UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

NAACP, *et al.*, *Plaintiffs*, v. DENISE MERRILL, SECRETARY OF STATE, and DANNEL P. MALLOY, GOVERNOR, *Defendants.*	No. 3:18-cv-01094-WWE October 4, 2018

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

More than one in seven of the people whom Connecticut counts in some of its rural legislative districts for apportionment purposes actually resides somewhere else. They are in the district only because they are incarcerated there. In drawing Connecticut's legislative districts, Defendants have chosen to incarcerated people in the prisons where they are confined rather than the communities they come from. That practice, known as "prison gerrymandering," distorts the democratic process and violates the Fourteenth Amendment. Prison gerrymandering uses the largely disenfranchised prison population to artificially inflate the voting and representational power of the predominantly white, rural districts where Connecticut has located most of its prisons. At the same time, Connecticut's *choice* to locate prisons in these areas and to count persons confined there dilutes the voting power of the predominantly African American and Latino residents of the urban districts where many incarcerated people permanently reside.

Although Defendants have made a Rule 12(b)(6) motion, Plaintiffs have alleged in detail how the state's apportionment scheme results in substantial deviations between the sizes of its legislative districts, when properly measured. The Constitution does not require that legislative districts be drawn to contain exactly equal populations but the Supreme Court has long held that districts must be "as nearly of equal population as practicable." *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). Indeed, deviations of 10% or more between the populations of the largest and smallest districts trigger close judicial scrutiny and subject the state to a higher burden of justification. *See, e.g.*, *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983). Plaintiffs have alleged that Connecticut's practice of counting incarcerated persons where they are confined results in nine state legislative districts that exceed the 10% threshold, violating the essential constitutional

principle of representational equality. On this motion to dismiss, before the development of an evidentiary record, Defendants cannot justify these malapportioned districts.

Defendants argue that reliance on unmodified census data in calculating total population for legislative redistricting immunizes them from judicial scrutiny. Yet the Supreme Court has recognized that a state may not use unmodified census data to draw districts when doing so would distort representational equality by counting individuals in areas in which they are not bona fide constituents. *See Mahan v. Howell*, 410 U.S. 315, 330-32 (1973). Defendants also argue that Plaintiffs fail to allege that Defendants intentionally discriminated on the basis of race when drawing the malapportioned state districts. Challenges to malapportionment do not require a showing of intentional discrimination when disparities exceed the 10% threshold.

Finally, Defendants argue that this suit is barred by the Eleventh Amendment to the U.S. Constitution and the political question doctrine. This is incorrect. It is well-settled that state officials are not immune from suit from federal constitutional claims seeking prospective injunctive relief, *Ex parte Young*, 209 U.S. 123 (1908), and for decades the Supreme Court and other federal courts have held that legislative apportionments are not immune from judicial review for conformity with constitutional requirements.

Plaintiffs have sufficiently alleged the violation of their equal protection rights due to unlawful population disparities between state legislative districts. Defendants will have the opportunity, on a factual record not yet developed, to justify their malapportioned districts. The motion to dismiss, however, should be denied.

BACKGROUND

Prison gerrymandering refers to the practice of counting incarcerated persons, for the purpose of drawing electoral districts, as "residents" of the jurisdictions in which their prisons

are located, rather than as residing at their pre-incarceration addresses. Compl. ¶ 2. No federal or state law requires Connecticut to count incarcerated persons in this manner but, nonetheless, Defendants do. The consequences of prison gerrymandering in Connecticut are severe. *Id*. ¶ 39. Connecticut prisoners disproportionately have their homes in the state's largest cities, but Connecticut incarcerates them primarily in lightly populated, rural towns. *Id*. ¶¶ 44-49; *see also* Peter Wagner, Prison Policy Initiative, Imported "Constituents": Incarcerated People and Political Clout in Connecticut 5 (2013), https://www.prisonersofthecensus.org/ct/report_2013.pdf [https://perma.cc/8KSK-TWM9]. Most Connecticut prisoners are not eligible voters while incarcerated but are eligible voters when they complete their sentences and return home. Conn. Gen. Stat. §§ 9-46, 9-46a (2018). Therefore, many incarcerated persons will be counted for a decade in a district where they were in state custody and disenfranchised but will not be counted in the district where they will likely be able to vote within that decade. The result is malapportioned districts that violate the fundamental principles underlying "one person, one vote." Compl. ¶¶ 1-2, 5-6, 10, 69, 71.

I. The origins of Connecticut's prison gerrymandering.

The concentration of incarcerated people in rural and remote parts of the state is a product of Connecticut's history of prison construction. Nearly all of the state's prison development projects were completed in the 1980s and 1990s, a time during which the prison population increased five-fold. Compl. ¶¶ 41-42. When building these facilities, the state chose to concentrate prisons in only a few discrete geographic areas. Out of ten prison expansion projects finished between 1990 and 1997, for example, the state completed half within three adjacent towns—Enfield, Somers and Suffield—along the northern border of central Connecticut, a region that already had three existing prisons. *Id*. ¶¶ 43-44. Today, Connecticut's

correctional facilities are concentrated in two areas: the Enfield-Suffield-Somers region along the northern border and Cheshire, in the central part of the state. *Id*. ¶ 45.

Because so many incarcerated persons come from the state's urban centers (such as Hartford, Bridgeport, and New Haven) but are incarcerated in these rural facilities, and because so many prisoners are disenfranchised while incarcerated, Connecticut's practice inflates the political power of bona fide constituents of the Enfield-Suffield-Somers and Cheshire regions while diluting the power of urban residents. *Id*. ¶ 71. But prison gerrymandering harms not only urban residents. Prison gerrymandering privileges the political voices of certain white voters—largely in the regions described above—at the expense of the persons residing in *all* other districts.

While incarcerated persons are counted in the districts where they are held in custody, they are not actually represented there. *Id*. ¶ 89. Persons incarcerated in districts far from their families and home communities are disconnected from the residents and towns where they are incarcerated. *Id*. ¶ 4. They cannot visit or patronize public or private establishments in the communities where the prisons are located, and they have no contact with the district's elected representatives. *Id*. ¶¶ 4-5. As the Complaint alleges, because local legislators do not visit prisoners incarcerated in their districts, they do not "represent" incarcerated persons in any meaningful sense and do not perform legislative services for them. *Id*. ¶ 5. As a result, the bona fide constituents of districts that include prisons have artificially inflated voting and representational power compared to the rest of the state.

