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September 27, 2018

VIA E-MAIL & U.S. MAIL

Kevin I. Shenkman, Esq.
Shenkman & Hughes, PC
28905 Wight Road
Malibu, CA 90265

Re: September 7, 2018, CVRA Letter to Grossmont Healthcare District

Dear Mr. Shenkman:

The undersigned is General Counsel for the Grossmont Healthcare District ("District"). The District's Board of Directors ("Board") is sensitive to the issue of transitioning from an at-large election system to a district-based election system and appreciates having the matter brought to its attention. The District will be complying with your request.

The Board believes that it will serve the best interests of the District to utilize the recent amendment to Elections Code section 10010, which allows for an additional 90 days to conduct public outreach, encourage public participation, and receive public input. The amended statute will be effective (January 1, 2019), during the current 90-day process and the Board feels that the additional time will provide a significant benefit to the process.

Attached for your review is a draft of an Extension Agreement to accomplish this purpose. Please feel free to call me if you would like to discuss the matter.

Sincerely,

JEFFREY G. SCOTT

JGS:jml
Enclosure
cc: Barry Jantz, CEO

EXTENSION AGREEMENT

This Extension Agreement ("Agreement") is made by and between the Grossmont Healthcare District ("District"), a public agency organized and operating under Health and Safety Code section 32000 et seq., and Shenkman & Hughes, PC, a California Professional Corporation ("Shenkman"), as follows:

RECITALS

A. On September 11, 2018, the District received a letter from Shenkman alleging that the District was in violation of the California Voting Rights Act ("CVRA") because the District relies upon an at-large election system for electing candidates to its Board of Directors ("Board"). A copy of the letter dated September 7, 2018, is attached hereto as Exhibit "A" and incorporated herein by reference.

B. Elections Code section 10010 provides a 90-day statutory process after a resolution of intention is passed for political subdivisions like the District to transition from an at-large method of election to a district-based election system.

C. Elections Code section 10010 was amended in 2018 and added a section to allow the political subdivision and a prospective plaintiff, who first sends a notice, to enter into a written agreement to extend the 90-day statutory period an additional 90 days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input, provided that the written agreement shall also include a requirement that the district boundaries be established no later than six months before the political subdivision's next regular election to select governing board members.

D. The District's Board agrees to comply with the request to transition from an at-large election system to a district-based election system and agrees to pass a resolution of intention on or before October 26, 2018.

E. The 2018 amendment to Elections Code section 10010 shall be effective January 1, 2019, and prior to the expiration of the 90-day statutory period beginning October 26, 2018. The parties agree that it will serve the best interests of the residents of the District to extend the statutory process an additional 90-days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input.

NOW, THEREFORE, based on the foregoing recitals and in consideration of the mutual promises contained herein and for other good and valuable consideration, the parties agree as follows:

1. The District's Board shall pass a resolution of intention to transition from an at-large method of election to a district-based or "zone based" election system on or before October 26, 2018.

2. The parties agree that the District will have a total of 180 days from the passage of the resolution of intention to complete the process to assist in conducting public outreach, encourage public participation, and receive public input.

3. The parties further agree that the new District boundaries for zone based elections shall be established within the 180-day period and no later than 6 months before the November 3, 2020, election.

"District":

Grossmont Healthcare District

By: _____ Dated: _____
Barry Jantz, CEO

"Shenkman":

Shenkman & Hughes, PC

By: _____ Dated: _____
Kevin I. Shenkman

SHENKMAN & HUGHES, PC
Attorneys Malibu, California

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VIA CERTIFIED MAIL

September 7, 2018

Virginia Hall, RN
Board Secretary
Grossmont Healthcare District
9001 Wakarusa St
La Mesa, CA 91942

Re: Violation of California Voting Rights Act

Dear Ms. Hall,

The Grossmont Healthcare District ("GHD") relies upon an at-large election system for electing candidates to its Board of Directors. Moreover, voting within GHD is racially polarized, resulting in minority vote dilution. Therefore, GHD's at-large elections violate the California Voting Rights Act of 2001 ("CVRA").

The CVRA disfavors the use of so-called "at-large" voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667 ("*Sanchez*"). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control *every* seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted "at-large" election schemes for decades, because they often result in "vote dilution," or the impairment of minority groups' ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) ("*Gingles*"). The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to "ignore [minority] interests without fear of political consequences"), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412

EXHIBIT "A"

U.S. 755, 769 (1973). "[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act ("FVRA"), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; *see also* Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, "[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965." *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered "restrictive interpretations given to the federal act." Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a "majority-minority district." *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. *See* Cal. Elec. Code § 14028 ("A violation of Section 14027 ***is established*** if it is shown that racially polarized voting occurs ...") (emphasis added); *also see* Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 ("Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).")

To establish a violation of the CVRA, a plaintiff must generally show that "racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision." Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: "elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class." Elec. Code § 14028(a). The CVRA also makes clear that "[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action." *Id.*

Factors other than "racially polarized voting" that are required to make out a claim under the FVRA – under the "totality of the circumstances" test – "are probative, but not necessary factors to establish a violation of" the CVRA. Elec. Code § 14028(e). These "other factors" include "the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns." *Id.*

GHD's at-large system dilutes the ability of Latinos (a "protected class") – to elect candidates of their choice or otherwise influence the outcome of GHD's Board elections.

The most recent election (2016) is illustrative. In that election, Latino candidate Art Madrid ran for the GHD Board of Directors and lost. Prior to his candidacy for the GHD Board, Art Madrid was the mayor of La Mesa for 24 years, a councilmember of La Mesa for 10 years, and a member of various La Mesa boards and commissions for 10 years. Thus, it goes without saying that Mr. Madrid's credentials, as well as his involvement and interest in La Mesa and its governing boards, were not lacking. Although Mr. Madrid was exceptionally qualified, and although he received significant support from Latino voters, Mr. Madrid was unable to secure a seat on the GHD Board due to the bloc voting of the non-Latino majority.

In addition, the paucity of Latino candidates to seek election to the GHD Board reveals vote dilution. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

GHD supports San Diego's East County region, which includes several "census-designated places" and the following four cities: La Mesa, El Cajon, Santee, and Lemon Grove. (Note that, as per our request, Santee has converted from an at-large to a district-based election system.) By compiling the 2010 census data of the East County cities and CDPs, we find that roughly 19.8% of GHD is Latino. However, it appears that in the last twenty years, there has not been a single Latino member of the GHD Board. The contrast between the significant Latino proportion, and the complete absence of Latinos to be elected to the Board of Directors is telling.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale City Council, with districts that combine all incumbents into one of the four districts.

Given the historical lack of Latino representation on the Board of Directors in the context of racially polarized elections, we urge GHD to voluntarily change its at-large system of electing board members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than October 27, 2018 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,

Kevin I. Shenkman