The Palm Beach County Policy Deliberation Phase: A Path Forward Towards Greater Economic Inclusion

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Palm Beach County

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**Introduction**

- **About the presenter:** Franklin M. Lee, Esq.:
  - **Education / Training** (U. of Chicago undergraduate B.A. - social sciences, political science, econometrics, U. of Chicago School of Economics graduate courses; NAACP Asper Fellowship, U. of MD School of Law, J. D.)
  - **Antitrust Litigator** (FTC) (Bureau of Competition in assoc. w/ Bureau of Economics)
  - **Civil Rights Lawyer** (Chief Counsel, MBE Legal Defense & Education Fund, Inc.)
Introduction (continued)

- Private Practice Client Base (Partner, Tydings & Rosenberg LLP) -- SLMBE Public Policy Matters
  - San Antonio, TX  Charlotte, NC
  - San Diego, CA  Miami-Dade County Public Schools
  - State of Maryland  School Board of Broward County
  - City of Baltimore  Austin, TX
  - Columbia, SC  The Metropolitan District (CT)
  - Richland County, SC  Washington Suburban Sanitary Commission
  - Macon-Bibb County  Palm Beach County School Board
The Legal Framework: Potential Challenges to Economic Inclusion Policies

- **Strict Scrutiny**
  - When is it required?
    - To examine government use of a racial preference
    - To examine government use of a racial classification
Two Prongs of Strict Scrutiny

1st Prong: Compelling Interest

- MTA Disparity Study provided a ‘strong basis in evidence’
- That “factual predicate” provides a roadmap to remedies
  1. Identification of where disparities exist
  2. Identification of the nature & form of barriers, and root causes of disparities.
Two Prongs of Strict Scrutiny

2nd Prong: Narrow Tailoring of Remedies

- Consideration of “race-neutral” remedies
- Consideration of appropriate “race-conscious” remedies only when it appears that neutral remedies, in and of themselves, are inadequate
- Limited duration; periodic review; limited by ethnicity/gender, industry, & form of discrimination
- Forms of remedies: Follow the Road Map of the Factual Predicate
The Policy Deliberation Phase

The Disparity Study as a Diagnostic Tool

- Identifies “symptoms” of unhealthy markets and appropriate policy “remedies” for addressing identified barriers to mainstream economic inclusion of all segments of business community
  - Race- and gender-neutral medicine
  - Race- and gender-conscious medicine

- Policy options that are legally defensible
- Policy options that are effective / best practices
The Policy Deliberation Phase

- Recommend features for proposed policy options to address each barrier identified in Study.
- Cite relevant findings and “diagnoses” from Disparity Study that support consideration of each proposed policy option.
- Summarize key pros and cons for each proposed policy option remedy.
Finding the Right Prescription: Palm Beach County’s Doctor’s Bag for Economic Inclusion...
Diagnosing and Treating Barriers to Economic Inclusion

- Diagnoses based upon totality of evidence ("strong basis") regarding race/neutral and race/conscious causes of marketplace disparities
- Prescribe appropriate course of treatment
  - Narrowly tailored remedies (consider progression from least aggressive to most aggressive and effective treatment options)
  - The right medicine at the right dose (goal setting)
  - Assess resource constraints for effective administration of remedies
Assess Strengths & Weaknesses of Study Results

- Data
- Methodologies – Quantitative and Qualitative
- Historical Context
- Statistical Patterns of Exclusion and Disparity
- Inferences of Discrimination from Study Results
- Control for Alternative Explanations
- Anecdotal Evidence -- Symptoms and Perceptions
Treatment Options for Economic Disparity...

Race-Neutral vs. Race-Conscious Remedies

- Industry-specific
  - Construction
  - Professional Services
  - Goods and Services

- Non-industry specific: bid-debriefings, financing, technical assistance, commercial non-discrimination, de-bundling, specification review, centralized bidder registration system.
Treatment Options for Economic Disparity...

**Race-Neutral Remedies**
- Small Business Enterprise Prime Contract Program
- SBE Subcontracting Program
- HUBZone Program (Glades Local Preference)
- Bonding Assistance
- SBE Mentor-Protégé Program
- SBE Low-Cost Wrap Up Insurance ("OCIP")
Treatment Options for Economic Disparity...

**Race-Neutral Remedies**
- Construction Direct Purchasing
- SBE Vendor Rotation
- Evaluation Preferences
- Evaluation Panel Diversity
- SBE Reserve
Treatment Options for Economic Disparity...

**Race-Conscious Remedies**

- Annual M/WBE Aspirational Goals
- M/WBE Joint Venture Incentives
- M/WBE Contract-Specific Subcontracting Goals
- M/WBE Mentor-Protégé Program
- Minority Inclusion Language in RFPs / Evaluation Preferences
- M/WBE Vendor Rotation
REMAINING STEPS FOR A NEW PROGRAM

- Formal acceptance of MTA Disparity Study findings and recommendations by County Board
- Design a course of treatment (menu of policy options)
- Obtain feedback from County Staff and Business Stakeholders on Draft Policy Options
- County Board approval for drafting revised policies based on totality of evidence and feedback
- Public feedback and Board adoption / modification of draft SLMWBE policies
REMAINING STEPS FOR A NEW PROGRAM

Implementation Plan: Timeline for Completion

- **Short Term** (30 to 60 days) – identify priorities for partial changes to policy and/or administrative practices to be achieved immediately;

- **Mid-term** (6 mos.) – implement short-term changes to policy and administrative practices; outreach to business community; apply short-term amendments of policies to solicitations and contracts;

- **Long-term** (12 mos.) -- Complete overhaul of all SLMWBE Policies and administrative practices; final approval by County Board of amended contracting and procurement procedures; requisite upgrades to staffing, technology, and administrative resources completed.
QUESTIONS???

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