

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,  
NAACP CONNECTICUT STATE  
CONFERENCE, JUSTIN FARMER,  
GERMANO KIMBRO, CONLEY MONK, JR.,  
GARRY MONK, and DIONE ZACKERY,

*Plaintiffs,*

v.

DENISE MERRILL, SECRETARY OF  
STATE, and EDWARD LAMONT, JR.,  
GOVERNOR,

*Defendants.*

No. 3:18-cv-01094-JBA

AMENDED COMPLAINT  
FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**INTRODUCTION**

1. Connecticut's State legislative Redistricting Plan, adopted in 2011 and scheduled for use in the 2020 election cycle, violates the "one person, one vote" requirement of the Fourteenth Amendment because the plan is based on unlawful prison gerrymandering.

2. "Prison gerrymandering" is the practice whereby a state counts incarcerated people as residing in the state facility where they are imprisoned, rather than at their pre-incarceration address, for the purpose of drawing lines for state legislative districts.

3. Connecticut's incarcerated individuals are disproportionately African American and Latino, and many maintain a permanent domicile in the State's urban centers. Nevertheless, many of these individuals are incarcerated in correctional facilities that the State has located primarily in rural, lightly populated, and predominantly white parts of Connecticut.

4. Persons incarcerated in districts far from their home communities have no meaningful connection to the towns in which they are incarcerated. They are separated from their families and friends and have little contact with citizens residing immediately outside the walls of the prisons.

5. Moreover, most incarcerated people in Connecticut cannot vote under state law and have no contact with the representatives of the districts in which they are incarcerated. Those few incarcerated people who can vote are explicitly required to do so as residents of their pre-incarceration domiciles under Connecticut law.

6. Despite the welcome decline in the State's overall prison population, the disproportionate incarceration of African American and Latino residents, and their confinement in distant, predominantly white districts, harms the communities they leave behind, as well. The voting power of these communities is diluted when incarcerated persons are removed from the apportionment base. Families bear severe emotional and financial hardships, neighborhoods experience economic and social instability, and entire communities lose their voice in State affairs when fathers, sons, daughters, and mothers are shipped to remote, rural prisons.

7. The Supreme Court has long recognized the principle of "one person, one vote," which requires representative districts to contain roughly the same number of people. Variations of ten percent or more in the population of electoral districts create a prima facie case of unconstitutional discrimination under the Fourteenth Amendment and shift the burden of justification to the State.

8. The ten percent benchmark is not a safe harbor, however. The ultimate inquiry is one of rationality, and plans must be free from any taint of arbitrariness or discrimination. As the Second Circuit recently affirmed in this case, even if the ten percent threshold is not met, an

apportionment scheme may still constitute invidious discrimination if, designedly or otherwise, it operates to minimize or cancel out the voting strength of racial elements of the voting population.

9. Because Connecticut counts incarcerated people where they are incarcerated rather than where they permanently reside, the actual number of constituents (exclusive of those incarcerated) in as many as nine Connecticut House districts is more than ten percent smaller than the number of constituents in the State's largest House district. The number of constituents in one Senate district is more than nine percent smaller than the largest Senate district.

10. Permanent residents of the prison-gerrymandered districts thus have more influence over local affairs and greater voting power than residents of other districts, particularly the urban districts that many incarcerated people call home.

11. Defendants' prison gerrymandering violates the "one person, one vote" principle of the Fourteenth Amendment to the United States Constitution. It impermissibly inflates the voting strength of predominantly white voters residing in certain Connecticut House and Senate districts, as compared to the voting strength of persons residing in all other House and Senate districts. Prison gerrymandering also dilutes the votes of residents in incarcerated people's home communities, who are disproportionately African American and Latino.

12. As a result, prison gerrymandering operates to minimize the voting strength of the African American and Latino elements of the voting population of Connecticut, and thus the ability of these groups to advocate for their interests in the political process and exercise their rights to full membership in our democratic society.

13. Plaintiffs seek a declaration that Defendants' use of prison gerrymandering in the 2011 Redistricting Plan, or any subsequent Redistricting Plan that also engages in substantially

similar prison gerrymandering, violates the Fourteenth Amendment to the U.S. Constitution; and an injunction against the use of the 2011 Redistricting Plan in the 2020 elections.

### **JURISDICTION AND VENUE**

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1357. This suit is authorized by 42 U.S.C. § 1983.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Plaintiffs NAACP Connecticut State Conference, Justin Farmer, Germano Kimbro, Conley Monk, Jr., Garry Monk, and Dione Zackery and all Defendants reside in the District of Connecticut, the facts that give rise to this suit occurred in the District of Connecticut, and no real property is involved in this dispute.

16. This Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

### **PARTIES**

17. Plaintiff National Association for the Advancement of Colored People (“NAACP”) is a non-profit, non-partisan corporation with over 300,000 members, including approximately 5,000 members residing in Connecticut, many of whom are registered to vote. Many NAACP members in Connecticut who are registered voters reside in State legislative districts that are underrepresented as a result of prison gerrymandering, as set forth below. Because the NAACP has members across the State, it will continue to have members who reside in districts underrepresented as a result of prison gerrymandering when the 2021 Redistricting Plan again uses the practice.

18. The NAACP works to enhance civic engagement among African American communities by increasing voter registration and through get-out-the-vote efforts. In its national

get-out-the-vote effort in 2016, the NAACP targeted fifteen states, including Connecticut, which in 2012 had lower than expected African American voter turnout, with a campaign titled “Our Votes Matter.” The NAACP relies on a fair and effective electoral process to help achieve its organizational missions of improving civic engagement, education, criminal justice, environmental justice, economic opportunity, and healthcare.

19. Members of the NAACP pay dues, elect branch officers, and are eligible to serve on the NAACP Board of Directors. The NAACP’s policies and procedures are established at an annual national convention by voting delegates representing each NAACP State Conference, Local Branch, and Youth Unit, elected by the members of those units.