Prison gerrymandering exacerbates the effects of mass incarceration's impact on minority communities. Connecticut's prison population is disproportionately African-American and Latino: African Americans are almost ten times more likely to be incarcerated than whites, and

Latinos are almost four times more likely to be incarcerated than whites. *Id*. ¶ 38. And because African Americans and Latinos tend to live in racially and economically segregated neighborhoods, and many maintain a permanent domicile in the state's urban centers, the social and political effects of imprisonment are magnified in their communities. *Id*. ¶¶ 3, 36. Ultimately, the current system disproportionately disenfranchises urban, minority citizens in Connecticut and then counts those disenfranchised individuals to amplify the political power of rural, white citizens. Simply put, prison gerrymandering compounds the political, economic, and social hardships that African American and Latino families endure when their fathers, sons, daughters, and mothers are shipped to remote, rural prisons. *Id*. ¶¶ 6, 10, 49.

II. Connecticut's 2011 redistricting is an unconstitutional prison gerrymander.

The Connecticut legislature, exercising authority under Article III of the state Constitution, appointed a Reapportionment Committee to advise the legislature on all apportionment matters following the 2010 Census. Conn. Const., art. 3, § 6; *see also* Compl. ¶ 61. When the Reapportionment Committee failed to meet its deadline to submit a redistricting plan, Governor Dannel Malloy appointed a Reapportionment Commission, which subsequently adopted and submitted the 2011 Redistricting Plan to Secretary of the State Denise Merrill. *Id*. ¶¶ 62-63. The state legislative redistricting plan became effective upon publication by Secretary Merrill soon thereafter. *Id*. ¶ 64; *see also* Conn. Const., art. 3, § 6(c).

No federal or state law requires Connecticut to count incarcerated persons in the towns where their prisons are located when drawing state legislative districts. Nonetheless, the Reapportionment Commission chose to allocate incarcerated persons in their termporary and unchosen prisons instead of their homes. Compl. ¶ 92. The result is a malapportioned, unfair, and unlawful map. When incarcerated people are appropriately counted in their home (pre-

incarceration) districts, nine State House districts (Districts 5, 37, 42, 52, 59, 61, 103, 106, and 108) are sharply underpopulated (have more than 10% fewer people than the most populated House district, District 97) and thus have outsized political power. When people are appropriately counted in their home districts, Districts 88, 91, 92, 94, 95, 96, 97, and 99 (in the cities of New Haven, East Haven and Hamden) are the most overpopulated and thus most underrepresented. The nine underpopulated districts listed above exceed the 10% threshold of malapportionment typically used to measure the "one person, one vote" requirements of the Fourteenth Amendment. *Id*. ¶¶ 7, 75.

III. Plaintiffs harmed by the redistricting bring this lawsuit.

Plaintiffs will suffer irreparable harm if Connecticut uses the 2011 Redistricting Plan to administer future elections.[1] The NAACP and its Connecticut State Conference ("NAACP-CT") are organizations with 5,000 members in Connecticut, many of whom are registered voters who reside in state legislative districts that are overpopulated due to prison gerrymandering. Compl. ¶ 16. Members of the NAACP and NAACP-CT are active participants in their communities, and work to achieve the NAACP's organizational missions of improving civic engagement, education, criminal justice, environmental justice, economic opportunity, and healthcare. *Id*. ¶ 17. An electoral system based upon the unequal voting power of the state's citizens inhibits the NAACP's ability to accomplish these goals by reducing the influence NAACP members have over state and local issues. For instance, any efforts to increase voter registration and civic engagement in urban, African American communities is necessarily undermined by Connecticut's unconstitutionally drawn map.

[1] In light of the proximity of the 2018 elections, Plaintiffs do not seek an emergency order against Defendants' use of the 2011 map. Compl. ¶ 12.

Individual Plaintiffs Farmer, Kimbro, Monk, Jr., Monk, and Zackery further suffer individualized harms. As residents of Districts 94, 95, 88, 92, and 97—which are are unlawfully overpopulated due to prison gerrymandering—their individual votes carry less weight than the votes of persons residing in Districts 5, 37, 42, 52, 59, 61, 103, 106, and 108. *Id.* ¶¶ 72, 99. Because their individual votes count for less, Plaintiffs, other NAACP members, and their fellow residents must invest greater energy to elect representatives of their choice. For instance, Ms. Zackery, a registered voter in House District 97, has more than 15% more doors to knock on, voters to call, and mailings to send if she wishes to have an equal influence over the election process as a resident of District 59. *Id*. ¶ 77.

The influence of individual Plaintiffs' and NAACP members over their representatives is also diluted because their districts are overpopulated. For example, District 97 Representative Al Paolillo has 3,751 more constituents than District 59 Representative Carol Hall. To serve all of his constituents, Rep. Paolillo must fully listen and respond to 15% more people despite working with the same level of funding, staff, and hours in the day. *Id*. ¶ 78. As a result, his constituents, like Ms. Zackery, have less influence over local affairs than the bona fide constituents of the prison-gerrymandered districts. *Id*. ¶ 9.

