sought to develop state and federal districts based on total population. *See* R.I. Const. Art. VII, § 1, R.I. Const. Art. VIII, § 1. Once the General Assembly configured its state senate and representative districts, the City set forth to apportion its local wards.

Akin to the Rhode Island Constitution, the City's Charter requires the use of total population of inhabitants of the City based on the most recent federal decennial census when apportioning its wards. Section 2.03(b) of the City Charter states:

> The city shall be divided into six wards in such a manner that each ward shall consist of a compact and contiguous portion of the city and that all wards shall contain as nearly as possible an equal number of *inhabitants* as determined by the most recent federal decennial census, and shall request that such plan be enacted into law.

(Emphasis added). Taking to its task, the City redistricted its six wards pursuant to state and federal constitutional standards (the "2012 Redistricting"). *See* Affidavit of Mayor Fung ("Aff.") at Exhibit 1 (Mayor Fung's Affidavit is attached hereto and incorporated herein as Exhibit A).

In so doing, on April 17, 2012, the City Council held a special meeting to approve the 2012 Redistricting. Without anyone from the public appearing before it at that meeting to comment, the full City Council approved the 2012 Redistricting. In keeping with the principles declared by the Rhode Island Constitution and the apportionment of the General Assembly's districts, the City's 2012 Redistricting reapportioned its wards using the City's total population as reported by the Bureau's Census, which included 3,433 individuals incarcerated in the Adult Correctional Institutions (the "ACI Population"). *See* Compl. ¶ 15. As devised by the 2012 Redistricting, the total population deviation between the lowest and highest ward districts is approximately 5 %. Compl. ¶ 22.

For over 50 years, the use of total population has been the constitutional measuring stick under the "one person, one vote" analysis. Without any constitutional mandate otherwise, Cranston's 2012 Redistricting complies with all constitutional requirements.

## II. STATEMENT OF UNDISPUTED FACTS

1. According to the 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; *see also*, Aff. ¶ 2(a). (City of Cranston, Rhode Island's Response to Plaintiffs' First Set of Request for Admission is attached hereto and incorporated herein as

Exhibit B).

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

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

## III. STANDARD OF REVIEW

To allow summary judgment, a court must find, after studying the parties' evidentiary proffers and giving the benefit of reasonable doubt to those against whom the motion is directed, that there is no genuine issue of material fact in dispute and that the motion's proponent is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c). *Stella v. Town of Tewksbury*, 4 F.3d 53, 55 (1st Cir. 1993). Only facts in dispute which might affect the outcome of the suit will preclude the entry of summary judgment. *Rodriquez v. Furtado*, 950 F.2d 805 (1st Cir. 1991). Irrelevant or unnecessary facts in dispute shall not be considered. *Id.* Although the Court must examine the record in the light most favorable to the non-moving party, defeating a properly documented motion for summary judgment requires more than "the jingoistic brandishing of a cardboard sword." *Intern'l Ass'n of Machinists v. Winsheep Green Nursing Ctr.*, 103 F.3d 196, 199-200 (1st Cir. 1996). This is especially true in claims upon which the non-movant bears the burden of proof. In such circumstances, the non-movant must point to specific facts sufficient to create an authentic dispute in order to avoid the imposition of summary judgment. *Id.*

## IV. ARGUMENT

The issue presented is simple and straightforward:

**If the population apportionment methodology used in Cranston's 2012 Redistricting is not constitutionally forbidden, how can that Redistricting violate the Equal Protection Clause?**

Based on United States Supreme Court jurisprudence, the answer is a resounding "it cannot".

Plaintiffs will certainly goad this Court to deviate from this very simple issue. Plaintiffs have used undefined and legally dubious terms like "true constituent" to avert the Court's attention from the real question posed. Plaintiffs want this Court to assess the political value of a group of individuals based on a set of criteria that is self-serving and driven by an even smaller group's policy intentions. Indeed, Plaintiffs will question the political viability of the ACI Population without any coherent or legally cognizable distinction between the ACI Population and other arbitrarily chosen groups, such as college students, illegal immigrants, children and military personnel. A significant amount of effort will be put into differentiating among groups, but it is all irrelevant.