20. In addition, the NAACP has had to divert organizational resources, including staff time, travel expenses, and other costs, to address unlawful prison gerrymandering in Connecticut.

21. The NAACP brings this action in its representative capacity on behalf of its members who are adversely affected by the unequal population of the legislative districts created by engaging in unlawful prison gerrymandering, and in its organizational capacity.

22. Plaintiff Connecticut State Conference of the National Association for the Advancement of Colored People (“NAACP-CT”) is a non-profit, non-partisan organization with approximately 5,000 members, all of whom reside or work in Connecticut, and many of whom are registered to vote. Many NAACP members in Connecticut who are registered voters reside in State legislative districts that are underrepresented as a result of prison gerrymandering, including members that reside in current House Districts 88, 91, 94, 95, 96, and 97, among others. Because NAACP-CT has members across the State, it will continue to have members who reside in districts that are underrepresented as a result of prison gerrymandering when the 2021 Redistricting Plan again uses the practice.

23. NAACP-CT seeks to support the mission of the NAACP by organizing its members in Connecticut to advocate for political, educational, social, and economic equality of rights. NAACP-CT devoted its April 2018 conference to criminal justice reform with the opportunity for attendees to meet candidates for Governor of Connecticut. NAACP-CT's 2019 annual convention, to be held in October, will also include workshops on criminal justice reform and voter empowerment.

24. Members of NAACP-CT branches elect voting delegates who, in turn, elect the Executive Committee of the NAACP-CT every two years. Members of NAACP-CT branches are eligible to serve on the NAACP-CT Executive Committee if duly elected. Members of NAACP-CT branches also elect voting delegates to represent NAACP-CT at the NAACP national convention.

25. In addition, the NAACP-CT has had to divert organizational resources to address unlawful prison gerrymandering in Connecticut.

26. NAACP-CT brings this action in its representative capacity on behalf of its members who are adversely affected by the unequal population of the legislative districts created by engaging in unlawful prison gerrymandering, and in its organizational capacity as well. NAACP-CT has members that reside in current House Districts 88, 91, 94, 95, 96, and 97, among others.

27. Plaintiff Justin Farmer is a 25 year-old Jamaican-American resident of Hamden, Connecticut and a duly qualified elector eligible to vote in local, state, and federal elections. He has lived in Connecticut his entire life and currently resides at 231 Butler Street, Hamden, Connecticut. Mr. Farmer is a registered voter in Connecticut State House District 94 and regularly votes in state and local elections. Mr. Farmer is a student at Southern Connecticut State

University in the Political Science Department, where he hopes to earn his B.A. in 2020. In 2017, he was elected to the Hamden Legislative Council, the town legislature, representing the Fifth District, which includes some of the poorest and wealthiest residents of Hamden, and he is a candidate for re-election in November 2019. Mr. Farmer wears headphones to manage his Tourette's Syndrome, a movement disorder, which has contributed to law enforcement stopping Mr. Farmer more than thirty times on the street. Mr. Farmer has close family members who have been incarcerated. He is a member of the NAACP and NAACP-CT.

28. Plaintiff Germano Kimbro is a 59 year-old African American resident of New Haven, Connecticut and a duly qualified elector eligible to vote in local, state, and federal elections. He has lived in Connecticut his entire life and currently resides at 126 Spring Street, New Haven, Connecticut. Mr. Kimbro is a registered voter in Connecticut State House District 95 and regularly votes in state and local elections. In 2019, he was a candidate for a New Haven Board of Alders seat in the Democratic primary. He also regularly participates in voter registration drives and volunteers for local, state, and federal campaigns.

29. Mr. Kimbro, a graduate of Springfield College, has worked for decades to reform the criminal justice system. As a young man, Mr. Kimbro was incarcerated, at which point he turned to education and service. Once he returned to the community, Mr. Kimbro dedicated himself to assisting people in overcoming the stigma of criminal convictions and poverty. He has worked in a variety of human services positions and helped to launch the Pardon Me Program, through which he educated hundreds of Connecticut residents so that they could apply for pardons. He has worked for numerous State legislative reforms, including to establish the Connecticut Fatherhood Initiative (P.A. 99-193), to "Ban the Box" (P.A. 16-83), and to limit

solitary confinement (P.A. 17-239). He is a member of Just Leadership USA and a lifelong member of the NAACP and NAACP-CT.

30. Plaintiff Conley Monk, Jr. is a 71 year-old African American resident of Hamden, Connecticut and a duly qualified elector eligible to vote in local, state, and federal elections. He has lived in Connecticut for nearly his whole life, and currently resides at 2360 Shepard Avenue, Hamden, Connecticut. Mr. Monk is a registered voter in Connecticut State House District 88, and regularly votes in state and local elections. Mr. Monk is also a Marine Corps combat veteran of the Vietnam War, the Director of the National Veteran's Council for Legal Redress, a Connecticut-based Veterans service organization, and participates in community development through his family organization, the Monk Council. Mr. Monk is a member of the NAACP and NAACP-CT.

31. Plaintiff Garry Monk is a 60 year-old African American resident of New Haven, Connecticut and a duly qualified elector eligible to vote in local, state, and federal elections. He has resided in Connecticut for more than twenty years, and currently lives at 245 Highland Street, New Haven, Connecticut. Mr. Monk is a registered voter in Connecticut State House District 94, and regularly votes in state and local elections. Mr. Monk is a veteran of the U.S. Air Force and serves as the Executive Director of the National Veteran's Council for Legal Redress, participates in community development through the Monk Council, is a Board member of the New Haven Fair Rent Housing Commission, and is an active member of the Thomas Chapel Church of Christ. Mr. Monk is a member of the NAACP and NAACP-CT.

32. Plaintiffs Conley and Garry Monk are brothers, and have a nephew who was incarcerated in Enfield Correctional Institution. This nephew was supported by the Monk family while incarcerated, and he returned to live in New Haven after his release.