STANDARD OF REVIEW

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires pleadings to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). When a defendant challenges the sufficiency of a claim by a 12(b)(6) motion, the Court must assume the truth of all factual allegations made in the complaint and construe those allegations in favor of plaintiffs. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 572, 592 (2007). The Court may dismiss the suit only where it is "beyond doubt that plaintiffs can prove no set of

facts to support their claim." *Chance v. Armstrong*, 143 F.3d 698, 701 (2d Cir. 1998). Furthermore "[t]his rule applies with particular force where the plaintiff[s] alleg[e] civil rights violations." *Id.*; *see also Sheppard v. Beerman*, 18 F.3d 147 (2d Cir. 1994) (same). Moreover, when federal courts review the sufficiency of a complaint without accompanying evidence, "its task is necessarily a limited one." *Lipsky v. Commonwealth United Corp.*, 551 F.2d 887, 894-95 (2d Cir. 1976) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

The standards governing motions to dismiss "under 12(b)(1) and 12(b)(6) are identical." *Moore v. PaineWebber, Inc.*, 189 F.3d 165, 169 n.3 (2d Cir. 1999). Thus, when deciding a Rule 12(b)(1) motion, "the court must accept all factual allegations in the complaint as true and draw inferences from those allegations in the light most favorable to the plaintiff." *Jaghory v. New York State Dep't of Educ.*, 131 F.3d 326, 329 (2d Cir. 1997). Moreover, "[t]he court may not dismiss a complaint unless it appears beyond doubt, even when the complaint is liberally construed, that the plaintiff can prove no set of facts which would entitle him to relief." *Id.* (quotations omitted).

ARGUMENT

I. Connecticut's prison gerrymander violates the Fourteenth Amendment.

Plaintiffs respectfully ask this Court to vindicate the constitutional principle that requires all individuals be represented by their government by ensuring those individuals are counted in the legislative districts in which they are bona fide constituents. Connecticut's current state legislative map counts incarcerated persons as residents of the districts where they are imprisoned instead of the districts where they maintain a permanent residence and domicile. This practice leads to gross discrepancies in the representational strength of Connecticut residents, in violation of the Equal Protection Clause of the Fourteenth Amendment.

To justify their practices, Defendants rely heavily on the Supreme Court's recent decision in *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), which upheld a Texas districting scheme that drew districts to contain equal numbers of total inhabitants, rather than equal numbers of eligible voters. *See* Mem. Supp. Defs.' Mot. Dismiss ("Defs.' Mem.") 11-13. The *Evenwel* Court approved of Texas's plan on the basis of representational equality—that is, because "representatives serve all residents, not just those eligible or registered to vote." 136 S. Ct. at 1132. In Defendants' telling, *Evenwel* now provides states carte blanche to draw districts composed of equal numbers of inhabitants, and to measure population on the basis of unmodified census data, without regard to the question of "equitable and effective representation" that *Evenwel* demands. *Id.* at 1132; *see* Defs.' Mem. 12. But to adopt Defendants' reading of *Evenwel* would be to butcher its core meaning. Plaintiffs challenge Connecticut's districting scheme *precisely because* it violates *Evenwel*'s endorsement of the idea that "the fundamental principle of representative government in this country . . . [is] equal representation for equal numbers of people." *Id*. at 1131 (quoting *Reynolds v. Sims*, 377 U.S. 533, 560-61 (1964)).

As discussed below, *see infra* Section III(C), prisoners remain essentially unrepresented by the elected officials in the districts where they are incarcerated and to which they have no bona fide connection. The most logical solution—one that even state law recognizes—is to count prisoners as residents in their districts of origin and not their districts of incarceration. *See* Conn. Gen. Stat. §§ 9-14, 9-14a (2018) (providing that prisoners do not lose residency in their home districts because of incarceration). Instead, the state's practice of counting prisoners in their districts of incarceration results in substantial deviations—above the 10% threshold for violations of the "one person, one vote" requirement—in district population across the state.

A. States must justify substantial deviations from equal population in all districts.

Because Plaintiffs have plausibly alleged that Connecticut's map violates the 10% threshold for violation of the "one person, one vote" requirement, the state must justify its redistricting choices. Compl. ¶¶ 71-75. The Supreme Court has adopted a burden shifting rule that requires the state to justify unequally populated districts when the disparity grows too large. Recognizing that mathematical precision is not always practicable, and that states have other valid redistricting objectives such as compactness, preserving political subdivisions, and communities of interest, the Court has held that the Constitution tolerates "minor deviations from mathematical equality." *Gaffney v. Cummings*, 412 U.S. 735, 745 (1973); *see also Brown v. Thomson*, 462 U.S. 835, 842-43 (1983). In state and local legislative districting plans, "minor deviation" is defined as a maximum of 10% deviation between the population of the smallest and the largest district. *Brown*, 462 U.S. at 842. If a state's redistricting plan results in a population deviation between districts that reaches or exceeds 10%, a prima facie case of discrimination has been established and the burden falls on the state to prove that the plan nevertheless comports with equal protection requirements. *Id.* at 842-43; *see also Daly v. Hunt*, 93 F.3d 1212, 1218 (4th Cir. 1996); *Calvin v. Jefferson Cty. Bd. of Commissioners*, 172 F. Supp. 3d 1292, 1302 (N.D. Fla. 2016); *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004).[2] In that instance, defendants must show that the plan is "an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 577 (1964).

[2] While a maximum deviation of 10% or more establishes a prima facie equal protection violation, a deviation of less than 10% is not necessarily a safe harbor. *Daly v. Hunt*, 93 F.3d 1212, 1220 (4th Cir. 1996). In that instance, the state is entitled to a rebuttable presumption of good faith, *id.*, which the plaintiff may nevertheless overcome by showing evidence that the apportionment process was the product of "bad faith, arbitrariness, or invidious discrimination." *Id.* at 1228.

The state employs an "honest and good faith effort" if the "divergences from a strict population standard" are "based on legitimate considerations incident to the effectuation of a rational state policy." *Id.* at 577, 579. In their motion to dismiss, however, Defendants have not and could not offer evidence to try to prove that the deviations in Connecticut district sizes are "based on legitimate considerations." *Id*. That is a factual dispute, after all, and one that must be resolved after Defendants come forward with evidence of their "legitimate considerations" and after Plaintiffs have the opportunity to test that evidence in discovery. The Court can then decide, on motions for summary judgment or after trial, whether Defendants have carried their burden. At this stage of the proceedings, however, on a motion to dismiss based on the allegations in Plaintiffs' complaint, the Court cannot assess whether Defendants' malapportioned districts are in fact "based on legitimate considerations." *Id.*

