

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SERGIO SERRATTO, ANTHONY AGUIRRE, IDA
MICHAEL, and KATHLEEN SIGUENZA,

Plaintiffs,

– against –

TOWN OF MOUNT PLEASANT and TOWN
BOARD OF THE TOWN OF MOUNT PLEASANT,

Defendants.

Index No. 55442/2024

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' STATEMENT OF
ALLEGEDLY UNDISPUTED
MATERIAL FACTS**

Plaintiffs Sergio Serratto, Anthony Aguirre, Ida Michael, and Kathleen Siguenza (collectively "Plaintiffs"), respectfully submit, pursuant to 22 NYCRR 202.8-g, the following response to Defendants' Statement of Material Facts, NYSCEF Doc. No. 138.

A. The Town of Mount Pleasant

1. Established in 1788, the Town of Mount Pleasant is a municipal government governed by a five-member board that includes four board members and the Town Supervisor (*see* Town Law §§ 24, 52, 60)

Response: Undisputed.

2. The Town includes the incorporated villages of Pleasantville, Sleepy Hollow, and a small portion of Briarcliff Manor. The remaining area of the Town is unincorporated and includes the hamlets of Hawthorne, Thornwood, Valhalla, and Pocantico Hills (*see About Mount Pleasant, Town of Mount Pleasant, <https://www.mtpleasantny.com/291/About-Mount-Pleasant>* [Last visited Aug. 9, 2024]).

Response: Undisputed.

3. The Town Board is the legislative, appropriating, governing and policy determining body of the Town (*see Elected & Appointed Officials, Town of Mount Pleasant,*

<https://www.mtpleasantny.com/299/Elected-Appointed-Officials> [last visited Aug. 9, 2024]). But, under state law, the Town Board has virtually no authority within the villages (Town Law § 60 [stating that the law empowering town boards “is not intended to extend the power of said board or officers within the limits of any incorporated village or city, or in any manner to abridge or interfere with the power and authority of the officers of any such village or city within its corporate limits, except as otherwise provided by law”]).

Response: Plaintiffs do not dispute that the Town Board is the legislative, appropriating, governing and policy determining body of the Town. The statement “the Town Board has virtually no authority within the villages” is ambiguous, a legal conclusion to which no response is required, and not relevant to any material issue in these proceedings because residents of the villages are eligible to vote in Town elections and represented in Town government by members of the Town Board. *See* NYSCEF 82 (Saracino Deposition) at 21:10-14, 155:4-10; NYSCEF 83 (Zaino Deposition) at 17:17-25; NYSCEF 84 (Rogers-Smalley Deposition) at 16:25-17:16, 18:19-18:24; NYSCEF 85 (Sialiano Deposition) at 17:25-18:14.

To the extent a response is required, Plaintiffs dispute that the Town Board has “virtually no authority” over the villages. The Town Board has the authority to levy taxes on village residents and provides numerous services to the villages, including assessing new developments, issuing permits, and providing other services as requested by the villages. *See* NYSCEF 80 (Town Deposition) at 39:16-40:14; NYSCEF 82 (Saracino Deposition) at 24:6-13; NYSCEF 83 (Zaino Deposition) at 19:3-20:3; NYSCEF 84 (Rogers-Smalley Deposition) at 18:3-9; NYSCEF 85 (Sialiano Deposition) at 19:9-22. Indeed, the Town Board decided to raise taxes on Sleepy Hollow residents by more than 20% this past year. *See* NYSCEF 116 (Town of Mount Pleasant Adopted Budget 2024) at 5.

4. Each of the three villages within the Town has their own local government, including an elected board of trustees and administrative municipal offices (*see Villages in the Town of Mount Pleasant*, Town of Mount Pleasant, <https://www.mtpleasantny.com/335/Villages-in-the-Town-of-Mount-Pleasant> [last visited Aug. 9, 2024]; *see also* Serratto Dep. 318:9-320:5; Aguirre Dep. 83:12-89:21; Michael Dep. 124:2-11).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

5. These villages “have their own police, recreation, highway, water, and building departments, tax assessor, clerks’ offices, and justice courts, which are separate and apart from” the Town, and the villages collect separate taxes for these services (*Villages in the Town of Mount Pleasant*, Town of Mount Pleasant, <https://www.mtpleasantny.com/335/Villages-in-the-Town-of-Mount-Pleasant> [last visited Aug. 9, 2024]).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

6. The villages collect separate taxes to cover the municipal services that they provide (*id.*).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