33. Plaintiff Dione Zackery is a 51 year-old African American resident of New Haven, Connecticut and a duly qualified elector eligible to vote in local, state, and federal elections. She currently resides at 1435 Quinpiac Avenue, Unit 5, New Haven, Connecticut. Ms. Zackery is a registered voter in Connecticut State House District 97 and regularly votes in state and local elections. Ms. Zackery has been a registered voter since age 18, when she first registered to vote in Connecticut. She has multiple family members who have been incarcerated in Connecticut prisons. Ms. Zackery's former partner, the father of her children, is formerly incarcerated. One of Ms. Zackery's cousins, who is currently incarcerated, resided with her before entering prison. While her cousin has been incarcerated, they have communicated with each other by mail and over the phone. Ms. Zackery is a member of the NAACP and NAACP-CT.

34. Defendant Denise Merrill is a resident of Connecticut and is Connecticut's Secretary of State and Chair of the State Elections Board. She is sued in her official capacity. Secretary of State Merrill is the Constitutional officer of the State charged with publishing the legislative district map and conducting elections in Connecticut in a manner consistent with federal constitutional and statutory requirements.

35. Defendant Edward Lamont, Jr. is the Governor of Connecticut. He is sued in his official capacity. Governor Lamont is the Constitutional officer of the State charged with appointing Reapportionment Commissions for the purposes of adopting State house and senatorial districting plans.

## **FACTUAL ALLEGATIONS**

### ***A. Mass Incarceration and Prison Construction in Connecticut***

36. In recent decades, the United States' incarceration rate has surged. Since the 1970s, the United States penal population exploded from approximately 300,000 to more than 2 million. The United States imprisons more people, per capita, than any other nation.

37. Persons with felony convictions are more likely to become homeless and lose custody of their children, and less likely to find employment and complete their education.

38. African Americans and Latinos experience especially high rates of imprisonment and tend to live in racially and economically segregated neighborhoods. As a result, the social and political effects of imprisonment are focused in their communities.

39. Connecticut is no exception. The State has the fifth-highest rate of incarceration of African American men in the country. Whites outnumber African Americans and Latinos by an almost 3-to-1 ratio in the State's general population, but there are twice as many African Americans and Latinos as whites in Connecticut prisons.

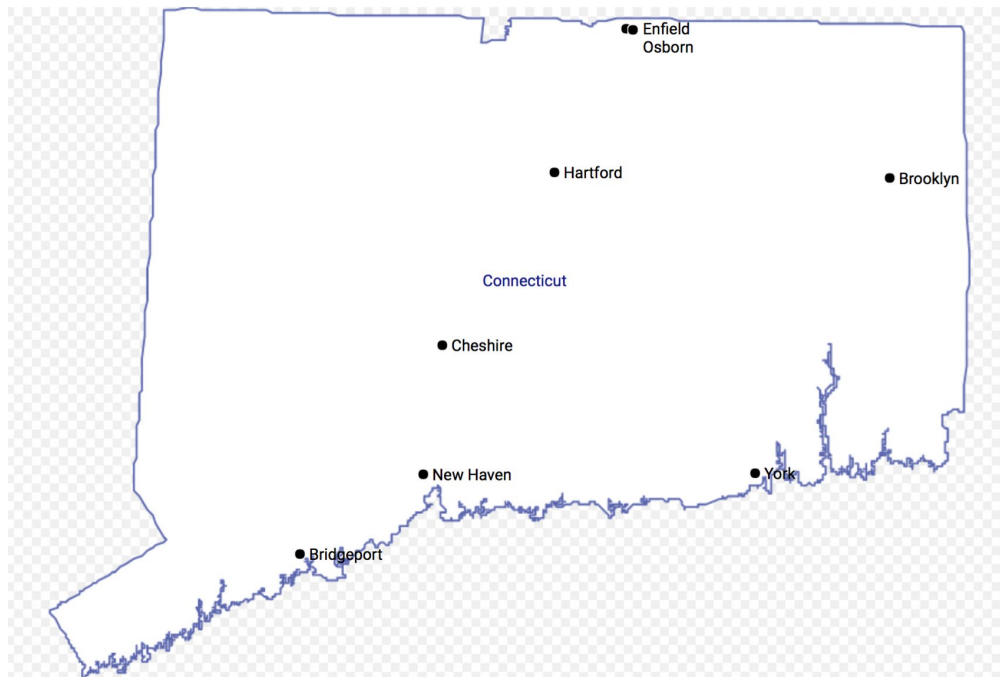
40. African Americans in Connecticut are almost ten times more likely to be incarcerated than whites, and Latinos are almost four times more likely to be incarcerated than whites.

41. These disparities in the criminal justice system occur in the context of widespread racial inequalities in Connecticut, including in employment, economic stability, education, and health care.

42. The problem of prison gerrymandering is particularly severe in Connecticut because of the State's concentration of incarcerated individuals at facilities that are significant distances from their home communities.

43. Before 1980, Connecticut maintained correctional facilities at eight sites dispersed across the State, as illustrated in Figure 1.

Figure 1: Prisons in Connecticut Before 1980



44. The prison population in Connecticut increased from 3,828 in 1980 to 18,416 in 2010. This increase coincided with a surge of prison construction and expansion projects.