Defendants point to several cases in which the Supreme Court found the state legislature's redistricting decision was a legitimate political judgment and did not violate the Fourteenth Amendment. Defs.' Mem. 9-10. These cases, none of which address prison gerrymandering, do not support the principle for which Defendants cite them—namely, that this Court must defer to Defendants' redistricting choice as a political judgment and dismiss the case. Rather, in each and every case, the Court determined whether the state's redistricting choice was a valid political judgment deserving of deference only after hearing the evidence and considering whether that choice was consistent with the Equal Protection Clause. *See Abbott v. Perez*, 138 S. Ct. 2305 (2018) (holding after a trial that legislature acted in good faith when it adopted Constitutional court-ordered plan in order to end litigation and stabilize districts prior to election); *Miller v. Johnson,* 515 U.S. 900 (1995) (upholding after a trial the lower court decision that legislature's redistricting plan was an illegitimate racial gerrymander); *Gaffney v.*

Cummings, 412 U.S. 735 (1973) (upholding after an evidentiary hearing a plan with 7.84% maximum deviation and which kept political boundaries intact over a proposed plan which achieved lower deviation by splitting towns across districts); *Burns v. Richardson,* 384 U.S. 73 (1966) (holding after an evidentiary hearing that state may use only registered voters in apportionment base when resulting distribution of legislators was not substantially different from using total population in apportionment base).

Connecticut's choice to use a redistricting practice that results in discrimination against urban residents in favor a group of rural residents is, at its core, precisely the type of practice the Supreme Court first reviewed in its foundational "one person, one vote" Equal Protection cases. *See, e.g.*, *Reynolds v. Sims.* 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Baker v. Carr*, 369 U.S. 186 (1962). The Court recently reiterated the judiciary's responsibility under the Fourteenth Amendment to invalidate districting schemes based on "ingrained structural inequality." *Evenwel,* 136 S. Ct. at 1123. This case merits the same scrutiny.

B. Unmodified Census data alone may not achieve equal representation.

Defendants repeatedly assert that reliance on unmodified census data in calculating total population for legislative redistricting immunizes them from judicial scrutiny. Defs.' Mem. 1, 11, 16. Defendants are mistaken. Reliance on census figures is no defense to the drawing of an apportionment map that fails to achieve equal representation and results in population disparities greater than 10%.

The controlling case, *Mahan v. Howell*, stands for the principle that use of census figures for determining a total population apportionment base is not per se constitutional. *Mahan v. Howell*, 410 U.S 315 (1973). In *Mahan,* official census tracts counted U.S. Navy personnel as residents of the district where they were temporarily stationed. The Court found that only half of

those individuals were bona fide constituents of the district in which they were counted. *Id*. at 330-31. Including military personnel as part of the total population in those districts resulted in "significant population disparities" in violation of the principle of "one person, one vote." *Id*. at 332 (affirming district court order invalidating malapportioned district). The legislature's use of census data to conclude that Navy personnel actually resided in the state "placed upon the census figures a weight they were not intended to bear." *Id*. at 330 n.11. The Supreme Court ultimately held that the District Court was acting within the "bounds of the discretion confided to it" when it invalidated a Virginia plan based on unmodified census figures. *Id*. at 332.

So too in this case, Connecticut's choice to use unmodified census data does not shield Defendants' malapportioned districts from judicial scrutiny. Legislatures are still required to make a "good faith effort" based on "legitimate considerations" in order to draw a map that achieves representational equality. *See Reynolds,* 377 U.S. at 577-79; *Mahan*, 410 U.S. at 324-25. Using census data is often a short-hand way for legislatures to determine the population base for legislative redistricting, but the Court has expressly recognized that district courts need not give legislative reliance on unmodified census figures "conclusive weight" when answering constitutional questions. *Mahan*, 410 U.S. at 331-32.[3] Defendants' assertion that representational equality can be achieved by "merely requir[ing] that each district should have the same number of people," Defs.' Mem. 12, reflects a fundamental misunderstanding of the Equal Protection Clause. A state is constitutionally obligated to modify census data when reliance on that data fails to provide "fair and effective representation" for all individuals, voters and non-voters alike.

[3] Neither is reliance on historical practice a defense, as Defendants suggest. Defs.' Mem. 7. The Court in *Reynolds* expressly warned that "[r]epresentation schemes once fair and equitable become archaic and outdated," 377 U.S. at 567, and emphatically rejected "history alone" as a justification for population disparitie, *id.* at 579.

Gaffney v. Cummings, 412 U.S. 735, 749 (1973) (explaining that overemphasis on raw population figures may ignore important factors to acceptable representation).

Accordingly, Defendant's use of census figures does not exempt them from constitutional scrutiny of their malapportioned districts, nor does it oblige Plaintiffs to demonstrate intentional discrimination by Connecticut, as Defendants suggest. Defs.' Mem. 16. Such an interpretation is contrary to the holding in *Mahan*, which invalidated a district malapportioned due to the use of unmodified census data to assign Navy personnel to the address where they were home-ported, *without* a showing of intentional discrimination. *See Mahan*, 410 U.S. 315. When a map results in "significant disparities" of malapportioned districts that exceed the 10% threshold, as it does here, the burden is on the state to justify those disparities. *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983) (recognizing apportionment plans resulting in population disparities above 10% create a prima facie case of discrimination to be justified by the state). Connecticut has not done so.

C. Connecticut's prison gerrymandering practice lacks justification and subverts representational equality.

The principle of "one person, one vote" stands for the notion that each individual deserves to be equally represented by his or her government. *See Gaffney v. Cummings*, 412 U.S. 735, 748 (1973) (recognizing "fair and effective representation for all citizens is . . . the basic aim of legislative apportionment") (quotations omitted); *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964) (holding state legislatures cannot ignore the constitutional objective of "[e]qual representation for equal numbers of people"). The touchstone in "one person, one vote" cases is whether a legislative map provides *representational* equality, which includes both voting power and access to elected officials. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1131 (2016) (emphasis added) (recognizing that equal representation for equal numbers is "a principle designed to prevent debasement of voting power *and* diminution of access to elected representatives"

(quoting *Kirkpatrick v. Preisler,* 394 U.S. 526, 531 (1969) (emphasis added)). In most cases, a districting scheme based on the same number of residents in each district would satisfy representational equality, since it would provide "equal representation for equal numbers" of people. *Id*. at 1131 (quoting *Wesberry*, 376 U.S. at 18).