After hearing all of Plaintiffs' bare assertions and policy arguments, the Court will be left with only one issue: **whether Cranston's reapportionment was constitutionally forbidden**. As is explained below, the City's 2012 Redistricting is not forbidden, but rather is constitutionally appropriate. As such, summary judgment must be granted in the City's favor.

**A. The City's 2012 Redistricting Is Not Constitutionally Forbidden.**

The Complaint alleges that Cranston violates the Equal Protection Clause's doctrine of "one person, one vote" by including the ACI Population in its population base for redistricting purposes. However, there is no claim of any invidious discrimination based on protected class status, such as racial discrimination. Accordingly, Plaintiffs do not and cannot provide any legal basis for their contention.

> [The United States Supreme Court's] decision in *Reynolds v. Sims* emphasized that 'legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so.'

> 377 U.S., at 586, 84 S.Ct., at 1394. Until this point is reached, a State's freedom of choice to devise substitutes for an apportionment plan found unconstitutional either as a whole or in part, should not be restricted beyond the clear commands of the Equal Protection Clause.

*Burns v. Richardson*, 384 U.S. 73, 84-85 (1966).

The United States Supreme Court has spoken definitively as to a *legislative* decision to deviate from total population for redistricting purposes; that unswerving precedent completely and entirely refutes Plaintiffs' position. In *Burns v. Richardson*, the Supreme Court did not mince words:

> Neither in *Reynolds v. Sims* nor in any other decision has this Court suggested that the States are required to include aliens, transients, short-term or temporary residents, or **persons denied the vote for conviction of crime** in the apportionment base by which their legislators are distributed and against which compliance with the Equal Protection Clause is to be measured. **The decision to include or exclude any such group involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere. Unless a choice is one the Constitution forbids, *cf., e.g., Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed.2d 675, the resulting apportionment base offends no constitutional bar, and compliance with the rule established in *Reynolds v. Sims* is to be measured thereby.**

384 U.S. at 92 (emphasis added). While Circuit Courts may have debated certain methodologies as to the constitutionality of a **legislative decision to exclude** specific groups based on electoral or representational equality, *see Garza v. County of Los Angeles,* 918 F.2d 763, 774 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991), the Supreme Court's lasting sentiment from *Burns* deserves repeating (and has been repeated in recent cases): "So long as the legislature's choice is not constitutionally forbidden, the federal courts must respect the legislature's prerogative."

*Evenwel v. Perry*, 2014 WL 5780507 at *2 (W.D. Tex. November 5, 2014) (citing *Burns v. Richards*, 384 U.S. at 92).[1]

Essentially, Plaintiffs' complaint is a demand that the Court choose Plaintiffs' metric over that of a constitutionally accepted metric without one scintilla of law to support their position. Indeed, the complaint is long on policy-related reasons for omitting the ACI Population for redistricting purposes, but is void of any constitutional requirement for the City to do so. Plaintiffs do not and cannot allege that the City's metric—total population—is constitutionally forbidden. Plaintiffs' failure to plead a constitutionally forbidden practice is fatal and, therefore, Plaintiffs' claims fail as a matter of law. *See Evenwel*, 2014 WL 5780507 at *3.