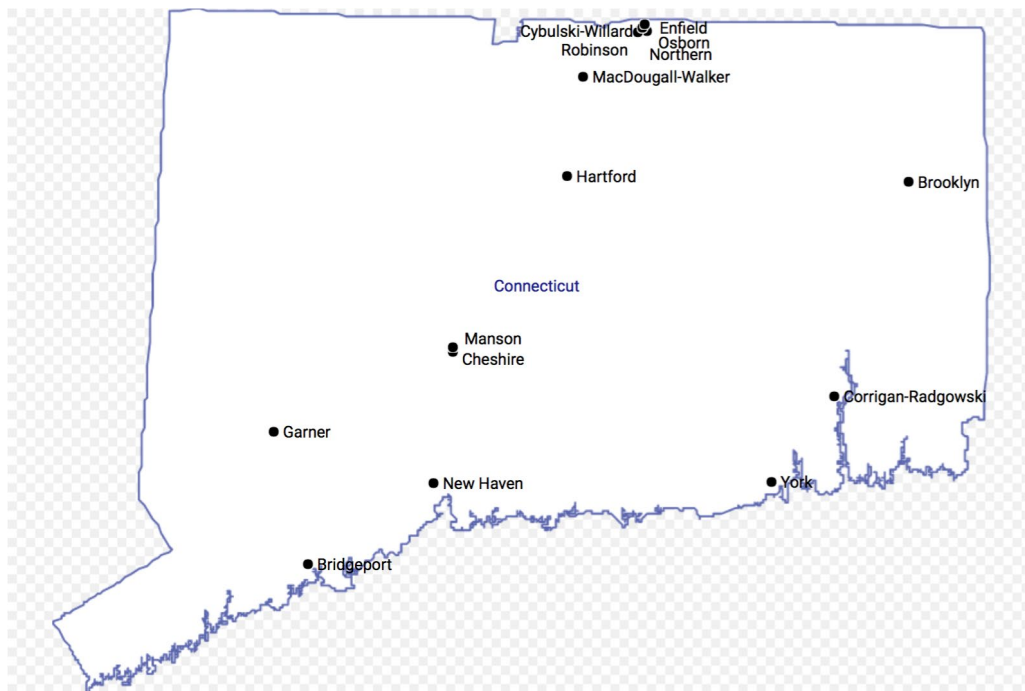
45. Of the twenty-one prison expansion projects Connecticut undertook between 1842 and 2003, fifteen—nearly all—were completed between 1988 and 1998. During this decade, the State expanded seven facilities: Manson Youth Institution, York Correctional Institution, Brooklyn Correctional Institution, Hartford Correctional Center, New Haven Correctional Center, Cheshire Correctional Institution, and MacDougall-Walker Correctional Institution.

46. As Connecticut incarcerated more of its residents over the past three decades, the State concentrated prisons in a few discrete geographic areas whose economies became dependent on these correctional facilities.

47. Out of ten prison expansion projects finished between 1990 and 1997, the State completed half within three adjacent cities—Enfield, Somers, and Suffield—along the northern border of central Connecticut, a region that already had three existing prisons.

48. Connecticut's correctional facilities are now even more concentrated in two areas: the Enfield-Suffield-Somers region along the northern border and Cheshire, in the central part of the State. The distribution of correctional facilities as of the 2010 census is set forth in Figure 2.

Figure 2: Prisons in Connecticut in 2010



49. The overall prison population has declined in recent years, but the residual population in the Department of Correction's fourteen currently-operating prisons remains concentrated in lightly-populated or rural areas.

50. Areas in which prisons are concentrated tend to be disproportionately white compared to the State as a whole. For example, Enfield, Somers, and Cheshire are each over 80% white, excluding people who are incarcerated in those communities. The majority of the

African American population in Enfield, Somers, and Cheshire is incarcerated—including roughly 95% of the African Americans residents of Somers. Enfield, Somers, and Cheshire each have 10% or less African American and Latino residents, excluding people who are incarcerated.

Table 1: Racial Makeup of Prison Communities

| <b>Rural Area with Prison Concentration</b>                                                                                                                                                                                                                                                                                                                                                                      | <b>Proportion of White Residents</b> | <b>Proportion of African American Residents</b> | <b>Proportion of Latino Residents</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------------------------------|---------------------------------------|
| <b>Enfield</b> (Willard-Cybulski, Robinson, and Enfield Correctional Institutions)                                                                                                                                                                                                                                                                                                                               | 84%                                  | 2%                                              | 8%                                    |
| <b>Somers</b> (Osborn and Northern Correctional Institutions)                                                                                                                                                                                                                                                                                                                                                    | 92%                                  | 0%                                              | 2%                                    |
| <b>Cheshire</b> (Cheshire Correctional Institution and Manson Youth Institution)                                                                                                                                                                                                                                                                                                                                 | 85%                                  | 1%                                              | 4%                                    |
| <b>Connecticut</b>                                                                                                                                                                                                                                                                                                                                                                                               | 69%                                  | 10 %                                            | 15%                                   |
| Tables 1, 2, 4, and 5 exclude incarcerated persons. The analysis is based on 2012-2016 American Community Survey (ACS) five-year estimates and July 2014 Connecticut Department of Corrections Monthly Statistics, the midpoint of the ACS data. For comparability, the racial groups listed from the ACS data are for “White alone”; “Black or African American alone”; and “Hispanic or Latino (of any race).” |                                      |                                                 |                                       |

51. A large and disproportionate number of Connecticut’s incarcerated individuals are African American or Latino persons who maintained a permanent address, pre-incarceration, in one of the State’s three urban centers of Hartford, New Haven, and Bridgeport, and their immediate suburbs.

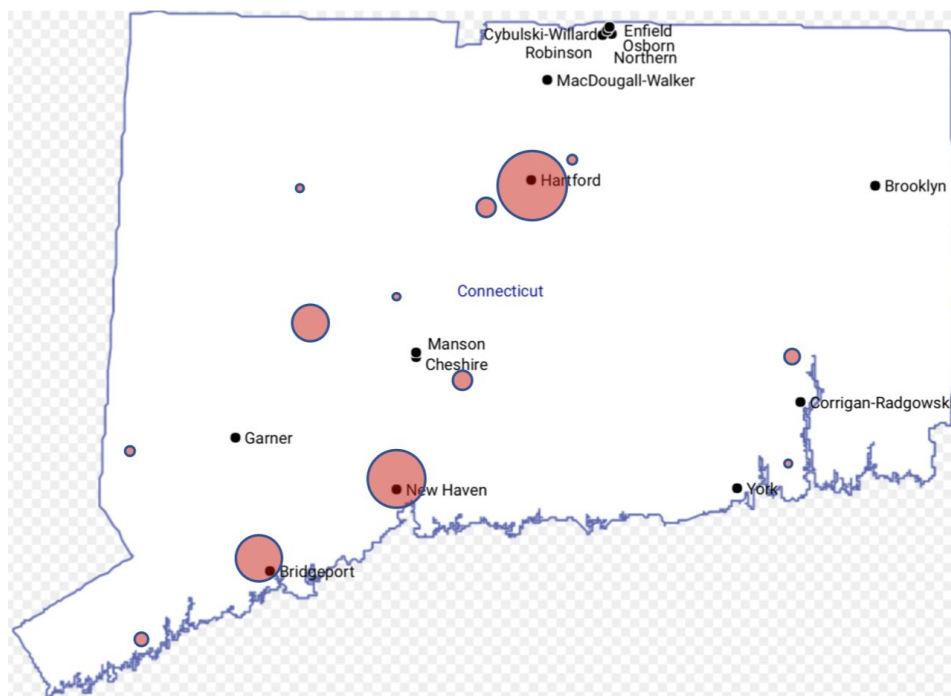
52. Those urban centers of Hartford, New Haven, and Bridgeport are home to a higher proportion of African American and Latino residents than the State as a whole, as the table below demonstrates—the converse of the areas where prisons are concentrated.