7. As of the 2020 Census, 19.1% of the Town’s population of 44,436 (including the villages) was reported to be Hispanic (*see Quick Facts: Mount Pleasant town, Westchester County, New York, U.S. Census Bureau*, <https://www.census.gov/quickfacts/fact/table/mountpleasanttownwestchestercountynewyork,US/POP010220> [last visited Aug. 13, 2024]). The majority of this population lies within the Village of Sleepy Hollow: according to the 2020 Census, 5,280 residents of the Village of Sleepy Hollow are Latino or Hispanic (*see Sleepy Hollow village, New York, U.S. Census Bureau*, https://data.census.gov/table/DECENNIALDHC2020.P9?g=060XX00US3611949011_160XX00US3667638 [last visited Aug. 13, 2024]).

Response: Undisputed.

B: Election Timing

8. The Town conducts elections to its board and supervisor positions at-large (Town Law §§ 24, 52).

Response: Undisputed.

9. Elections for the Town Board have been held in November of odd-numbered years (Town Law §§ 24, 52).

Response: Undisputed.

10. In December 2023, the New York Legislature amended Town Law § 80 to move all town elections statewide to November of even-number years (2023 McKinney's Sess Law News of NY, ch 741, §§ 1, 7 [A. 4282-B] [Dec. 22, 2023]).

Response: Plaintiffs do not dispute that the New York Legislature amended Town Law § 80 to eventually move all town elections statewide to November for even-number years. However, Plaintiffs note that – as Defendants acknowledge – Town Law § 80 provides for a multiyear phase-in of even-year elections, such that the Mount Pleasant will not conduct even-year elections for Town offices until 2028. *See* Dkt. 118 at 21; 2023 McKinney's Sess. Law News, ch 741, § 5 (A. 4282-B) (Dec. 22, 2023).

11. Voting patterns in odd-numbered years differ from those in even-numbered years (*see* Handley Rep. 5; Lewis Rep. 20-21, 24-25; Velez Rep. 6; DeFord Rep. 5).

Response: The statement that voting patterns “differ” in odd- and even-numbered years is too vague to merit a response. It is unclear in what ways Defendants are asserting voting patterns “differ” between odd- and even-numbered elections – Defendants fail to specify whose voting patterns differ, over what time period, and in what jurisdictions.

To the extent a response is required, Plaintiffs do not dispute that, as a general proposition, there is evidence that levels of voter turnout vary between even- and odd-year elections. Indeed, voting patterns “differ” in every election based on a number of factors. Regardless, Plaintiffs note that there is evidence of racially polarized voting among white and Hispanic voters in Mount Pleasant in both even and odd-year elections. NYSCEF 70 (Velez Report) at 7.

12. There is no evidence that Hispanic preferred candidates will lose contests in the Town in November of even-numbered years. In the only recent even year election for Town Board, the Hispanic preferred candidate won (Velez Rep. 6; DeFord Rep. 5; Lewis Rep. 24-25).

Response: Plaintiffs do not dispute that the Hispanic-preferred candidate prevailed in a 2018 special election for an open Town Board seat. Plaintiffs dispute that there is “no evidence that Hispanic preferred candidates will lose contests in the Town in November of even-year elections.” There is evidence of racially polarized voting within Democratic primary elections (i.e., Hispanic and white voters prefer different candidates in Democratic primaries), indicating that the transition to even-year elections does not mean Hispanic-preferred candidates will prevail, even if it is correct that Democratic candidates have a better chance of success in even-year elections. *See* NYSCEF 72 (Velez Rebuttal Report) at 11.

13. Moreover, Democratic candidates have been nearly universally successful in even year contests in the Town (Lewis Rep. 20-21).

Response: The phrase “nearly universally successful” is ambiguous. To the extent a response is required, Plaintiffs do not dispute that Democratic candidates have generally been more successful in even-year elections than in odd-year elections. However, with the exception of one special election in 2018, there have been no other elections for Town office held in even years. *See* NYSCEF 71 (Lewis Report) at 20-21.

C. Plaintiffs

14. Plaintiffs are four Hispanic residents of the Town (Michael Dep. 8:23-24; Aguirre Dep. 12:3-4; Serratto Dep. 13:11-13; Siguenza Dep. 11:13-14).

Response: Undisputed.

15. Plaintiffs did not affirmatively seek to become plaintiffs in this case—they were introduced to Plaintiffs’ counsel David Imamura via mutual friends (Siguenza Dep. 23:14-25:13; Serratto Dep. 41:23-42:3, 44:9-45:4; Aguirre Dep. 22:13-23:19).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Moreover, the phrase “affirmatively seek” is ambiguous.