Moreover, in order to defend their position in the summary judgment phase, Plaintiffs must present a genuine issue of material fact that the City's 2012 Redistricting is constitutionally forbidden. In order to do that, Plaintiffs must present more than an allegation or a bare assertion that the ACI Population is constitutionally forbidden to be counted. *See Intern'l Ass'n of Machinists*, 103 F.3d 196, 199-200 (defeating a properly documented motion for summary judgment requires more than "the jingoistic brandishing of a cardboard sword"). However, no such "fact" exists. Indeed, such a debate is one that the United States Supreme Court has refused to entertain: the "decision to include or exclude any such group [e.g. aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime]

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[1] The Court may have become aware of the fact that the United States Supreme Court recently issued a statement as to jurisdiction accepting the appeal of *Evenwel v. Perry*, 2014 WL 5780507 (W.D. Tex. November 5, 2014), *sub nom*, *Evenwel v. Abbott,* No. 14-940 (February 4, 2015). The Supreme Court accepted jurisdiction directly from a three panel court in the United States District Court for the Western District of Texas. There, the District Court found that the "Plaintiffs failed to plead facts that state[d] an Equal Protection Clause violation[.]" *Evenwel*, 2014 WL 5780507 at *4. In *Evenwel*, Plaintiffs challenged a legislative plan alleging that the plan violated the "one-person, one-vote" principle "never before accepted by the Supreme Court or any other circuit court: that the metric of apportionment employed by Texas (total population) results in an unconstitutional apportionment because it does not achieve equality as measured by Plaintiffs' chosen metric-voter population." *Id.* at *3.

involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere." *Burns*, 384 U.S. at 92.

**B. The City's 2012 Redistricting Meets Constitutional Requirements.**

The City used total population from the Bureau's Census as its base for its 2012 Redistricting. In so doing, it created wards of roughly 13,000 inhabitants per ward. Ward 6 has a population of 13,642. *See* Aff. ¶ 2. Based on the total population and ward apportionment, the City's 2012 Redistricting has a total deviation of 5.8 %; a deviation far less than ten (10) percent. *See* Aff. ¶ 2. Accordingly, the City's 2012 Redistricting meets the "one person, one vote" doctrine of the Equal Protection Clause.

The Supreme Court "reaffirm[ed] its holding [in *Reynolds v. Sims*] that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, . . . , as nearly of equal population as is practicable." *Mahan v. Howell*, 410 U.S. 315, 324-25 (1973) (quoting *Reynolds*, 377 U.S. at 577). The fact that a state's apportionment plan is based on total population is not, in and of itself, the sole determining factor; the deviation of populations among legislative districts must also fall within acceptable bounds. *Brown v. Thompson*, 462 U.S. 835, 842 (1983). "[M]inor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facia case of invidious discrimination under the Fourteenth Amendment so as to require justification by the state." *Id.* (quoting *Gaffney v. Cummings*, 412 U.S. 735, 745 (1973)). Therefore, "for deviations below 10%, the state is entitled to a presumption that the apportionment plan was the result of an 'honest and good faith effort to construct districts . . . as nearly of equal population as is practicable.'" *Daly v. Hunt*, 93 F.3d 1212, 1220 (4th Cir. 1996) (quoting *Reynolds*, 377 U.S. at 577). Accordingly, "[i]f the maximum deviation is less than 10 %, the population differential will be considered *de minimis* and will not, by itself, support a claim of vote dilution." *Daly v.*

*Hunt*, 93 F.3d 1212, 1217-18 (4th Cir. 1996). This *de minimis* deviation applies to legislatively enacted apportionment plans for state or local representatives. *Id.* at 1218 n. 4 (citations omitted).

The City's 2012 Redistricting followed the constitutional mandates laid out by the United States Supreme Court: (1) it used total population as a base; and (2) the maximum deviation among the ward populations was significantly less than the ten (10) percent ceiling. There is no material fact that Plaintiffs can show to rebut the constitutionality of the 2012 Redistricting. Accordingly, summary judgment must enter for the City and against Plaintiffs.

### C. Plaintiffs Rely on Argument and Policy Considerations Not Recognized by Constitutional Standards.

Plaintiffs' action seeks judicial intervention in favor of a discrete policy initiative that the United States Supreme Court has explicitly refrained from encroaching upon—the counting (or more accurately in this case, the non-counting at all) of incarcerated population for redistricting purposes. The Plaintiffs seem to approach this in a number of vague and ambiguous ways: (1) deliberately interchanging legal terms of art such as resident, domicile and constituent; (2) misusing a perverse notion of "resident" status in the "one person, one vote" analysis; (3) referencing irrelevant statutes; and (4) giving legal effect to a self-created term—"true constituent"—where no such legal or factual effect exists.