Table 2: Racial Makeup of Urban Centers

| Urban Center | Proportion of White Residents | Proportion of African American Residents | Proportion of Latino Residents |
|--------------|-------------------------------|------------------------------------------|--------------------------------|
| Hartford     | 15%                           | 35%                                      | 44%                            |
| New Haven    | 31%                           | 33%                                      | 29%                            |
| Bridgeport   | 22%                           | 33%                                      | 39%                            |
| Connecticut  | 69%                           | 10 %                                     | 15%                            |

53. The pre-incarceration addresses of Connecticut's incarcerated people are illustrated in Figure 3. The sizes of the colored circles correspond to the percentage of Connecticut's incarcerated individuals who resided in that particular geographic area immediately prior to incarceration.

Figure 3: Where Incarcerated Residents Lived Prior to Incarceration

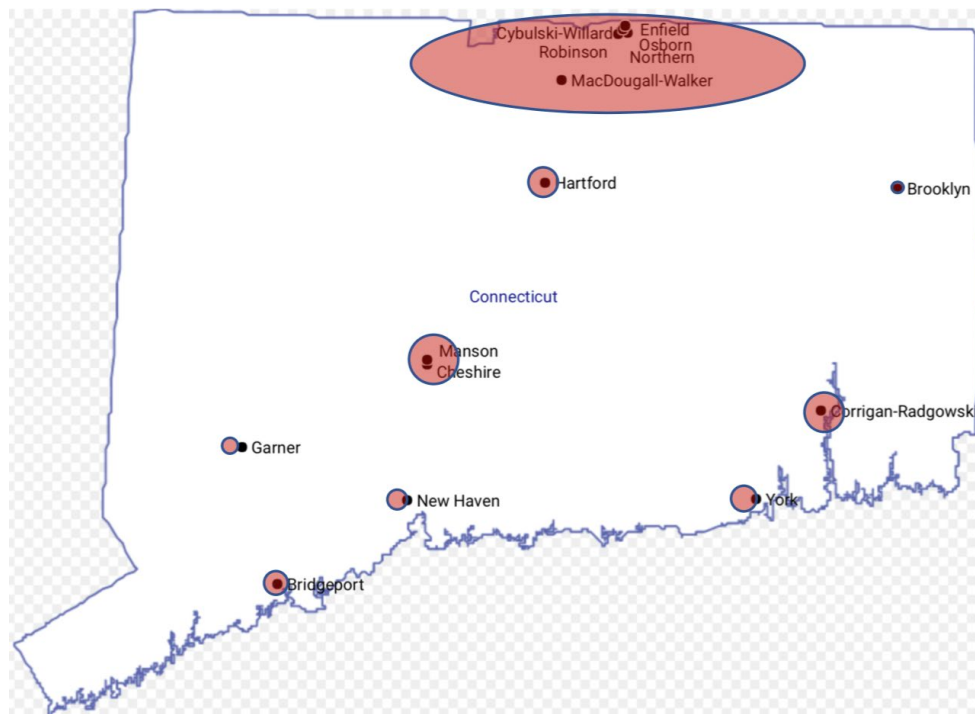


54. Connecticut relocates nearly all of its incarcerated people to serve out their sentences at correctional facilities in rural or suburban areas that are predominantly white. The Enfield-Somers-Suffield area along the northern border of the State accounts for nearly three-quarters of the State's sentenced, incarcerated people. The State maintains a second concentration of incarcerated people in the Cheshire area.

55. The placement of prisons in locations far from the urban centers where most incarcerated people maintained a permanent domicile, combined with a lack of public transportation, creates further hardship for incarcerated people and their families.

56. The location of incarcerated people by population as of the 2010 census is illustrated in Figure 4. The sizes of the colored shapes correspond to the percentage of incarcerated people who are housed in a prison located in that particular geographic area.

Figure 4: Where Incarcerated People are Incarcerated



***Current Prison and District Populations***

57. Hartford Correctional Institution (“CI”) (Hartford) is in House District 5.
58. York CI (East Lyme) is in House District 37.
59. Corrigan-Radgowski Correctional Center (Montville) is in House District 42.
60. Osborn CI (Osborn) and Northern CI (Northern) are in House District 52.
61. Robinson CI (Robinson) and Willard-Cybulski CI (Willard-Cybulski) are in House District 59. Enfield CI (Enfield), which was operational during the 2010 census and 2011 Redistricting Plan, and which operated until January 23, 2018, is also in House District 59.
62. MacDougall-Walker CI (MacDougall-Walker) is in House District 61.
63. Manson Youth CI (Manson) and Cheshire CI (Cheshire) are in House District 103.
64. Garner CI (Newtown) is in House District 106.
65. MacDougall-Walker, Robinson, Enfield, Willard-Cybulski, Osborn, and Northern are all in Senate District 7.
66. According to the Connecticut Department of Corrections, and as counted in the 2010 census, each prison described in paragraphs 57 through 64 held the following number of incarcerated people in March 2010:

