

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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