#### 1. Plaintiffs' Demands Run Contrary to Clear Supreme Court Precedent

From the outset, it is clear that Plaintiffs' goal is unprecedented in the judicial context: seeking to judicially define a subset of people as "true constituents" so as to self-servingly define who should be counted in the total population base and who should not. This flies in the face of over a half-century's worth of United States Supreme Court jurisprudence.

Moreover, the founders were well aware that along with those able to vote, elected representatives would have a duty to and represent those without the right to vote. *See* Madison, James, *The Federalist No. 54*. At the time of the Constitutional debate, "the framers were aware that this apportionment and representation base would include categories of persons who were ineligible to vote—women, children, bound servants, convicts, the insane, and, at a later time, aliens." *Garza*, 918 F.2d at 774 (citing *Fair v. Klutznick*, 486 F.Supp. 564, 576 (D.D.C. 1980)). Yet despite the knowledge of these groups who were or are still unable to vote, the Supreme Court continues to use total population (inclusive of those groups above) as the appropriate apportionment base for the "one person, one vote" doctrine.

Since *Reynolds v. Sims*, *supra*, a number cases have tested the "one person, one vote" doctrine in the circuits. In weighing in, however, the Circuit Courts have generally refused to entertain the debate. Indeed, the Court that actually debated the issue (and unsurprisingly, the most popular for discussion among legal academic circles) is the Ninth Circuit's *Garza*, *supra*, opinion where the majority and the dissent sparred over what was dubbed "representational equality" versus "electoral equality". Intellectually stimulating as this dispute may be, this Court should not be distracted from two main points: (1) the *Garza* **majority** followed clear United States Supreme Court guidance: "The purpose of redistricting is not only to protect the voting power of citizens; a coequal goal is to ensure 'equal representation for equal numbers of people.'" *Garza*, 918 F.2d at 775 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531, *reh'g denied*, 395 U.S. 917 (1969)); and (2) the debate itself is one that the United States Supreme Court has cautioned courts to avoid.

Despite the outlying nature of the Ninth Circuit's internal disagreement, since *Garza*, courts have looked back to the Supreme Court's guiding principle that such a debate

between the appropriate form of representation is one that the judiciary should not entertain and, accordingly, have not chosen one form of equality over the other. The Fourth Circuit put it succinctly:

> What, then, should courts do when faced with a situation, such as presented here, where electoral equality and representational equality cannot be achieved simultaneously? This is quintessentially a decision that should be made by the state, not the federal courts, in the inherently political and legislative process of apportionment. *See Burns,* 384 U.S. at 92, 86 S.Ct. at 1296–97 ("The decision to include or exclude any such group involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere.").

*Daly*, 93 F.3d at 1227.

Also, in *Chen v. City of Houston*, 206 F.3d 502 (5th Cir. 2000), the Fifth Circuit was confronted with a very similar question as the one before this Court. In *Chen*, even though conceding that total population is the appropriate measurement when those ineligible to vote or to register to vote, i.e. felons, are evenly distributed, **those plaintiffs** espoused the argument that

> when . . . a districting body knows that large numbers of those ineligible to vote are disproportionately concentrated in certain areas, it can no longer in good faith use total population as a proxy for potential voters.

206 F.3d at 524. However, *Chen* **did not** accept those plaintiffs' assertion and upheld the lower court's decision to allow total population to be used as the measuring base. *Id.* at 528 ("The propriety under the Equal Protection Clause of using total population rather than a measure of potential voters also presents a close question. But in face of the lack of more definitive guidance from the Supreme Court, we conclude that this eminently political question has been left to the political process.")

