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October 5, 2020

**VIA ECF**

The Honorable Gary R. Brown
United States District Court for the Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722-9014

Re: *Flores* v. *Town of Islip*, No. 18 Civ. 3549(GRB)(ST)

Dear Judge Brown:

We, along with co-counsel, represent the Plaintiffs in the above-referenced matter. We write to address Your Honor's questions regarding the relevance of certain topics covered during today's examination of Plaintiffs' expert, Dr. Thomas Sugrue. As explained in more detail below, Dr. Sugrue's testimony is highly relevant to the Court's broad-based totality of the circumstances inquiry—specifically, Senate Factor Five.

Under Senate Factor Five, the Court must consider "the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process." *Thornburg* v. *Gingles*, 478 U.S. 30, 36–37 (1986) (citing S. Rep. No. 97-417, at 28–29 (1982)). While other Senate Factors focus on the political process directly, Senate Factor Five is designed to consider the ways that the political process "interacts

with social and historical conditions to cause an inequality" in the opportunity of the minority group to participate politically. *Goosby* v. *Town Bd. of Town of Hempstead, N.Y.*, 180 F.3d 476, 496 (2d Cir. 1999) (citing *Gingles*, 478 U.S. at 47).

Importantly, "where minority group members suffer effects of prior discrimination" and "the level of minority participation in politics is depressed, plaintiffs need not prove any further causal nexus between their disparate socioeconomic status and the depressed level of political participation." *United States* v. *Vill. of Port Chester*, 704 F. Supp. 2d 411, 445 (S.D.N.Y. 2010) (internal quotation marks and alteration omitted); *Reed* v. *Town of Babylon*, 914 F. Supp. 843, 887 (E.D.N.Y. 1996) ("No casual nexus between lower socioeconomic status and lower political participation need be proven"); *Rodriguez* v. *Harris Cty., Tex.*, 964 F. Supp. 2d 686, 785 (S.D. Tex. 2013), *aff'd sub nom. Gonzalez* v. *Harris Cty., Tex.*, 601 F. App'x 255 (5th Cir. 2015) (same). Moreover, courts frequently credit the types of discrimination and disparities presented by Dr. Sugrue in considering Senate Factor Five. *See e.g.*, *Port Chester*, 704 F. Supp. 2d at 435 (considering disparities in housing in finding that plaintiffs satisfied Senate Factor Five); *Rodriguez*, 964 F. Supp. 2d at 786 (considering educational disparities in finding that plaintiffs satisfied Senate Factor Five); *Large* v. *Fremont Cty., Wyo.*, 709 F. Supp. 2d 1176, 1218–19 (D. Wyo. 2010) (considering disparities in socioeconomic status in finding that plaintiffs satisfied Senate Factor Five); *Missouri State Conference of the Nat'l Ass'n for the Advancement of Colored People* v. *Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1071 (E.D. Mo. 2016), *aff'd*, 894 F.3d 924, 940 (8th Cir. 2018) (considering disparities in policing practices in finding that plaintiffs satisfied Senate Factor Five); *Pope* v. *Cty. of Albany*, 94 F. Supp. 3d 302, 326 (N.D.N.Y. 2015) (considering disparities in disease infection rates in finding that plaintiffs satisfied Senate Factor Five).

Dr. Sugrue testified today about discrimination and disparities suffered by Islip's Latinos relating to housing, education, and socioeconomic status, and he will offer testimony of additional discrimination and disparities tomorrow. Plaintiffs' expert Dr. McDonald has already testified that Latino voters turn out to vote less than white voters in Islip. (Trial Tr. 579:7–11.) Plaintiffs' expert Dr. Rene Rocha, who will testify later this week, will not only offer further testimony that Latino political participation in Islip is depressed, he will also surpass Plaintiffs' burden under Senate Factor Five and testify that certain housing, socioeconomic, and educational disparities help to explain Latino's depressed levels of participation.

We hope that this information is helpful to the Court. We look forward to continuing Dr. Sugrue's testimony tomorrow.

Respectfully submitted,

/s/ *Sara E. Hershman*

Sara E. Hershman
*Counsel for Plaintiffs*

cc: All Counsel (via ECF)