Plaintiffs do not challenge these principles; nor do Plaintiffs, like the unsuccessful plaintiffs in *Evenwel*, argue for districts based on equal numbers of eligible voters. *See id.* at 1126 ("[W]e reject appellants' attempt to locate a voter-equality mandate in the Equal Protection Clause."). Instead, Plaintiffs challenge Defendants' view that representational equality requires only that each district have roughly the same "aggregate number of inhabitants." Defs.' Mem. 4. States are not free to define "inhabitants" in a manner that diminishes meaningful equal representation for its residents.

It is important to recognize why the Supreme Court has repeatedly endorsed the general practice of drawing districts based on the total number of people, rather than the number of eligible voters. It has done so because all individuals, even those categorically denied the franchise like minors and non-citizens, have an "important stake in many policy debates" and in "receiving constituent services" in the districts where they live. *Evenwel*, 136 S.Ct. at 1132. As discussed below, *see infra* Section III(C)(1), this logic is simply not applicable to incarcerated persons, who are forcibly separated from and enjoy no meaningful connection to the communities where their prisons are located. Incarcerated individuals have stakes in the policy debates and constituent services in their home districts, not where they are temporarily housed by the state. Because Defendants count incarcerated persons in districts where they are not effectively represented, Connecitcut's state legislative map fails to ensure the "equitable and effective representation" of incarcerated persons that *Evenwel* demands. 136 S. Ct. at 1132. This

denial of prisoners' representational equality results in a substantial dilution of the voting power of urban voters. Compl. ¶¶ 74-75.

1. Prisoners are not equally and effectively represented by legislators elected from districts where they are held.

By counting prisoners in their district of incarceration rather than their district of origin, Connecticut substantially undermines representational equality. As Connecticut law recognizes, prisoners are not residents of the district in which they are held—they are residents of their district of origin. Conn. Gen. Stat. §§ 9-14, 9-14a (2018). Unlike other nonvoting groups such as underage children, prisoners gain nothing by empowering the legislators representing the district in which they are involuntarily held. Instead, prisoners' political power is perversely given to voters who economically and politically benefit from maintaining and adding to the number of incarcerated people in the state. Connecticut's legislative map therefore substantially undermines prisoners' representational equality.

This goal of equal representation does not, as Defendants claim, "*merely* require[] that each district . . . have the same number of people" as measured by total inhabitants. Defs.' Mem. 12 (emphasis added). Rather, the Court in *Evenwel* held that Texas's method was constitutional because it "promotes *equitable* and *effective* representation." *Evenwel v. Abbott*, 136 S. Ct. 1120, 1132 (2016) (emphasis added). By way of illustration, the Court noted that "[n]onvoters have an important stake in many policy debates—children, their parents, even their grandparents, for example, have a stake in a strong public-education system." *Id.*

Unlike the resident nonvoters *Evenwel* describes, generally nonvoting prisoners do not have a stake in local outcomes in towns like Enfield and Suffield, and they are not meaningfully represented by legislators from the districts where they are held. For example, in contrast to non-citizens, prisoners cannot drive on local roads, take their children to local museums, or enjoy

local state-funded parks. Compl. ¶ 4; *see also Calvin v. Jefferson Cty. Bd. of Commissioners*, 172 F. Supp. 3d 1292, 1324 (N.D. Fla. 2016) ("Prisoners are not like minors, or resident aliens, or children—they are separated from the rest of society and mostly unable to participate in civic life."). Most incarcerated persons do not come from the places where they are held, and their children do not benefit from public schools located in the district where they are confined. *See* Compl. ¶¶ 47, 49.

Indeed, as the history of several Plaintiffs illustrate, by counting incarcerated persons in rural districts, Defendants take political power and resources *away* from the urban districts where prisoners' families and communities live—precisely the interest in representation *Evenwel* recognized. *See, e.g.*, Compl. ¶ 31 (alleging that Plaintiff Dione Zackery has multiple family members who have been incarcerated in Connecticut prisons, including cousins who are currently incarcerated); *Id.* ¶ 30 (alleging that Plaintiffs Conley and Garry Monk have a nephew who was incarcerated in Enfield Correctional Institution); *see also Evenwel*, 136 S. Ct. at 1132.

Prisoners involuntarily held in these districts do not have the indicia of residence that the Supreme Court looks at to ensure that representation is equal and effective. For example, prisoners do not have the "enduring tie[s]" or "some element of allegiance" to districts where they are counted that the Supreme Court has looked at to measure true residence. *Franklin v. Massachusetts*, 505 U.S. 788, 804 (1992) (permitting Secretary of Commerce to count overseas Federal employees abroad at their home state when allocating Congressional seats); *see* Compl. ¶ 4. Nor are they "just as interested in and connected with electoral decisions as . . . their neighbors" not held in prison. *Evans v. Cornman*, 398 U.S. 419, 426 (1970) (requiring Maryland to count dwellers of federal enclaves in state district apportionment). As the Supreme Court has long held, voluntary intent to remain is critical to establish residence—and involuntarily held

prisoners certainly lack this intent. *Mitchell v. United States*, 88 U.S. 350, 353 (1874) ("Mere absence from a fixed home, however long continued, cannot work [a] change [between domiciles]. There must be the *animus* to change the prior domicile for another." (emphasis in original)); *see* Compl. ¶¶ 4-6. In short, by the measures the Supreme Court looks to determine representation and residence, prisoners are isolated from the communities where they are held and do not receive equal and effective representation by the legislators who represent prison districts. Prisoners are thus denied the equal and effective representation *Evenwel* and the Constitution demand when a state uses total population to draw its legislative map.

That prisoners are not represented by the legislators from districts is true in fact, *see* Compl. ¶¶ 4-5, 90 (legislators representing prison districts do not visit prisoners, and prisoners cannot attend events for constituents in prison districts), as well as in law. Under state law, incarcerated persons retain residency in their place of origin. Conn. Gen. Stat. § 9-14 (2018) ("No person shall be deemed to have lost his residence in any town by reason of his absence therefrom in any institution maintained by the state."). Moreover, the small number of pretrial detainees or prisoners who are not disenfranchised can vote *only* in the districts where they are bona fide residents. *Id.*; *see also id.* § 9-14a ("Any [incarcerated] person . . . whose voting rights have not been denied, shall be deemed to be absent from the town or city of which he is an inhabitant for purposes of voting," such that the person is eligible to request an absentee ballot).

