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CITY OF SYRACUSE, MAYOR BEN WALSH

VIA ELECTRONIC AND FIRST CLASS MAIL

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Dear Mr. Morrison,

I am writing to follow up on our recent conversation where I conveyed the City of Syracuse's position regarding the United States Department of Justice's notice that it intends to move for dissolution of the 1980 consent decree (the "Decree"). As stated in our conversation, the City does not support a motion to dissolve the Decree.

This Decree is the result of litigation that the City itself initiated in 1979 to challenge the perceived disparate impact of New York State Civil Service examinations on minority police officers and firefighter applicants. *Alexander v. Bahou*, No. 5:78-00392. This case was joined with a similar action initiated by the Department of Justice ("DOJ"). *U.S. v. City of Syracuse*, No. 5:80-cv-53. The Decree entered into as a result of those two actions set a long term goal of utilizing African-American officers "in all ranks" and "in numbers approximating their representation with the labor force which is available for employment in the City of Syracuse." The Decree originally set this number at 10%. However, in a decision dated April 9, 2009, United States District Court for the Northern District of New York (Judge David Hurd) interpreted the Decree as mandating a percentage equaling that of the City's labor force. *Vivenzo v. City of Syracuse*, 545 F.Supp.2d 241, 251-52 (N.D.N.Y. 2008). That interpretation was impliedly upheld by the Second Circuit. *Vivenzio v. City of Syracuse*, 611 F.3d 98, 107 (2d Cir. 2010). As of the 2010 Census, the City's population was 29% African-American for all ages. We do not have data available showing the demographics of those in the labor pool, but it is fair to assume that the percentage of African-Americans in the labor pool is much closer to 29% than the 10% of the 1980 decree. (And it is likely that the number will rise even higher in the upcoming 2020 census.)

Based on the courts' interpretation of the Decree, the City has not yet met the Decree's specific diversity goals for its police and fire department. Specifically, based on the latest data maintained by the City, of which I presume you are aware, the City still has significant work to do to meet the target percentages.

The City, cognizant of this shortcoming, takes very seriously its obligations to promote minority hiring and promotion, and it continues to explore other strategies for improving the diversity within the City's police and fire departments. This task is a priority of the City's still-new administration. The Mayor of Syracuse, Ben Walsh, took office in January 2018. Upon the start of his administration, he began a search for a new Chief of Police. As part of that search, the City engaged in extensive public engagement to learn more about what the residents of Syracuse look for in a Police Chief and in a Police Department. The administration heard the public's call to have a police force that better reflects the population it serves. In late November 2018, the City hired a new Police Chief, Kenton Buckner. Soon after Chief Buckner assumed leadership, he began looking at ways to increase the diversity of the Police Department. The Chief of the Fire Department, Mike Monds, has also been working to increase the diversity in his department.

The Decree has been in place for nearly forty (40) years. Clearly, the mere existence of the Decree itself has not yet resulted in a satisfactory level of diversity within the Syracuse Police or Fire Department. However, it has provided the City an important tool, i.e., the ability for the City to grant priority to minority applicants on the Civil Service examination. The City is concerned that the removal of that tool will make further progress even more difficult.

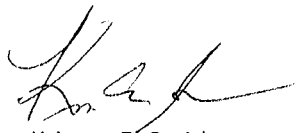
From our conversation, we understand that the DOJ has worked together with the New York State Civil Service Commission to improve its entry level police officer civil service exam so as to eliminate any disparate impact on African-American applicants or other minorities resulting from examination process. Neither the City nor Onondaga County, which administers the examinations for Syracuse, are aware of this new test or have seen it implemented. Assuming there is a new test, we are pleased to learn that this has occurred and view this development as significant progress toward the shared goals of the Decree. However, we do not agree that creating a better examination alone will remove *all* unintended barriers, especially those that may affect promotion decisions. Thus, it is the City's position that the Court should not dissolve the Decree merely based on an expectation the improved exam *may* work to level the playing field for entry-level applicants. As an initial matter, the decree should at least remain in place until the exam is utilized and proven to improve outcomes for African-American and other minority candidates.

Additionally, the introduction of a new entry level civil service exam does not address the more daunting problem of achieving diversity within the higher ranks of the department. When Chief Buckner was sworn in on December 3, 2019, he was the only African-American holding a rank above entry level police officer. In other words, there were no African-American officers within the ranks of Sergeant, Lieutenant, Captain, or Deputy Chief. Under Chief Buckner's leadership, the Department has begun to work to improve this disparity. However, it would appear that promotional exams required for these positions should *also* be reviewed and evaluated to determine whether they effect a disparate impact on minority officers. Given that the goal of the Consent Decree is to achieve diversity at *all ranks*, we should be working together to develop exams at each police rank to focus solely on the

skills needed in police leadership and eliminate unrelated questions or evaluative criteria that tend to create disparate impact. Dissolving the Decree will hinder this further work that still needs to be done.

As I stated on our call, the City does not support the current attempt to dissolve the Decree. We have been in contact with Congressman John Katko, and he does not object to Syracuse maintaining the Decree. The Decree should not be dissolved merely because of the passage of time, because the City has achieved the original 10% threshold among its new applicants, or because there may be a new State Civil Service test available. The population demographics of the City have changed, and as the District Court recognized in 2008, this has raised the bar for the City. The City's current administration is working hard to reach that bar. We respectfully request that the DOJ not take away one of the main tools the City has to achieve these important goals.

Sincerely,



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cc:

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