To the extent a response is required, Plaintiffs do not dispute that that they were introduced to their counsel via mutual friends. Plaintiffs dispute that being introduced to counsel through mutual friends means that they did not “affirmatively seek” to become plaintiffs in these proceedings. For example, when asked about being contacted to become a plaintiff in this case, Plaintiff Siguenza stated, “It wasn’t that I was contacted, it’s that I offered.” NYSCEF 79 (Siguenza Deposition) at 25:12-13.

16. Prior to being contacted about becoming a plaintiff in this case, Plaintiffs Michael and Siguenza had no concerns with the Town's at-large election system (Siguenza 23:14-25:13, 29:6-10, Michael Dep. 27:10).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

17. Similarly, Plaintiff Aguirre could not recall any concerns with the Town's at-large elections system before he was contacted about become a plaintiff (Aguirre Dep. 27:20-23).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

18. While Plaintiff Serratto testified he had concerns with the Town's at-large system before this action, he never shared his concerns with anyone on the Town Board or in the Mount Pleasant government (Serratto Dep. 76:13-77:5).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Plaintiffs further dispute that Plaintiff Serratto "never shared his concerns with anyone on the Town Board or in the Mount Pleasant government," as Plaintiff Serratto testified that he discussed his concerns about the Town's at-large system of election with Francesca Hagadus, who previously served on the Town Board, and other members of the Town government. *See* NYSCEF 76 (Serratto Deposition) at 74:7-76:16.

19. Plaintiff Aguirre is a registered Republican.

Response: Undisputed.

20. Plaintiff Aguirre has never voted in a Town Board election, and he did not have a preferred candidate in the 2023 Town Board or Town Supervisor elections (*id.* at 35:8-23, 39:14-18). He does not even know who the candidates were or who won those elections (*id.* at 35:24-36:5).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

21. Plaintiff Aguirre does not know who the current Town Board members are, whether any Town Board members represent his interests, or whether any of them are his candidate of choice (*id.* at 97:14-23).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

22. Plaintiff Aguirre testified that he may not vote in future Town Board elections (*id.* at 39:18-23, 40:10-17).

Response: Undisputed.

23. Plaintiff Siguenza could not identify, either at her deposition or in written discovery responses, her preferred candidate in any Town Board election (*see* Plaintiff Siguenza's Responses to Defendants' First Discovery Requests at 9-13; Siguenza Dep. 39:19-42:19).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

24. Plaintiff Siguenza does not recall if she voted in the most recent Town Board election in 2023 or who the candidates were (Siguenza Dep. 42:10-19). In all these elections, plaintiff did not know whether her candidates of choice won (*id.* at 41:5-10, 42:2-19).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

25. Plaintiff Michael admitted she does not know whether any Town Board members are her candidates of choice or represent her interests (Michael Dep. 136:4-15). She does not know who she voted for in the 2017, 2019, or 2021 Town elections or whether her candidates of choice prevailed (*id.* at 41:15-21, 42:13-44:6; Plaintiff Michael's Responses to Defendant's first Discovery Requests at 8-9).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Plaintiffs further dispute that Plaintiff Michael "does not know whether any Town Board members are her candidates of choice or represent her interests." As Plaintiff Michael explained in her deposition, she does not

believe a Republican Town Board member would represent her interests and, accordingly, she would not consider voting for a Republican Town Board candidate in the future. NYSCEF 78 (Michael Deposition) at 136:21-137:4.

26. While Plaintiff Michael voted in the 2023 Town Board election, she did not vote in the Town Supervisor election (Plaintiff Michael's Responses to Defendants' First Discovery Requests at 8).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Further, Plaintiff Michael notes that she did not vote for a Town Supervisor candidate because she did not support either of the candidates who appeared on the ballot. NYSCEF 78 (Michael Deposition) at 37:17-38:7. Otherwise, undisputed.

D. Voting Patterns

27. Non-Hispanic voters in the Town support candidates preferred by Hispanic voters at high rates. In the 2019 town-justice election and 2021 supervisor election, nearly 40% of non-Hispanic voters supported the Hispanic-preferred candidates (Handley Rep. 3, 5).

Response: The assertion that non-Hispanic voters in the Town support candidates preferred by Hispanic voters at "high rates" attempts to draw a legal conclusion and is not a statement of fact as to which a response is required. Moreover, the term "high rates" is ambiguous.

To the extent a response is required, Plaintiffs do not dispute that, depending on what methodology is used to estimate group electoral preferences, between 30% and 40% of non-Hispanic voters supported the Hispanic-preferred candidates in the 2019 town-justice election and 2021 supervisor election.