Nor is there any practical difficulty for Defendants to count prisoners at their permanent address, as state law also directs that when a prisoner is released, the Secretary of State—who possesses the necessary information—must promptly notify the registrar of the released prisoners' municipality of origin. Conn. Gen. Stat. § 9-46a; *see also id.* (former felons may have their voting rights automatically restored *only* if they reside in their municipality of origin).

The Census Bureau's count placing prisoners in their place of incarceration does *not* suggest that, contrary to Connecticut law, prisoners are legally resident where they are incarcerated. As a three-judge district court panel noted, "prisoners are counted [by the Census Bureau] where they are incarcerated for pragmatic and administrative reasons, not legal ones." *Fletcher v. Lamone*, 831 F. Supp. 2d 887 (D. Md. 2011), *aff'd*, 567 U.S. 930 (2012) (citing U.S. Census Bureau, Prisoners at Their "Permanent Home of Record" Address, 10 (2006)). Connecticut law, then, plainly recognizes that legislators from districts with prisons do not represent prisoners. Instead, they are represented by legislators from their districts of origin.

By swelling the power of districts holding prisoners, rather than giving prisoners' political power to their home districts, Defendants violate the constitutional command to create legislative maps that achieve "equitable and effective representation." *Evenwel*, 136 S. Ct. at 1132. Connecticut's prison gerrymandering significantly undermines this constitutional mandate.

2. Defendants' prison gerrymandering substantially dilutes the voting power of urban communities.

Connecticut's legislative map also violates the Fourteenth Amendment because it dilutes the weight of urban votes. When counting prisoners at their permanent residence, rather than their prison address, nine House Districts are 10% less populous than the largest House District. Compl. ¶ 74. Deviations of that size, when they do not act to improve representational equality, are constitutionally suspect. *Evenwel*, 136 S. Ct. at 1123, 1126; *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983) ("A plan with [a maximum population deviation of more than 10%] creates a prima facie case of discrimination and therefore must be justified by the State."). In practice, what this means is that for every 85 residents of District 59 there are more than 100 residents in New Haven's District 97. Compl. ¶ 76. Connecticut is thereby diluting Plaintiffs' votes—and, as discussed above, without any compensating gain in representative equality.

For example, Plaintiff Dione Zackery—who resides in House District 97, votes regularly in state elections, and has several cousins currently incarcerated—has to work more than 15% harder to make her voice heard in state politics than do residents of District 59. Compl. ¶ 31; *see also id.* ¶ 26 (alleging that Plaintiff Justin Farmer, a resident of House District 94, is on the Hamden Legislative Council, votes regularly in state elections, and has had close family members incarcerated); *id.* ¶ 27 (alleging that Plaintiff Germano Kimbro, who lives in House District 95, regularly votes and participates in voter registration drives as well as local, state, and federal campaigns).

As in the classic "one person, one vote" cases, Connecticut's system privileges the political voices of rural residents over those of city dwellers. Compl. ¶ 71; *see also Reynolds v. Sims*, 377 U.S. 533, 567 n.43 (1964) (noting that statewide "legislative apportionment controversies are generally viewed as involving urban-rural conflicts," and that generally there is an "underrepresentation of urban and suburban areas"). Just as in those cases, the substantial disparities in voting weight between city dwellers and those living in rural regions violate the Equal Protection Clause.

D. *Evenwel* and *Cranston* concern whether—not where—to count people.

Defendants rely heavily on *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), and *Davidson v. City of Cranston*, 837 F.3d 135 (1st Cir. 2016), to argue that Plaintiffs' claims are foreclosed and should be dismissed. *See, e.g.*, Defs.' Mem. 1-3, 11-20. This reliance is misplaced because both cases concern *whether* certain individuals should be counted, not *where* they must be counted. Plaintiffs agree that Defendants should count prisoners in legislative apportionment. This action raises the different question of *where* prisoners must be counted. Plaintiffs allege that counting

prisoners where confined rather than in their home districts results in constitutionally suspect population deviations between districts.

1. *Evenwel v. Abbott* answers a different legal question.

Contrary to Defendants' argument, Defs.' Mem. 16, 18, *Evenwel* does not address the issues presented in this case. *Evenwel* recognized the importance of representational equality and thus ruled in favor of allowing Texas to count, for apportionment purposes, incarcerated individuals and other residents who are ineligible to vote. However, *Evenwel* did not answer the question—not presented in that case—about *where* incarcerated individuals should be counted. The relevant Supreme Court case regarding *where* to count persons for state redistricting purposes is *Mahan v. Howell*, 410 U.S. 315, 330-32 (1973), which invalidated a Virginia state legislative map that relied on unmodified census data to assign Navy personnel based on their home-port address rather than their permanent residence. *See supra* Section III(B).

Indeed, *Evenwel*'s representational equality footing cuts against Defendants. In *Evenwel*, the Court concluded that the use of total population for apportionment "promotes equitable and effective representation" because "[n]onvoters have an important stake in many policy debates—children, their parents, even their grandparents, for example, have a stake in a strong public-education system—and in receiving constituent services." 136 S. Ct. at 1132. Incarcerated individuals have these important interests in their home districts, not where they are temporarily housed by the state.

2. *Davidson v. Cranston* is inapposite.

Defendants mistakenly urge this Court to adopt wholesale the First Circuit's decision in *Davidson v. Cranston*, 837 F.3d 135 (1st Cir. 2016), calling it "directly on point." Defs.' Mem. 17. But that case cannot bear the weight that Defendants place on it. In the first place, *Davidson*

is a single out-of-circuit case that is not binding on this Court.[4] It is also readily distinguishable. Plaintiffs' challenge to statewide legislative districting is quite different from the municipal districting challenge at issue in *Davidson*. Defendants are simply incorrect that the claim rejected by the First Circuit in *Davidson* was "virtually identical" to Plaintiffs' claims. Defs.' Mem. 2.

