



Notes  
**PCC Member Strategy Call**  
**Wednesday, September 7, 2022**  
**12:00 pm ET**

*Steering Committee:* ICE (Denise Roosendaal), ASAE (Jeff Evans)

*Legal Counsel:* Jerry Jacobs, Craig Saperstein, Julia Judish, Lori Panosyan, Nicole Steinberg (Pillsbury)

**1. Welcome**

- a. Thank you to those who have paid their dues. Prompt payment allows us to more accurately budget for our state and federal advocacy efforts, particularly on-the-ground lobbying assistance.
- b. As usual, we will be updating the password to the members only portion of the website in the next few weeks and sending it to members who have paid all or part of their dues for the fiscal year.

**2. Certification-Related Litigation**

a. **Preliminary injunction related to Florida *Stop WOKE Act* update**

- i. The *Stop WOKE Act* was passed by the Republican controlled legislature and the Republican governor and went into effect on July 1, 2022.
- ii. It added a new section to the Florida Civil Rights Act that defines certain DEI programs as unlawful discrimination if they are mandated by employers, associations, or certification organization.
- iii. The law listed 8 specific concepts as unlawful discrimination if espoused during required training or instruction that was a condition of employment, membership, or credentialing, including, among others, white privilege, male privilege, and unconscious bias.
- iv. There were two lawsuits filed, one in which a preliminary injunction was filed: *Honeyfund.com v. DeSantis*.
- v. The Plaintiffs, employers and DEI consultants, challenged the constitutionality of the law as a viewpoint-based restriction that violates the First Amendment.
- vi. The Judge found there was a high likelihood that the Plaintiffs would succeed on the merits and issued a preliminary injunction. The state will now have to determine whether it appeals the ruling to the 11th Circuit.
- vii. We'll see how this plays out in the coming weeks, but currently, as an employer, association, or certification body in Florida, you do not face any heightened restrictions on the content of DEI training or codes of conduct.
- viii. **Member question:** Can you explain a little bit more about how this could have affected certification organizations? Just as Florida employers, or would it have prevented asking DEI related questions on exams or including them in eligibility requirements?
  1. **Answer:** If you're providing certification to Florida residents, and if your certification exam has DEI components or if a premise or precondition for certification is DEI training, the Stop WOKE Act would influence what kind of content you could include in the DEI questions or DEI training.

b. **Ohio remote proctoring of exams lawsuit**

- i. In addition, we wanted to flag a decision by a federal court in Ohio regarding remote

proctoring for exams, *Ogletree v. Cleveland State University*.

- ii. In the case, professors at the University could choose from a variety of options for exams and a professor chose remote proctoring for the Plaintiff student, which called for him to appear in the camera with his ID and then to allow the camera to scan the papers around the testing area and the entire room.
- iii. The Plaintiff was only told about the room scanning requirement about 2 hours before the exam and he objected because he had confidential papers in the room. He sued, arguing the requirement was an invasion of his privacy.
- iv. Because the University is a government agency, the court held that the University's use of remote proctoring companies that required that students taking online examinations use their webcams to scan their rooms prior to taking the remotely proctored tests resulted in an unconstitutional search in violation of the Fourth Amendment of the U.S. Constitution.
- v. This could impact PCC members who have state licensing boards (government agencies) administer their exams.
- vi. Despite the limited impact, the case gives us some insight into how courts view remote proctoring.
- vii. **Member question:** What about if students consent?
  1. **Answer:** This is the first student that objected in any form. When you're not a government agency, consent to your procedure beforehand would almost certainly make it a much harder obstacle for someone to oppose based on general privacy rights and not constitutional search and seizure.
- viii. **Member question:** What do you recommend for private certifications who use a proctor for room scanning?
  1. **Answer:** The key issue is going to be validity. Has the method itself been tested and validated? Your obligation is to provide valid tests based on reasonable criteria and fair procedures. The challenge will be the validity of the remote proctoring method you've chosen and you can rely on vendors to provide representations and a commitment to the validity of the methodology they're proposing you use.