The *Chen* Court analyzed the decisions regarding the "one person, one vote" doctrine, particularly the Fourth Circuit, *Daly v. Hunt*, 93 F.3d 1212 (4th Cir. 1996) and Judge

Kozinski's dissent in *Garza*. With regard to *Daly, Chen* indicated that in "confronting the analogous issue of districting when persons below the voting age were unevenly distributed . . . the choice between total population or a measurement of potential voters is left to the legislative body." *Chen*, 206 F.3d at 524 (citing *Daly*, 93 F.3d at 1227)). Otherwise, a reapportionment plan "must ordinarily achieve the goal of population equality with little more than de minimus variation." *Chapman v. Meier*, 420 U.S. 1, 27 (1975).

Accordingly, like *Chen* and others, the Plaintiffs cannot show a prima facie case that Cranston has violated **any** constitutional standard. The 2012 Redistricting used total population and its maximum deviation is well below ten (10) percent. Therefore, Cranston has adhered to this standard. There being not one constitutional prohibition to using such a standard, judgment must enter for the City.

2. Plaintiffs' Misplaced Use of "Resident" Status Is Deliberate and Improper

Throughout their complaint, Plaintiffs refer to "resident" or "domicile" as a component of determining whether someone is or is not to be rightfully counted in "total population" under the "one person, one vote" doctrine of the Equal Protection Clause. More problematic to their arguments, Plaintiffs cite to R.I. Gen. Laws § 17-1-3.1(a) to create ambiguity where none exists.

First, neither Rhode Island law nor Cranston's Charter reference residency as a prerequisite when apportioning their legislative boundaries. In fact, Cranston's Charter is extremely clear by using the term "inhabitant". *See* Charter at § 2.03. Cranston has made the political decision to apportion its wards by using total inhabitants in Cranston on the day of the Bureau's Census count. Inhabitant does not reference or relate to eligibility to vote, residency requirements or the like.

As has been held and continually upheld, such a decision when using total population as a base is subject to the legislative body in question. "So long as the legislature's choice is not constitutionally forbidden, the federal courts must respect the legislature's prerogative." *Evenwel*, 2014 WL 5780507 at *2 (citing *Burns v. Richards*, 384 U.S. at 92).

Second, Plaintiffs' citation to § 17-1-3.1(a) is dubious at best. Title 17, Chapter 1 of the Rhode Island General Laws is an act establishing election laws. More specifically, § 17-1-3.1 is entitled "Residence for voting purposes." But whether a person can vote, actually votes, or where he/she votes is irrelevant for establishing a population base for apportionment of districts.

As this Court is aware, the distributed population consists of several groups of individuals, some that are not allowed to vote, e.g., illegal and not-yet nationalized immigrants, children; others that have the right to vote, such as college students who may or may not choose to partake in the process (or who may vote elsewhere); military personnel temporarily stationed in a given district; and others. However, the ability or choice to vote is not a criterion for assessing the overall population and all of the groups listed above are counted within the total population. In fact, Plaintiffs' own expert, Mr. William S. Cooper, acknowledged as much: "The total population is what matters[.]" Deposition of William S. Cooper at 55, line 7. (Mr. Cooper's deposition reference is attached hereto and incorporated herein as Exhibit C)

There is no distinction, particularly from an Elections Law standpoint, that would differentiate the ACI Population from any of the other aforementioned groups. Moreover, the United States Supreme Court has already cautioned lower courts that the "decision to include or exclude any such group [e.g. aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime] involves choices about the nature of representation with

which we have been shown no constitutionally founded reason to interfere." *Burns*, 384 U.S. at 92.