28. In the 2015, 2019, and 2021 Town Board elections, nearly 20% of non-Hispanic voters supported Hispanic-preferred candidates (*id.* at 5).

Response: Plaintiffs do not dispute that, depending on what methodology is used to estimate group electoral preferences, between 10% and 20% of non-Hispanic voters supported Hispanic-preferred candidates in the 2015, 2019, and 2021 Town Board elections.

29. In the 2018 Town Board election, the Hispanic-preferred candidate won with over 55% of the vote, which is not possible without high levels of support from non-Hispanic voters (*see id.*).

Response: The assertion that the Hispanic-preferred candidate could not have prevailed in the 2018 Town Board election “without high levels of support from non-Hispanic voters” attempts to draw a legal conclusion and is not a statement of fact as to which a response is required. Moreover, the phrase “high levels of support” is ambiguous.

To the extent a response is required, Plaintiffs do not dispute that the Hispanic-preferred candidate won a special election for a seat on the Town Board in 2018, a seat which she lost in the subsequent election despite being an incumbent. *See* NYSCEF 65 (Handley Report) at 5. The record evidence does not demonstrate that this candidate’s success would not have been possible without “high levels” of white support, given that this election was also characterized by significantly higher turnout among Hispanic voters as compared to typical Town elections. *See id.*

30. Hispanic residents in the Town are “composed of many subgroups with differing national origins, diversity of political and social views, times of arrival in this country, and generational differences between subgroups” (Critchlow Rep. 3).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. To the extent a response is required, Plaintiffs do not dispute that the Hispanic community is internally diverse in some ways.

31. They are also “economically, educationally, by origin of country, and politically diverse” (*id.* at 5). Scholars predict that Hispanic voting behavior will be divided between the parties (*id.*).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Moreover, the second sentence is ambiguous. It is unclear which “[s]cholars” Defendants are referring to, how “voting behavior” can be “divided between the parties,” and which “parties” are included in these predictions (i.e., only the major Democratic and Republican parties or also minor and third parties?). To the extent Defendants mean to say that Hispanic voters’ votes will be divided between Democratic and Republican candidates, this statement would still be ambiguous because it does not specify the level of division “[s]cholars” predict will occur in the future and how that level of division compares to the present day. For example,

Hispanic votes are already “divided between the parties” today (although Latinos in Mount Pleasant are on the whole politically cohesive and tend to support Democratic candidates).

To the extent a response is required, Plaintiffs do not dispute that the Hispanic community is internally diverse in some ways. Plaintiffs dispute the statement that the Hispanic community is “politically diverse” to the extent it implies that the Hispanic community is not politically cohesive as that term is defined under the NYVRA or does not have candidates of choice in Town elections. *See* NYSCEF 65 (Handley Report); NYSCEF 66 (Wice Report); NYSCEF 70 (Velez Report); NYSCEF 72 (Velez Rebuttal Report).

32. There is no evidence analyzing the differing voting patterns among various groups within the “Hispanic community” in the Town. For example, Ecuadorians and Dominicans are the two largest subgroups within the Town’s “Hispanic community,” but there is no evidence that Ecuadorians in the Town vote the same as Dominicans (*see id.* at 7-8, Table 1).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings, given that the NYVRA specifically bars consideration of whether “sub-groups within a protected class have different voting patterns.” Election Law § 17-206(2)(c)(vii).

To the extent a response is required, Plaintiffs do not dispute that neither party has entered evidence in this case analyzing the voting patterns of Ecuadorians and Dominicans in Mount Pleasant. Plaintiffs note, however, that there is evidence demonstrating that the Hispanic community on the whole in Mount Pleasant (a community which includes both Ecuadorians and Dominicans) is politically cohesive as that term is defined under the NYVRA and has candidates of choice in Town elections. *See* NYSCEF 65 (Handley Report); NYSCEF 66 (Wice Report); NYSCEF 70 (Velez Report); NYSCEF 72 (Velez Rebuttal Report).

E. The Totality of the Circumstances

33. There is no evidence establishing a history of actual discrimination *in* the Town (*see, e.g.,* Sandoval-Strausz Rep. 8-18 [no mention of any incidents in the Town of Mount Pleasant]).