Table 3: Connecticut State Prison Populations

| Facility           | Incarcerated Individuals |
|--------------------|--------------------------|
| Hartford           | 1,095                    |
| York               | 2,014                    |
| Corrigan-Radgowski | 1,511                    |
| Osborn             | 1,980                    |
| Northern           | 356                      |
| Robinson           | 1,486                    |
| Enfield            | 724                      |
| Willard-Cybulski   | 1,164                    |
| MacDougall-Walker  | 2,137                    |
| Manson             | 608                      |
| Cheshire           | 1,494                    |
| Garner             | 608                      |

**B. *State Legislative Redistricting in Connecticut in 2011***

67. The Connecticut Legislature, exercising authority granted by Article III of the State Constitution, appointed a Reapportionment Committee following the 2010 census.

68. The Reapportionment Committee failed to meet its September 15, 2011 deadline to submit a Redistricting Plan. Pursuant to Article III of the Connecticut Constitution, then-Governor Dannel P. Malloy appointed a Reapportionment Commission on October 5, 2011.

69. On November 30, 2011, the Reapportionment Commission unanimously adopted a State legislative Redistricting Plan and submitted it to Defendant Merrill.

70. The State legislative Redistricting Plan became effective soon thereafter upon publication by Defendant Merrill. See Conn. Const., Art. 3 § 6(c) (“Upon receiving such plan [from the Reapportionment Commission] the secretary [of state] shall publish the same forthwith, and, upon publication, such plan of districting shall have the full force of law.”).

71. The Connecticut Legislature commissioned a report from the Office of Legislative Research in 2010, received prior to the redistricting process, which indicated that the majority of people incarcerated in the prisons described in paragraphs 57 through 64 were not residents of the districts in which they were incarcerated.

72. No Connecticut state law requires counting incarcerated individuals where they are incarcerated. Counting incarcerated people where they are incarcerated was an arbitrary choice made by the Reapportionment Commission and reflected in the plan published by Defendant Merrill, and a choice that produced discriminatory results. The Reapportionment Committee received public testimony highlighting the problems with counting incarcerated people where they are incarcerated, but neither the meeting minutes of the Commission nor the Committee provide any explanation for this choice.

73. The Connecticut Legislature has considered legislation mandating that incarcerated people be counted at their pre-incarceration addresses for reapportionment purposes in its 2011, 2013, 2015, 2016, and 2019 legislative sessions. As part of this consideration, the Legislature heard extensive public testimony as to the problems associated with prison gerrymandering, including its disproportionate racial impact. Nevertheless, lawmakers failed to enact legislation in each instance, leaving the 2011 Redistricting Plan unchanged.

74. A significant number of the people incarcerated in Connecticut's fourteen operational prison facilities are ineligible to vote because they have been convicted of a felony. CONN. GEN. STAT. § 9-46.

75. Connecticut statutes treat those incarcerated people who *are* eligible to vote as residents of their pre-incarceration domiciles and prohibit these voters from claiming residence for voting purposes in the district in which they are incarcerated. CONN. GEN. STAT. §§ 9-14, 9-14a. Thus, Connecticut's current practice is to count incarcerated people, for reapportionment purposes, in the districts in which they are not legal residents for voting purposes under explicit Connecticut law.

76. When combined with the practice of prison gerrymandering, the geographic concentration of prison facilities results in the dilution of the votes of residents in urban voting districts that are overpopulated as compared to districts that contain prison facilities.

77. Because they reside in such overpopulated districts, Plaintiffs Justin Farmer, Germano Kimbro, Conley Monk, Jr., Garry Monk, and Dione Zackery (hereafter "individual Plaintiffs") and members of Plaintiffs NAACP and NAACP-CT (hereafter collectively "the NAACP") have substantially less voting power and political representation than residents of at least five, and as many as nine, State House districts. The overpopulated districts include House Districts 5, 37, 42, 52, 59, 61, 103, 106, and 108, and Senate District 7 (hereinafter "gerrymandered districts").

78. Data locating incarcerated individuals at their exact pre-incarceration addresses is not publicly available, though it is readily available to the State. Home district of origin may be approximated, however, using public records detailing the home towns and cities of incarcerated people at the time of their admission.

79. When district population size is calculated using these estimates, nine State House districts (Districts 5, 37, 42, 52, 59, 61, 103, 106, and 108) have more than ten percent fewer people than the most populated House district (District 97).

80. Even when incarcerated people are removed from the apportionment base rather than counted in their approximate pre-incarceration districts, five House districts (Districts 5, 52, 59, 61, and 103) are more than ten percent smaller than the largest House district (District 88).

81. For every 85 residents in District 59 (which encompasses Robinson, Enfield, and Willard-Cybulski Correctional Institutions), there are over 100 residents in District 97 (located in New Haven). The vote of a District 97 resident thus counts for less than 85% of the vote of a District 59 resident. District 59 is roughly 89% white, compared to 69% for the State as a whole, while District 97 is only 38% white.

82. Similarly, for every 85 residents of District 52 (which encompasses Osborn and Northern Correctional Institutions), there are roughly 100 residents in District 97. The vote of a District 97 resident thus counts for about 85% of the vote of a District 52 resident. District 52 is roughly 92% white, compared to 69% for the State as a whole. Similar imbalances occur in the other gerrymandered districts.

83. Because their individual votes count for less, individual Plaintiffs, NAACP members, and their fellow residents must invest greater energy to elect representatives of their choice. Plaintiffs in District 97 have over 15% more doors to knock on, voters to call, and mailings to send if they wish to have an equal influence over the political process as residents of District 59. Because of this increased need for resources, their campaign donations go less far.

84. Because their districts are overpopulated and underrepresented in this manner, the influence of individual Plaintiffs and NAACP members over their representatives is also diluted.

