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May 3, 2019

Pietro Lynn  
Lynn, Lynn, Blackman & Manitsky, P.C.  
76 St. Paul Street, Suite 400  
Burlington, VT 05401

**Re: Mount Mansfield Modified Union School District Board merger vote**

Dear Pietro:

We are writing regarding the merger vote that MMMUSD is planning to hold on Thursday, June 6, and in particular to object to the way that MMMUSD is planning to carry out that vote.

The State Board of Education's Act 46 merger order does not require MMMUSD to hold a merger vote. Instead, it leaves the decision to hold such a vote entirely up to MMMUSD. The Huntington School Board is opposed to this unilateral merger vote on the grounds that it is fundamentally unlawful. We have presented that argument to the Court, and we will allow the Court to make its ruling without elaborating on that underlying point here.

If MMMUSD does hold a vote (and again, we believe it should not do so), that vote should at least be structured according to basic principles of fairness, openness, and transparency. Unfortunately, the floor vote that MMMUSD is planning to hold at the Mount Mansfield High School fails to meet these basic standards in a number of ways. The logistical constraints that come with holding a floor vote will discourage participation and undermine a democratic process for three reasons.

First, the high school is simply not big enough to hold the planned vote. Bolton, Huntington, Jericho, Richmond, and Underhill together had 12,915 registered voters as of the November 2018 general election. 6,233 voters took part in the 2014 merger vote that led to the creation of the existing modified union district.<sup>1</sup> The high school auditorium only has the capacity for several hundred people, and there is only parking for a few hundred vehicles. This is a simple math problem: the venue is too small to accommodate the voters of the District who, based on past votes, are likely to come out and vote on this substantial issue.<sup>2</sup> In practical terms a floor vote will allow only a small fraction of eligible voters to participate in the vote, while excluding the vast

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<sup>1</sup> We have the exact number of participants because that vote was held by Australian ballot, which required a checklist and tabulated the votes cast.

<sup>2</sup> If 6,000 people show up to vote, and carpool in groups of four, there will be 1,500 vehicles. If 1,200 of these park on the street, with the average parking spot being 20 feet long, the line of cars will be 24,000 feet, or 4.5 miles, long.

majority of voters. This is not a matter of convenience—no matter how early citizens show up to wait in line, most of them will not be able to enter the meeting space and will be disenfranchised.

Second, the timing of the vote is unclear. The posted warning instructs voters to meet at the high school at 6:00 p.m. Will there be an effort to check-in registered voters for the District? Are voters supposed to arrive and check in at 6:00 p.m.? Is there a cutoff time for arrival or check in? Has MMMUSD calculated the time needed to check in 6,000 to 13,000 voters? When will the vote actually take place? How many staff members has MMMUSD arranged to count the 6,000 to 13,000 votes from the floor? Will there be an opportunity for public comment or equal time for each affected school district or municipality? Will there be a cutoff time for the length of the meeting? These are important logistical questions, not least because many voters are also parents who will need to arrange child care to attend this school-night meeting.

Third, the timing and location of the vote will also materially disadvantage Huntington voters. While MMMUSD meetings are typically held weeknights at 6:30 p.m., this vote is scheduled to take place at 6:00 p.m., giving people less time to get there. Because Huntington (and Bolton) residents live farthest away from the high school, they will need the most time to get there and are therefore most likely to be impacted by the earlier start time. This early start time is exacerbated by the practical time constraints of walking from a vehicle that may have to be parked more than a mile away (see Footnote 2) and getting in line early enough to be registered and counted as one of the small fraction of voters who will actually be admitted to the undersized facility with the hopes of getting to participate in this meeting.

The way that the vote has been presented to voters is also sorely lacking in transparency, and even misleading, in two important ways.

First—and contrary to representations made by your client—nothing in the law prohibits a vote by Australian ballot. According to the April 15, 2019 MMMUSD/CESU board meeting minutes, the Board determined that this pending merger vote must be a floor vote because “the Articles of Agreement, under which the district operates, do not allow Australian Ballot in such a case. It is not legally permissible.” More recently, Superintendent Alberghini indicated that a vote by Australian ballot in these circumstances is barred by state statute, or by the State Board of Education’s Act 46 order.

Again, nothing in the Articles of Agreement, the State Board’s order, or the controlling statutory scheme prohibits an Australian ballot. MMMUSD could have warned the Special Meeting, consistent with their Articles, statute and the state order, and then at the Special Meeting, warned an election by Australian ballot. Moreover, the similarly-situated Lamoille North and Slate Valley districts both conducted the exact same type of organizational-merger vote under Act 46 by Australian ballot.

Second, the MMMUSD board has misleadingly presented the vote as follows: either Huntington merges with MMMUSD, or MMMUSD will pursue the dissolution of the supervisory union. By declining to mention a third option—maintaining the status quo—the board gives the false impression that only two outcomes are possible.

In fact, dissolution of the CESU is highly unlikely for several reasons. First, the structure envisioned by MMMUSD fails to satisfy the basic requirements to qualify as a standalone

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supervisory district under the controlling statutes. Second, even if these standards were satisfied, MMMUSD would have to warn and hold a vote at its annual meeting to ask the State Board of Education to restructure the CESU and designate MMMUSD as a standalone supervisory district. Third, the State Board would likely deny that request as contrary to the goals of Act 46 and contrary to controlling statutes under Title 16.

While we trust that MMMUSD wants to provide an opportunity for all voters to participate in such an important vote, the planned floor vote will not do so. If MMMUSD decides to hold a merger vote before the Court rules on Huntington's legal arguments, we urge it to reconsider how that vote will be held. The communities that send their children to the Huntington and Mount Mansfield schools are keenly interested in the merger question. If MMMUSD is to put this important question to those communities, it should do so in a way that allows every eligible voter to make their voice count. As currently constituted, the proposed Thursday, June 6<sup>th</sup> floor vote appears designed to thwart any such participation and to stack the deck in favor of illusory participation.

Sincerely,



Stephen Coteus  
Nicholas Low

cc: Client  
David Boyd, Assistant Attorney General