First, the *Davidson* Court was evaluating—and ultimately rejected—a much broader remedy than the one proposed by Plaintiffs. The First Circuit declined to remove prisoners from the City of Cranston's apportionment base altogether. *Davidson*, 837 F.3d at 146 ("The Constitution does not require Cranston to *exclude* the ACI inmates from its apportionment process." (emphasis added)). In this respect, *Davidson* was closer to *Evenwel* than the instant action, given *Davidson's* focus on whether to count prisoners at all.[5]

Here, by contrast, the issue is not *whether* prisoners are counted for apportionment purposes but *where* they are to be counted. Plaintiffs do not ask this Court to exclude the prisoners from Connecticut's apportionment base (as was requested by plaintiffs in *Davidson*), nor to disturb *Evenwel*'s approval of drawing districts based on the total population. Instead, Plaintiffs allege that Defendants' failure to allocate prisoners to their pre-incarceration residences artificially inflates the representation enjoyed by permanent residents of districts with prison facilities, offending the constitutional principle of representational equality. *See* Compl. ¶ 91; Conn. Gen. Stat. § 9-14 (2018) (providing that prisoners remain residents of their districts of origin); *see also Reynolds v. Sims*, 377 U.S. at 560-61 ("[T]he fundamental principle of

[4] This Court is required to accept neither the First Circuit's holding nor its reasoning. *See L.S. v. Webloyalty.com, Inc.*, No. 3:10-CV-1372 CSH, 2014 WL 3547640, at *5 (D. Conn. July 17, 2014) (reiterating that judges of the District of Connecticut are "not bound by the decisions of any other district court in the nation, nor by the decisions of any circuit court other than the Second").

[5] Even so, the First Circuit acknowledged that "*Evenwel* did not decide the precise question before us." *Davidson*, 837 F.3d at 141.

representative government in this country is one of equal representation for equal numbers of people.").

Second, *Davidson* was a case of municipal prison gerrymandering, whereas here Connecticut is engaging in prison gerrymandering of the state legislature. *Compare Davidson*, 837 F.3d at 137, *with* Compl. ¶ 1. As a controversy about local municipal districts, *Davidson* did not involve one of the Supreme Court's chief concerns in its "one person, one vote" cases: protecting urban and suburban residents from the inflated political influence of rural residents, a concern that arises specifically in state cases. *See, e.g., Reynolds v. Sims*, 377 U.S. at 567 n.43 (noting that statewide "legislative apportionment controversies are generally viewed as involving urban-rural conflicts," and that generally there is an "underrepresentation of urban and suburban areas"); *see* Compl. ¶ 3 ("[M]any [of Connecticut's prisoners] maintain a permanent domicile in the state's urban centers. . . . [But] many of these individuals are incarcerated in correctional facilities that the State has located primarily in rural . . . parts of Connecticut.").

Third, *Davidson* was a case concerned with the alleged overcrowding of non-prison districts, without looking to the effects that Cranston's apportionment scheme had on prisoners' home districts. 837 F.3d at 138-39. In this case, however, Plaintiffs are harmed because prisoner residents are both removed from Plaintiffs' midst and given to other districts competing for political sway. Compl. ¶¶ 1-3, 9. Thus, here Defendants' practice of prison gerrymandering is a double punch: residents are removed from Plaintiffs' districts *and* assigned to other districts. Plaintiffs here, unlike the plaintiffs in *Davidson*, can secure full relief only by having prisoners properly counted in their districts of origin—not removed from the apportionment base. Thus, Defendants err in suggesting that *Davidson* is "directly on point in all material respects." Defs.' Mem. 17.

Finally, the *Davidson* court relied on a political logic that is inapplicable in the present case. There, the First Circuit reasoned that Plaintiffs' alleged injury could be easily remedied through the political process. Only one of Cranston's six wards contained a prison, so the court reasoned that residents of the other five wards—which controlled a majority in the city council—could have prevented the alleged dilution of their own votes. *Davidson*, 837 F.3d at 144. In this case, by contrast, no such fix is available. Here, the political power of the voters who suffer the greatest injury—namely, residents of the communities where large numbers of Connecticut prisoners maintained permanent pre-incarceration domiciles—is diluted in comparison to the power of voters who benefit from that very injury. *See* Compl. ¶ 99. The opportunity to use the political process to achieve the remedy is thus effectively denied to them.[6]

II. Defendants are not immune and the case is justiciable.

Defendants attempt to evade this suit by claiming that they are entitled to Eleventh Amendment immunity and that this case is not justiciable because it presents a political question. Defs.' Mem. 7-8. Both these assertions are incorrect. First, this suit is not barred by the Eleventh Amendment. Plaintiffs seek prospective injunctive relief for an ongoing federal violation by state officials, strictly in line with the well-settled *Ex parte Young* exception to Eleventh Amendment immunity. 209 U.S. 123 (1908). Second, this action does not present a non-justiciable political question. Consistent with long-standing Supreme Court precedent, federal courts have the power to review claims alleging constitutional violations in state redistricting plans. *See, e.g.*, *Baker v. Carr*, 369 U.S. 186, 237 (1962).

[6] Moreover, as noted above, Plaintiff's proposed remedy—treating Connecticut prisoners as residing at their pre-incarceration domiciles—is entirely consistent with the state's political determinations. *See supra* Section III(C)(1).

A. The Eleventh Amendment does not immunize Defendants from claims for prospective injunctive relief against an ongoing violation of federal law.

The Eleventh Amendment does not bar Plaintiffs from seeking prospective injunctive relief against state officials acting in their official capacity for violations of federal law. *Ex parte Young*, 209 U.S. 123 (1908); s*ee also Frew v. Hawkins,* 540 U.S. 431, 437 (2004) ("To ensure the enforcement of federal law . . . the Eleventh Amendment permits suits for prospective injunctive relief against state officials acting in violation of federal law."); *Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002) ("In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" (quoting *Idaho* v. *Coeur d'Alene Tribe*, 521 U.S. 261, 296 (1997)); *Papasan v. Allaub,* 478 U.S. 265, 277 (1986) ("*Young* has been focused on cases in which a violation of federal law by a state official is ongoing"). This "straightforward inquiry" leads to the simple conclusion that this suit is not barred by the Eleventh Amendment.