Response: Plaintiffs dispute that there is “no evidence establishing a history of actual discrimination *in* the Town.” There is evidence of discrimination perpetuated by individuals and entities within the Town. *See* NYSCEF 67 (Sandoval-Strausz Report) at 35; NYSCEF 69 (Sandoval-Strausz Rebuttal

Report) at 19. Moreover, discrimination perpetuated by individuals and entities outside the Town of Mount Pleasant affects the lives of Hispanic residents “in the Town.” See NYSCEF 69 (Sandoval-Strausz Rebuttal Report) at 9-11, 16-20. For example, Westchester County’s alleged violations of the Voting Rights Act and the Help America Vote Act and the Westchester County Executive’s decision to veto the county’s Immigrant Protection Act affected the lives of Hispanic residents in Mount Pleasant, a town within Westchester County. NYSCEF 67 (Sandoval-Strausz Report) at 16; NYSCEF 69 (Sandoval-Strausz Rebuttal Report) at 18.

34. There is no evidence that white residents contribute to political campaigns at higher rates than Hispanic residents in the Town (*see id.* at 23-24 [no statistics specific to the Town of Mount Pleasant]).

Response: Plaintiffs do not dispute that the record does not contain “statistics specific to the Town of Mount Pleasant” with respect to relative levels of political contributions by Hispanic and white residents. However, Plaintiffs do dispute that this means there is “no evidence” of differential levels of contributions by residents of Mount Pleasant, *see, e.g., Vetere v. Pembroke Land Dev. LLC*, 156 A.D.3d 1195, 1198 (3d Dep’t 2017) (“Circumstantial evidence may be used to defeat a motion for summary judgment.”), as there is evidence indicating that non-Hispanic whites are substantially overrepresented among political donors nationwide due to racial wealth gaps, *see* NYSCEF 67 (Sandoval-Strausz Report) at 23-24, and evidence indicating that there are significant wealth gaps between Hispanic and white residents of Mount Pleasant, *id.* at 28-30; NYSCEF 70 (Velez Report) at 10. This evidence supports the reasonable inference that Hispanic voters contribute to political campaigns at lower rates than white voters in the Town of Mount Pleasant.

35. There is no evidence showing that Hispanics are excluded from processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election (*see id.* at 23).

Response: Plaintiffs dispute that there is no evidence showing that Hispanics are excluded from processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election. There are numerous barriers that operate to prevent Hispanic candidates from being nominated to the Town Board, including an insular nomination and slating process overseen by the Mount Pleasant Republican Committee, *see* NYSCEF 81 (Fulgenzi Deposition) at 60:20-61:4; NYSCEF 84 (Rogers-Smalley Deposition) at 36:14-38:12; NYSCEF 85 (Sialiano Deposition) at 27:17-28:2, 38:7-16, which provides extensive resources and

support to its chosen candidates, *see* NYSCEF 81 (Fulgenzi Deposition) at 25:10-16, 37:21-24, 39:4-21, 40:22-42:2, 46:24-47:25, and the only realistic pathway to holding office in Mount Pleasant, *see* NYSCEF 63 (Defendants Responses and Objections to Interrogatories), No. 5; NYSCEF 81 (Fulgenzi Deposition) at 71:20-72:20, 74:14-75:12, and which Town Supervisor Fulgenzi described as a “like a club” where “[i]f you didn’t fit the mold they didn’t want you and they made your life harder,” *see* NYSCEF 81 (Fulgenzi Deposition) at 26:14-28:8.

36. There are Hispanic residents on both the Mount Pleasant Republican Committee and the Mount Pleasant Democratic Committee (Serratto Dep. 234:19-25; Smalley Dep. 86:17-25).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

37. Hispanic candidates can be nominated to the Town Board (Serratto Dep. 232:8-234:25, 238:16-19).

Response: Plaintiffs do not dispute that, in theory, Hispanic candidates “can” be nominated to the Town Board, in that there is no legal prohibition forbidding Hispanic candidates from being nominated. However, Plaintiffs dispute this item to the extent it suggests that Hispanic candidates have any realistic pathway to being nominated to the Town Board. *See supra* ¶ 35.

38. There is no evidence of voting practices that may enhance the alleged dilutive effects of the at-large system. Plaintiffs have never been prohibited from voting or contributing to political campaigns, and they have no evidence that Hispanic residents have been prohibited from engaging in any political activity (*see, e.g., id.* at 101:12-17, 288:6-11, 270:18-271:13; Aguirre Dep. 40:18-41:8, 57:2-8, 58:2-9; Siguenza Dep. 43:13-15, 77:17-78:2; Michael Dep. 47:17-48:2, 83:6-10, 84:12-17).