For example, District 97 Representative Al Paolillo has 3,751 more constituents than District 59 Representative Carol Hall, and 3,502 more constituents than District 52 Representative Kurt Vail. Thus, to serve his full body of constituents, Rep. Paolillo must fully listen and respond to roughly 15% more people despite working with the same level of funding and staff.

85. The malapportioned districts in which Plaintiffs reside, or have members residing in, are also generally districts with a disproportionate African American or Latino population compared to the State as a whole. As the table below indicates, each district except District 88 is disproportionately African American or Latino, often substantially so.

Table 4: Racial Makeup of Relevant Connecticut Districts

| <b>District</b> | <b>Proportion of White Residents</b> | <b>Proportion of African American Residents</b> | <b>Proportion of Latino Residents</b> |
|-----------------|--------------------------------------|-------------------------------------------------|---------------------------------------|
| <b>88</b>       | 79%                                  | 8%                                              | 5%                                    |
| <b>91</b>       | 58%                                  | 22%                                             | 12%                                   |
| <b>94</b>       | 27%                                  | 46%                                             | 16%                                   |
| <b>95</b>       | 12%                                  | 24%                                             | 60%                                   |
| <b>96</b>       | 61%                                  | 12%                                             | 15%                                   |
| <b>97</b>       | 38%                                  | 23%                                             | 36%                                   |
| <b>CT Total</b> | 69%                                  | 10%                                             | 15%                                   |

86. Conversely, the gerrymandered districts are disproportionately white compared to the State as a whole with the exception of District 5, as the following table shows. More than three-quarters of residents of all the overpopulated House districts except District 5 are white, while fewer than 5% of the residents of all those districts are African American, after excluding people who are incarcerated from the population totals of those districts.

87. In House Districts 52, 59, and 106, nearly the entire African American population is incarcerated; there are close to no African American residents if people who are incarcerated are excluded from the population totals of these districts. And about half of the African American population in Senate District 7 is incarcerated; as a result, only 3% of the district's non-incarcerated residents are African American, compared to 86% who are white.

Table 5: Racial Makeup of Overpopulated Connecticut Districts

| <b>District</b> | <b>Proportion of White Residents</b> | <b>Proportion of African American Residents</b> | <b>Proportion of Latino Residents</b> |
|-----------------|--------------------------------------|-------------------------------------------------|---------------------------------------|
| <b>5</b>        | 19%                                  | 58%                                             | 20%                                   |
| <b>37</b>       | 84%                                  | 2%                                              | 6%                                    |
| <b>42</b>       | 79%                                  | 2%                                              | 5%                                    |
| <b>52</b>       | 92%                                  | 0%                                              | 3%                                    |
| <b>59</b>       | 89%                                  | 1%                                              | 4%                                    |
| <b>61</b>       | 86%                                  | 4%                                              | 5%                                    |
| <b>103</b>      | 86%                                  | 2%                                              | 4%                                    |
| <b>106</b>      | 90%                                  | 0%                                              | 7%                                    |
| <b>108</b>      | 82%                                  | 2%                                              | 11%                                   |
| <b>Senate 7</b> | 86%                                  | 3%                                              | 5%                                    |
| <b>CT Total</b> | 69%                                  | 10%                                             | 15%                                   |

88. The overpopulated districts are disproportionately African American and Latino and the gerrymandered districts are disproportionately white. This means that the communities that receive less representation due to prison gerrymandering are disproportionately African American and Latino, and the communities that receive more representation are disproportionately white.

89. The Connecticut State House of Representatives currently has 151 members, and the State Senate has 36 members, each of whom is elected by an individual district.

90. The 151 individual House districts each elect one member to the State House of Representatives, and the 36 individual Senate districts each elect one member to the State Senate.

91. The “ideal” district size is defined by the total state population divided by the number of districts.

92. According to Connecticut State’s published data after the 2011 redistricting, the ideal House district size is 23,670 residents.

93. The gerrymandered districts, however, have substantially fewer residents than the ideal population, and are thus more than ten percent smaller than the largest State district, District 97.

94. For instance, as of November 2011, District 59 contained only 21,001 residents when incarcerated individuals are counted in their home districts. When compared with District 97, which would have a population of approximately 24,752 residents when incarcerated individuals are counted in their home districts, the actual number of constituents in District 59 was 15.84% smaller. Likewise, District 52 contained only 21,250 residents when incarcerated individuals are counted in their home districts, or 14.79% fewer than District 97.

95. The following table sets forth the populations of the gerrymandered House districts with incarcerated people counted where they are incarcerated, incarcerated people counted in their approximated home districts, and the deviation of the latter from the population of District 97, the largest district.

**Table 6: Population Deviations of Connecticut Districts as a Result of Prison  
Gerrymandering**

| <b>District</b> | <b>Population<br/>(incarcerated<br/>individuals counted<br/>where incarcerated)</b> | <b>Population<br/>(incarcerated individuals<br/>counted in approximate<br/>home districts)</b> | <b>Deviation from the<br/>largest district</b> |
|-----------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|------------------------------------------------|
| <b>5</b>        | 23,000                                                                              | 22,139                                                                                         | 11.04%                                         |
| <b>37</b>       | 23,310                                                                              | 21,333                                                                                         | 14.44%                                         |
| <b>42</b>       | 23,663                                                                              | 22,218                                                                                         | 10.70%                                         |
| <b>52</b>       | 23,531                                                                              | 21,250                                                                                         | 14.79%                                         |
| <b>59</b>       | 24,314                                                                              | 21,001                                                                                         | 15.84%                                         |
| <b>61</b>       | 23,448                                                                              | 21,330                                                                                         | 14.45%                                         |
| <b>103</b>      | 23,005                                                                              | 21,543                                                                                         | 13.56%                                         |
| <b>106</b>      | 22,971                                                                              | 22,382                                                                                         | 10.01%                                         |
| <b>108</b>      | 23,531                                                                              | 22,234                                                                                         | 10.64%                                         |

96. Still other House districts have meaningful population deviations due to prison gerrymandering, though less than 10%, and a racially disparate impact.