Plaintiffs request only prospective injunctive relief for an ongoing constitutional violation, and make no claim for money damages. The *Ex parte Young* exception thus clearly applies. Plaintiffs assert a cause of action against the state officials for an ongoing constitutional violation. Defendants' concede that the *Young* exception applies in cases when an ongoing violation of federal law is demonstrated, but incorrectly assert that no such violation is alleged by Plaintiffs. Defs.' Mem. 8.[7] Contrary to Defendants' claims, Plaintiffs have plausibly alleged that the challenged prison gerrymandering creates an ongoing harm. In particular, Plaintiffs allege

[7] The two *Ex parte Young* exceptions—i.e., the existence of "a comprehensive remedial scheme [devised by Congress] that prevents the federal courts from fashioning an appropriate equitable remedy" and the presence of "certain sovereignty interests . . . [such as] when the administration and ownership of state land is threatened," *In re Dairy Mart Convenience Stores, Inc*., 411 F.3d 367, 372 (2d Cir. 2005)—are not present here and Defendants have not argued otherwise.

that Defendants will use the malapportioned map they adopted in 2011 to conduct the 2020 elections,[8] in violation of the constitutional principle of representational equality. See Compl. ¶ 91; *see also Reynolds v. Sims*, 377 U.S. 533 (1964) ("[T]he fundamental principle of representative government in this country is one of equal representation for equal numbers of people."). Elections under the 2011 map also form the basis for the ongoing representation of all Connecticut residents by their state legislators. As long as Defendants conduct elections based on the 2011 map, the alleged violations are ongoing.

Defendants try to shoehorn their merits defense into their Eleventh Amendment immunity claim. But as the Supreme Court has consistently observed, the merit of a plaintiff's case is *irrelevant* in determining Eleventh Amendment immunity. *See Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. at 646 ("[T]he inquiry into whether suit lies under *Ex parte Young* does not include an analysis of the merits of the claim."); *Idaho v. Coeur d'Alene Tribe*, 521 U.S. at 281 ("An allegation of an on-going violation of federal law where the requested relief is prospective is ordinarily sufficient to invoke" the *Ex parte Young* exception). It suffices that Plaintiffs have alleged a viable cause of action that falls within the settled confines of the *Ex parte Young* exception. Defendants' claim of Eleventh Amendment immunity must be rejected.

B. This case does not present a non-justiciable political question.

Determining whether an apportionment plan violates constitutional principles is not a political question. Federal courts unquestionably have the power to adjudicate claims involving constitutional violations in state redistricting plans, as Plaintiffs have alleged here. Compl. ¶¶ 96-99. Defendants characterize their practice of prison gerrymandering as an "inherently political judgment" in which the court should not interfere. Defs.' Mem. 7. Defendants ignore the clear

[8] In light of the proximity of the 2018 elections, Plaintiffs do not seek an emergency order against Defendants' use of the 2011 map. Compl. ¶ 12.

guidance of the Supreme Court, however, that when the state exercises its judgment in a manner that infringes on the individual political rights of its residents, courts are not divested of jurisdiction from adjudicating constitutional claims.

For more than half a century, the Court has recognized that a state's decision to malapportion its districts in a manner that deprives its residents of representational equality is not a "political question," but a deprivation of constitutional rights which the Court has the power to review. *Baker v. Carr*, 369 U.S. 186, 226 (1962). Plaintiffs challenge "the consistency of state action with the Federal Constitution," and their claim is entitled to judicial review. *Id*. Beginning with *Baker,* in which the Court reviewed and found unconstitutional a state reapportionment scheme that favored rural districts by ignoring the actual, urban residences of a significant number of voters, courts have adjudicated claims that legislative maps violate constitutional principles. *See, e.g.*, *Mahan v. Howell,* 410 U.S. 315 (1973) (holding it was not an abuse of discretion for a lower court to order interim plan when the Virginia legislature's reliance on unmodified Census data resulted in a constitutionally impermissible redistricting plan); *Reynolds v. Sims,* 377 U.S. 533, 566-68 (1964) ("[A] denial of constitutionally protected rights demands judicial protection. . . . The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races."); *Wesberry v. Sanders*, 376 U.S. 1 (1964) (holding district court erred by dismissing constitutional challenge to unequally populous districts as non-justiciable political question).

A basic constitutional principle of representative government is that the weight of a particular individual's vote should not be determined solely by where he or she lives. *Reynolds*, 377 U.S. at 567. "Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations

based upon factors such as race." *Id.* at 566. Connecticut's choice to over-value the votes of its rural, primarily white residents by counting incarcerated non-residents within those districts for redistricting purposes, even while those non-residents are disenfranchised, has as its corollary the dilution and under-valuing of the votes of its urban residents. As in *Reynolds,* Connecticut's legislators represent people and are elected by voters, "not farms or cities or economic interests." *Id.* at 562.

It is possible that before the age of mass incarceration and the boom in prison construction, the state's choice to adopt this residential fiction had no meaningful impact on the electoral or representational equality of Connecticut's residents. However, the continued use of prison gerrymandering now results in unevenly populated districts, with population disparities exceeding what is constitutionally tolerable. As a result, this Court, following the principles laid out in *Baker* and subsequent cases, plainly has jurisdiction to consider the constitutionality of the state's determination to continue this practice at the expense of urban voters. *See Evenwel v. Abbott*, 136 S. Ct. 1120, 1123-24 (2016); *Wesberry*, 376 U.S. at 6 (rejecting argument that reapportionment is committed exclusively to legislative discretion when this would "immunize state congressional apportionment laws which debase a citizen's right to vote from the power of courts to protect the constitutional rights of individuals from legislative destruction"); *Baker*, 369 U.S. at 191-92.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants' Motion to Dismiss.

Respectfully submitted,

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* Motion for law student appearances forthcoming
** This brief does not purport to state the views of Yale Law School, if any.
*** Motion for *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2018, a copy of the foregoing *Memorandum of Law In Opposition to Defendants' Motion to Dismiss*, was electronically filed. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

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