Response: Disputed. Elections for Town Board are staggered and conducted in odd-numbered years, which compounds the dilutive effects of the Town’s at-large system of elections. *See* NYSCEF 73 (DeFord Report) at 5-14. The Town provides official information – including information about voting – only in English and does not conduct any outreach to the Hispanic community around elections, depriving Hispanic residents of accurate information about Town elections. *See* NYSCEF 80 (Town Deposition) at

140:15-142:13; NYSCEF 79 (Siguenza Deposition) at 86:8-21, 88:16-89:6; NYSCEF 78 (Michael Deposition) at 86:14-25. Candidates for Town Board conduct little, if any, outreach to voters in Spanish or in Sleepy Hollow, where most Hispanic residents of the Town reside. *See* NYSCEF 83 (Zaino Deposition) at 46:14-24, 70:10-16; NYSCEF 85 (Sialiano Deposition) at 32:24-33:12; NYSCEF 81 (Fulgenzi Deposition) at 42:5-13; NYSCEF 82 (Saracino Deposition) at 77:24-82:4, 85:18-20, 95:18-23. A map previously appearing on the Town's official website misleadingly communicated to residents of the Village of Sleepy Hollow, where the Town's Hispanic population is most heavily concentrated, that they were not residents of the Town. *See* NYSCEF 86 (Map of Mount Pleasant); NYSCEF 80 (Town Deposition) at 37:20-38:1.

39. Since 1788, there is minimal evidence of incidents in the Town that Plaintiffs deem a racial appeal, and they are interwoven with a policy question of unlawful immigration on which reasonable minds differ (*see* Sandoval-Strausz Rep. 35-37).

Response: This item attempts to draw a legal conclusion and is not a statement of fact as to which a response is required.

To the extent a response is required, Plaintiffs dispute both that the evidence of racial appeals is "minimal" and that these incidents are not racial appeals because they "are interwoven with a policy question of unlawful immigration." Elected officials in and around Mount Pleasant have made anti-Hispanic appeals central to their campaigns and political identities. *See* NYSCEF 67 (Sandoval-Strausz Report) at 32-34. For example, Town Supervisor Carl Fulgenzi has endorsed numerous messages on social media evincing hostility towards non-white immigrants. *See* NYSCEF 96 (Record of Public Comments) at 101-109 (TMP0000120-0000128). The Mount Pleasant Republican Committee distributed a mailer falsely claiming that the Mayor of New York City, who is Black, was sending "unvetted migrants" to a facility in Pleasantville. *See* NYSCEF 106 (Mount Pleasant Republican Committee Mailer). During the 2023 campaign, a flyer for a rally in Pleasantville stated that Town residents were needed to "fight the Illegal Alien Invasion" and to oppose Democratic politicians who were allegedly "PRO ILLEGAL ALIENS." *See* NYSCEF 108 (Rally Flyer). Plaintiffs have explained how these and other racial appeals utilize dog whistles and anti-Hispanic stereotypes, distinguishing them from what could be characterized as good-faith policy arguments. *See* NYSCEF 60 (Plaintiffs' Memorandum of Law in Support of their Motion for Summary Judgment) at 27.

40. Outside of one statement about this litigation, there is no evidence that the Town Board is unresponsive to the needs of the Hispanic residents (*see id.* at 39-40).

Response: Disputed. There is extensive evidence that the Town is unresponsive to the needs of Hispanic residents. Hispanic residents of the Town have particularized concerns in areas like housing, education, health care, and mental health, which the Town has failed to address. *See* NYSCEF 76 (Serratto Deposition) at 125:18-22. The Town was unaware of socioeconomic disparities between white and Hispanic residents before this lawsuit, *see* NYSCEF 80 (Town Deposition) at 56:25-58:4; 61:08-13; 62:21-63:4; 63:24-64:7; 65:7-17; 67:7-12, and has admittedly taken no steps to address those disparities, *see id.* at 64:15-18; 79:6-23; 80:23-81:25, 82:22-83:16, 83:23-84:15, 84:22-85:12, 85:13-87:2. The Town Board has disclaimed responsibility for Hispanic residents in Sleepy Hollow, *see id.* at 96:10-18, even though it possesses legal and functional power over their lives. For example, the Town acknowledges that it has failed to take action to address the Hispanic community's affordable housing needs, *id.* at 126:7-10, 132:8-11; NYSCEF 84 (Rogers-Smalley Deposition) at 66:3-9; NYSCEF 83 (Zaino Deposition) at 75:10-20, even though it has numerous tools available to incentivize the development of affordable housing, *see* NYSCEF 80 (Town Deposition) at 112:15-113:25; NYSCEF 84 (Rogers-Smalley Deposition) at 64:9-20; NYSCEF 83 (Zaino Deposition) at 54:3-16, which the Town has used to incentivize the development of housing for seniors, NYSCEF 81 (Fulgenzi Deposition) at 100:23-101:18. The Town made no effort to engage the Hispanic community in developing a new Master Plan, and the resulting plan included no goals or strategies relating to the Hispanic community's needs, even though it addressed the particularized needs of other communities such as veterans and seniors. *See* NYSCEF 80 (Town Deposition) at 124:12-24, 135:20-136:4, 137:24-138:5, 139:6-17; NYSCEF 112-113 (Town Master Plan) at 7-2, 7-28.