But yet, Plaintiffs want this Court to draw a political distinction among various groups and their propriety in being counted. As is well-known many apolitical groups can be concentrated in any population—students, illegal immigrants, minors, as well as incarcerated individuals. Despite these varying degrees, Plaintiffs highlight and seek to disenfranchise the ACI Population whether or not those individuals vote or not.[2]

Furthermore, § 17-1-3.1 does not limit its voter residency requirements to those who are incarcerated. Section 17-1-3.1 belies Plaintiffs very contention. It is true that § 17-1-3.1(a)(2)—for voting purposes—indicates that a person is not automatically domiciled in a correctional facility. Additionally, however, § 17-1-3.1(a)(4) indicates that "[a]ttendance as a student at an academic institution" similarly disqualifies such a domicile for voting purposes as well. Despite the clarity of this statute—that it is for voting purposes only and it equally disqualifies correctional facilities and academic institutions as proper domiciles—Plaintiffs demand an arbitrary distinction between correctional facilities and at least the three other forms of domicile prohibitions. Plaintiffs cannot provide a basis to require the Court to make such a distinction.

It is clear that based on their incoherent cherry-picking of laws and creating definitions of "true constituents" out of thin air, Plaintiffs want this Court to be the first to delve into the very representational nature that the *Burns* Court (and those subsequent) have found unnecessary to interfere because it is to be left to the legislature. *Chapman v. Meier*, 420 U.S. at 27 ("We say once again what has been said on many occasions: reapportionment is primarily the

[2] Only the felon incarcerated population cannot vote in Rhode Island. *See* R.I. Const. Art. II, § 1. Pursuant to the R.I. Department of Corrections, only thirty seven (37) percent of the ACI Population that Plaintiffs seek to exclude cannot vote. *See* Affidavit of Caitlin O'Connor at ¶ 4 (Exhibit D).

duty and responsibility of the State through its legislature or other body, rather than of a federal court."). Who is or is not a "true constituent" is not found in the Equal Protection glossary and is a question better left to the political branches.

**D. A Matter of State Law**

Plaintiffs want this Court to decide this issue strictly as it relates to Cranston as if a broader effect is not at issue. However, it is not that simple. Cranston's 2012 Redistricting is also state law. *See* Plaintiffs' Response to Defendant's Request for Admission No. 13. (Plaintiffs' Response to City of Cranston's Request for Admission is attached hereto and incorporated herein as Exhibit E).

In accordance with the City Charter, the 2012 Redistricting was passed by both houses of the General Assembly and became state law. On June 26, 2012, the amendments to the local reapportionment of the City were "ratified, confirmed, validated and enacted" by the General Assembly. *See* 12-LA135, 12-LA136. Therefore, the effect of requiring a court ordered redistricting would be to render the State law unconstitutional.

Moreover, the Charter itself, which requires the City to apportion its wards by "inhabitants", is a state law. By Chapter 183 of the Rhode Island Public Laws of 1963, § 2.03 was "validated, ratified and confirmed" by the General Assembly thereby giving it the force and effect of state law. As was expounded on *supra*, the City Charter uses the term "inhabitant", which has been interpreted to include the ACI Population since at least 1963 without challenge. In order for the City to have omitted the ACI Population from redistricting, the City would have had to ignore the Charter and state law. In order for this Court to require a redistricting by omitting the ACI Population, it must declare the Charter and state law unconstitutional.

Accordingly, the use of total population in allocating its wards is not just the City's prerogative, it is also the State of Rhode Island's. Plaintiffs' oversimplification of merely

"not counting" this population evidences the lack of true consideration of all interested parties and stakeholders, particularly the ACI Population.

## V. CONCLUSION

Should the City's theme not be clear already or at the risk of being a "broken record", Plaintiffs cannot make their case because there is no constitutional prohibition from using total population from the Bureau's Census to apportion its wards. To the contrary, it is the constitutional standard. Moreover, Cranston's 2012 Redistricting is well below the maximum deviation among its wards giving it presumptive constitutional validity. The attack being leveled by Plaintiffs is based on policy considerations that are better left to the political branches. Accordingly, there being neither a genuine issue of material fact nor any legal basis to justify Plaintiffs' claims, judgment must enter for the City.

CITY OF CRANSTON, RHODE ISLAND

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**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 July 9, 2015.

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