### 3. Federal Legislation

- a. ***Freedom to Invest in Tomorrow's Workforce Act update***
  - i. Recap: this bill would allow individuals to use their 529 savings plans to cover expenses associated with obtaining or maintaining a certification or other postsecondary credential.
  - ii. Senators Collins and Hassan cosponsored the bill and also introduced their own 529-related legislation a few months ago that would provide a tax credit for low- and middle-income families who contribute to 529 plans and would allow the plans to roll over to retirement accounts.
  - iii. When you add in our legislation expanding eligibility, they fit nicely together and we have plans to connect them. Unified efforts would increase our prospects for success.
- b. ***REBUILD Skills Act update***
  - i. Recap: this will would allow certification organizations to provide a scholarship to individuals who have been displaced during the pandemic years or who are coming out of active-duty military services (and their spouses) during the pandemic years.
  - ii. Hasn't formally been introduced yet, despite being drafted and redrafted numerous times based on feedback from the committees of jurisdictions.
  - iii. We have narrowed eligibility to those who absolutely need the assistance, as the bill sponsors came to the conclusion that our original draft would have created an exceptionally large (and therefore politically unpalatable) federal program.
  - iv. The language remains with legislative counsel meaning it is near the very last step before introduction. We are working with the bill sponsors and legislative counsel to finalize the bill text to allow for introduction. We continue to push for both bills and are working with

our bipartisan group of sponsors to try and find the right legislative vehicles for them to be incorporated in at the end of the session.

c. **General legislative updates**

- i.
- ii. We expect a flurry of legislative activity over the next month. This fiscal year ends on September 30th – necessitating passage of budget legislation to keep the federal government from shutting down – and the National Defense Authorization Act (NDAA) is also on the congressional agenda. The NDAA passes every year and covers a huge chunk of the federal budget. It is also often a “Christmas tree” bill that has many “ornaments” that may or may not relate to national defense.
- iii. There also should be some other vehicles that pop-up during the “lame duck” session after the November election. There will likely be a tax related bill and possibly the reauthorization of Workforce Innovation and Opportunity Act (which the House has moved on but the Senate has not). We are talking to decision makers about using these big legislative vehicles as something we can hitch our bills on to.
- iv. **Member question:** Can you resend the materials for us to engage our representatives to co-sponsor?
  - 1. **Answer:** Yes!

4. **State Legislation**

- a. Updated watchlists and executive summary on Members Only portion of website.
- b. We will be monitoring the states that remain in session through the Fall and the end of the year. These states (e.g., Ohio, Michigan, and Pennsylvania) tend to have late-breaking legislative activity in the Fall after finishing their budgets in the Summer, so we will be monitoring them closely and preparing to activate as necessary.
- c. We’re also closely monitoring pre-filing of bills for next year’s legislative session. Most states will be starting over their two-year sessions though a few, like NJ, will be on the second year of their two-year sessions.

**High Priority Bills**

State	Bill Number	Category	Priority
Ohio (OH)	HB 203/SB 131	Universal Licensure/Reciprocity	High

\* Indicates activity after our last member strategy call

5. **Stakeholder Outreach**

- a. **Women in Government (WiG) – Leadership and Innovation Summit (November - Orlando, FL)**
  - i. The PCC has decided to sponsor the WiG Leadership and Innovation Summit, which is taking place right after the election in mid-November.
  - ii. We have partnered with WiG in the past – it is a great organization that facilitates awareness about the PCC and our priority policy issues among women policymakers and legislators.
  - iii. This year, WiG is offering an opportunity for sponsors to participate in round robins where they will bring attendees to presenters for several ten-minute conversations. We feel this is a good, cost-effective way to get the PCC’s message out to legislators and policymakers.
- b. **Other stakeholder outreach**
  - i. As we do every year, we are reaching out to interest groups and think tanks that have been heavily involved in the issues that affect our membership.
  - ii. We want to know what they’re working on and, to the extent we have differences, we want to limit those differences to make model legislation as least problematic as possible when introduced.