41. Plaintiffs have never voiced any concerns to the Town Board outside of this litigation (*see* Serratto Dep. 185:5-9, 167:10-17; Aguirre Dep. 78:10-79:6; Siguenza Dep. 108:6-14, 110:2-25, 117:5-24; Michael Dep. 115:18-116:6).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Plaintiffs further dispute that Plaintiff Serratto "never voiced any concerns to the Town Board outside of this litigation," as Plaintiff Serratto discussed his concerns about the Town's at-large system of election with Francesca Hagadus, who previously served on the Town Board, and other members of the Town government. *See* NYSCEF 76 (Serratto Deposition) at 74:7-76:16.

42. Plaintiffs have never requested to reserve a public space in the Town, or asked for an issue to be added to the Town Board's agenda (Michael Dep. 61:3-15; Serratto Dep. 163:6-164:2; Siguenza Dep. 48:25-49:5; Aguirre Dep. 45:7-14).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

43. Three Plaintiffs have never attended a Town Board meeting or a community event hosted by the Town outside of those related to this action (Aguirre Dep. 45:15-47:17, 49:12-15; Siguenza Dep. 118:9-11; Michael Dep. 61:4-11, 70:17-20).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

44. Plaintiff Serratto believes that he had attended a Town Board meeting prior to the hearings related to this action, but he does not remember when it was (Serratto Dep. 78:15-20). Plaintiff Serratto has never requested to meet with a Town Board member or with the Town Supervisor (*id.* at 164:3-18).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

45. The only evidence demonstrates that the Town is responsive to members of all races and is actively working to respond to the needs of all residents (*see, e.g.*, Sialiano Dep. 19:5-6, 53:19-54:12, 136:18-137:21; Rogers-Smalley Dep. 17:19-24, 97:12-98:9, 106:17-107:21; Saracino Dep. 150:21-152:9).

Response: This item attempts to draw legal conclusions and is not a statement of fact as to which a response is required. To the extent a response is required, Plaintiffs dispute this item. Defendants have already acknowledged “one statement about this litigation” demonstrating that the Town Board is unresponsive to the needs of the Hispanic community. *See supra* ¶ 40. This appears to reference Mark Saracino’s comments at a public meeting that Plaintiffs and other Town residents who live in the villages should secede from Mount Pleasant and form their own town rather than seek full political equality within the Town. *See* NYSCEF 82 (Saracino Deposition) at 149:11-21; NYSCEF 67 (Sandoval-Strausz Report) at 40. Moreover, there is extensive evidence that the Town Board is unresponsive to the needs of Hispanic residents in numerous ways. *See supra* ¶ 40

46. All four Plaintiffs live in the villages within the Town. Plaintiff Sergio Serratto lives in the Village of Pleasantville (Serratto Dep. 15:9-14), and Plaintiffs Anthony Aguirre,

Kathleen Siguenza, and Ida Michael live in the Village of Sleepy Hollow (Aguirre Dep. 12:13-15; Siguenza Dep. 105:19-21; Michael Dep. 9:7-8).

Response: Undisputed.

47. Plaintiffs do not know what services the Town provides to the villages (Serratto Dep. 320:12-17; Michael Dep. 124:14-125:17; Siguenza Dep. 129:15-19).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, Plaintiffs do not dispute that they could not precisely identify what legal services the Town provides to the villages during their depositions.

48. Plaintiffs do not know what legal authority the Town had over the villages (Serratto Dep. 320:18-24; Michael Dep. 126:9-13; Siguenza Dep. 129:15-19; Aguirre Dep. 91:14-20).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, Plaintiffs do not dispute that they could not precisely identify what legal authority the Town had over the villages during their depositions.