97. The ideal Senate district size is 99,280 residents. Senate District 7 contained 102,622 residents as of 2011.

98. Senate District 7 contained 94,692 residents when incarcerated persons are counted in their home districts. There are 9.53% fewer residents in Senate District 7 than in District 26, the largest Senate district.

99. As a result of the current districting plan, residents of the prison gerrymandered districts possess artificially inflated voting and representational power compared to those in other districts, whereas the people incarcerated in the gerrymandered districts have effectively no representation.

100. For instance, upon information and belief, State Senator John Kissel (S-7) has not visited incarcerated people in any of the five prisons located in his district over his past two terms.

101. The effect is that Connecticut's 2011 Redistricting Plan subverts representational equality.

102. It would have been possible for the Reapportionment Committee or Reapportionment Commission to adjust district boundaries so as to prevent creating nine malapportioned House districts due to prison gerrymandering, thus safeguarding the principle of "one person, one vote," but they did not do so. This remedy would require minor alterations to approximately 30 additional contiguous districts, and can generally be accomplished without introducing incumbent conflicts.

103. Prison gerrymandering also deprives the State of Connecticut of at least one minority opportunity district. The same districting plan which would restore "one person, one vote" also has the effect of raising the Citizen Voting Age Population in House District 14 from 20.2% under the current plan to nearly 45%, thus enhancing the potential for the Connecticut Legislature to more accurately reflect the choices of Connecticut's voting population.

**C. *State Legislative Redistricting in 2021***

104. Following the 2020 census, Connecticut will undertake a similar redistricting process as occurred in 2011.

105. State law requires that, in 2021, the General Assembly will appoint a Reapportionment Committee.

106. If the Reapportionment Committee fails to submit a proposed Redistricting Plan to the Legislature by September 15, 2021, then Governor Lamont will appoint a Redistricting

Committee, which must submit a Redistricting Plan to Defendant Merrill, who will publish the plan, making it effective under state law. *See* Conn. Const., Art. 3 § 6.

107. For decades, the State Legislature has counted incarcerated persons where they are incarcerated, rather than where they reside, and there is no evidence or reason to believe that the Redistricting Committee or Redistricting Commission appointed in 2021 will depart from this longstanding practice.

108. Since commencement of this litigation, Defendant Merrill has issued multiple public statements criticizing the practice of prison gerrymandering. For example, when Plaintiffs filed suit, Defendant Merrill stated, “[I] believe that people who are in prison should be counted where they resided prior to their incarceration, and not in the prison in which they are incarcerated . . . Prison gerrymandering unfairly inflates the size of some districts at the expense of others, and ending the practice will give a more accurate population count of our urban communities.”

109. The State of Connecticut has never disavowed this practice, however, and the Office of the Attorney General has, throughout this litigation, defended the right of the State to engage in prison gerrymandering, even when this practice results in population deviations in excess of 10% between legislative districts and has significant racial impacts.

110. Incarcerated people in Connecticut serving their sentences will continue to be concentrated in the predominantly white, rural, or suburban Enfield-Somers-Suffield and Cheshire areas. There is no evidence or reason to believe this will change prior to the 2021 redistricting process.

111. Incarcerated people in Connecticut will continue to be disproportionately African American and Latino. The most recent statistics on the incarcerated population, as of October 1,

2019, indicate that the State's incarcerated population is roughly 43% African American and 27% Latino. There is no evidence or reason to believe this will change to any significant degree prior to the 2021 redistricting process.

112. In a 2021 Redistricting Plan drawn using prison gerrymandering, residents of the prison gerrymandered districts will continue to possess artificially inflated voting and representational power compared to those in other districts, and the people incarcerated in the gerrymandered districts will continue to have effectively no representation. The Plan will again subvert representational equality.

113. Plaintiffs are suffering irreparable harm as a result of Defendants' actions, and that harm will continue unless Defendants' current practice of counting prison populations for the purpose of apportionment is declared unlawful and enjoined.

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

### **FIRST CAUSE OF ACTION**

#### **(Violation of 42 U.S.C. § 1983 and Equal Protection)**

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

116. 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."

117. 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.

118. Defendants' reliance on the incarcerated population in determining the geographic boundaries of House Districts 5, 37, 42, 52, 59, 61, 103, 106, and 108, and Senate District 7 under the 2011 Redistricting Plan subverts equal representation. Prison gerrymandering inflates the voting strength and political influence of the residents in these districts and dilutes the voting strength and political influence of Plaintiffs and other persons residing outside of these districts, 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.

119. Defendants' reliance on the incarcerated population in the 2011 Redistricting Plan inflates the voting strength of the disproportionately white districts in which prisons are located at the expense of disproportionately African American and Latino districts elsewhere in the State, even in districts with a deviation of less than 10% from the ideal district.

120. Defendants' prison gerrymandering has racially disparate impacts in districts with less than 10% deviation and operates to minimize the voting strength of the African American and Latino communities in Connecticut, in violation of the "one person, one vote" principle of the Equal Protection Clause.

121. Defendants intend to continue their longstanding practices of counting incarcerated persons where they are confined rather than where they reside under state law, contrary to state law, *see* CONN. GEN. STAT. 9-14, in the 2021 state legislative redistricting.

122. A 2021 Redistricting Plan that is drawn using substantially similar prison gerrymandering will result in the same type of constitutional violations that have occurred as a result of the 2011 Redistricting Plan.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully ask this Court to:

- 1) Exercise jurisdiction over Plaintiffs' claims;
- 2) Declare that the use of prison gerrymandering in the 2011 Redistricting Plan, or any subsequent Redistricting Plan that also engages in substantially similar prison gerrymandering, violates 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 Connecticut House of Representatives and Senate under the 2011 Redistricting Plan in the 2020 electoral cycle;
- 4) In the event Defendants fail or are unable to implement a Redistricting Plan that comports with the Constitution and laws 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: October 15, 2019

Respectfully submitted,

/s/ Michael J. Wishnie

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