49. The one concrete example Plaintiff Siguenza could provide of ways the Town could better serve her needs was making the Town pool more accessible to residents of Sleepy Hollow (Siguenza Dep. 130:2-131:11). But, she admitted that Sleepy Hollow residents are able to gain entry to the pool (*id.* at 134:6-135:3), and that she has never expressed this concern to anyone in the Town (*id.* at 137:19-138:11).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Further, Plaintiffs dispute that “making the Town pool more accessible to residents of Sleepy Hollow” was the only “concrete example” of how the Town could better serve her needs. Plaintiff Siguenza also stated that she believed the Town could invest more resources in infrastructure to reduce the burden on local residents and invest more resources in the villages directly to address socioeconomic disparities between residents of Sleepy Hollow and the rest of the Town. NYSCEF 79 (Siguenza Deposition) at 130:2-131:24.

50. There is no evidence that a Hispanic resident of the Town has ever ran for a Town elected office and lost (Aguirre Dep. 52:25-53:8; Michael Dep. 78:11-79:6; Siguenza Dep. 66:6-9; Serratto Dep. 204:5-17).

Response: Plaintiffs do not dispute that no Hispanic person has run for Town office since at least 2015, and that no Hispanic person has ever held a Town-wide elected office. *See* NYSCEF 67 (Sandoval-Strausz Report) at 18-19; NYSCEF 5 (Handley Report) at 3.

51. Plaintiffs admitted that the evidence supporting their allegations that Hispanic residents are unable to take time off work to vote and that language barriers prevent them from obtaining election information evidence is anecdotal or entirely absent (*see* Aguirre Dep. 62:14-69:18, 77:25-78:18; Siguenza Dep. 115:16-116:17, 117:5-14; Serratto Dep. 298:13-303:8, 310:7-311:2).

Response: Defendants' attempt to characterize the nature of the evidence presented by Plaintiffs is an attempt to offer a legal conclusion to which no response is required.

To the extent a response is required, in addition to the sworn testimony provided by Plaintiffs during their depositions, Plaintiffs' experts have presented evidence that Hispanic residents in Mount Pleasant are substantially socioeconomically worse off compared to white residents, which impacts their ability to ability to take time off work to vote. *See* NYSCEF 67 (Sandoval-Strausz Report) at 27-30; NYSCEF 70 (Velez Report) at 10-11. Moreover, the Town has acknowledged that it provides official information only in English and that candidates for Town Board conduct little, if any, outreach to voters in Spanish. *See supra* ¶ 38.

52. Plaintiffs have never asked the Town to change their information distribution methods or provide information in Spanish (Serratto Dep. 302:15-303:8; Siguenza 116:18-117:14; Michael Dep. 107:17-110:10, 119:2-9).

Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Otherwise, undisputed.

53. There is no evidence indicating that socioeconomic disparities between Hispanic and white residents of the Town reflect anything other than recent immigration status (*see* Sandoval-Strausz Rep. 26-30).


Response: Plaintiffs dispute that this item is relevant to any material issue in these proceedings. Defendants purported explanation of the reason for socioeconomic disparities between Hispanic and white residents of Mount Pleasant is also unsupported by competent evidence and thus entitled to no weight. *See, e.g., Trzepacz v. Jara*, 11 A.D.3d 531 (2d Dep't 2004). Defendants have cited no evidence demonstrating that Hispanic residents of Mount Pleasant are more likely to be recent immigrants than white residents. Defendants have cited no record evidence demonstrating that recent immigrants are more likely to be worse off on the relevant socioeconomic indicators than individuals who have been in the United States for longer periods of time. Finally, even if there are disparities on the relevant socioeconomic indicators between these two groups, Defendants have cited no evidence indicating that it is immigration status alone (as opposed to other factors) which causes those disparities.

54. There is no evidence tying these socioeconomic conditions to any government actions or to electoral opportunities in the Town (*see id.*).

Response: This item attempts to draw a legal conclusion and is not a statement of fact as to which a response is required. To the extent a response is required, this item is also unsupported by competent evidence and thus entitled to no weight. *Supra* ¶ 53. Plaintiffs have presented extensive evidence detailing how socioeconomic disparities between white and Hispanic residents of Mount Pleasant interact with other circumstances within the Town and the Town's at-large system of elections to unlawfully dilute the electoral influence of Hispanic voters. *See, e.g.,* NYSCEF 67 (Sandoval-Strausz Report); NYSCEF 69 (Sandoval-Strausz Rebuttal Report); NYSCEF 70 (Velez Report); NYSCEF 72 (Velez Rebuttal Report); NYSCEF 73 (DeFord Report); NYSCEF 75 (DeFord Rebuttal Report).

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