

**Notes**  
**PCC Member Strategy Call**  
**Wednesday, June 5, 2024**  
**12:00 noon ET**

**I. Welcome & Introductions**

- a. Thank you all for being here.
- b. Update on payment options for PCC dues:
  - i. For the next fiscal year, beginning July 1, 2024, the PCC is offering a new option for paying dues. At the request of a member that we thought was a good idea, we are offering a 10% discount for those who choose a two-year membership and pay both years of dues in full by August 31, 2024.
  - ii. Note that members still have the option to pay dues on an annual basis, either in a single payment at the start of the fiscal year or in two installments (one in the first half of the fiscal year and one in January).
  - iii. We've sent more information via email. If you have any questions, please feel free to email us at [info@profcertcoalition.org](mailto:info@profcertcoalition.org).

**II. State Legislative Update**

- a. With most state legislative sessions concluded, we only have a few state legislative updates.
  - i. **Missouri:** Several high priority bills that we tracked in Missouri, which spanned issues such as reciprocity, alternative pathways to licensure, and clean slate, failed with the session ending.
  - ii. **Colorado:** A returning citizens bill in Colorado was enacted on May 29, 2024. We did have communication with legislators in Colorado this year and will aim to build on those relationships next year.
  - iii. **New Hampshire:** The review and repeal bill (HB 1676), which we've discussed in several meetings, has not moved since February. We're keeping an eye on this one.
  - iv. **Ohio:** Similarly, the Ohio First Amendment interference bill (HB 238), that would prohibit licensing boards from giving credit for continuing education courses on certain topics, has not moved, but Ohio tends to have late-in-the-year activity, so we are following this closely, too.
  - v. **Massachusetts:** We're monitoring activity in Massachusetts but have no new updates.

### III. **Judicial Activity:** 11<sup>th</sup> Circuit Court of Appeals Decision – *American Alliance for Equal Rights v. Fearless Fund Management, LLC*

- a. There was a significant Court of Appeals decision two days ago that, while it does not fall squarely in the PCC’s issue set as one targeting the certification community, we thought it warranted a discussion as it may be relevant for many of your organizations.
- b. The American Alliance for Equal Rights (AAER), a group formed by the same person behind the group that challenged Harvard and UNC’s affirmative action programs, brought a lawsuit targeting a venture fund’s nonprofit foundation, which provides grants to black women-owned businesses. The lawsuit alleges that the grant program is discriminatory, in violation of Section 1981 of the Civil Rights Act of 1866, which prohibits race discrimination in contracting.
- c. AAER sued in the U.S. District Court for the Northern District of Georgia and sought a preliminary injunction to halt the grant program. The district court denied the injunction, concluding that the grant program may be protected under the First Amendment as expressive conduct. AAER appealed the denial. On Monday, June 2, 2024, the U.S. Court of Appeals for the 11<sup>th</sup> Circuit reversed the denial and remanded to the district court with instructions to enter a preliminary injunction against the grant program pending the outcome of the case on the merits. The Eleventh Circuit rejected the First Amendment exception argument, treating the grant contest’s eligibility criteria permitting applications only from Black women who own U.S. small businesses as an act of racial discrimination, rather than an expression of an idea. The Court of Appeals also held that, even though the goal of the grant contest was to remediate a manifest racial imbalance in the availability of investment funds for Black women, the categorical race-based exclusion of non-Black applicants meant that the grant program did not qualify for the legal test that allows narrow exception for remedial programs.

### IV. **Outreach and Engagement Update**

- a. Department of Justice Antitrust Division’s “Healthy Competition” Website
  - i. As a reminder from our last call, as part of the Biden Administration’s overall effort to control healthcare costs and spur greater competition in health care and other industries, the DOJ opened the [Healthy Competition website on April 18](#). The website solicits complaints from the public about potential antitrust violations in the healthcare field and lists “examples of conduct that can harm competition in healthcare.” The examples include “unnecessary recertification requirements” in the healthcare field by certification and accreditation organizations. There’s very little explanation here; just an example that physicians may be subject to unnecessary recertification requirements.

- ii. Pillsbury has sent FOIA requests for more information about what led to this example (sent to the DOJ, FTC, and HHS, all of which are participating in the initiative).
- iii. We have also made some initial outreach to our contacts at DOJ and FTC and are preparing a draft letter with the request that this example be removed from the website, explaining that this example is inconsistent with court decisions on the value of certification and the role certifications play in supporting informed choice by consumers.

## V. Federal Legislative Update

### a. *Freedom to Invest in Tomorrow's Workforce Act* (H.R. 1477/S. 722)

- i. We're continuing to make progress here. We have several new cosponsors on the House side, totaling 138 (up from 132 since our last meeting).
- ii. We've also gained a cosponsor on the Senate side: Senator Debbie Stabenow from Michigan has joined our bill. This is fantastic because Senator Stabenow is a Democrat on the Senate Finance Committee, which has jurisdiction over the bill.
- iii. We have also been working on revisions to the legislation to broaden its applicability and to clarify its applicability to both the credentials that many of your organizations members have earned, as well as the programs that are necessary to obtain those professions. We've had some good back and forth on the language, first with the Senate Finance Committee and Joint Committee on Taxation. Armed with SFC and JCT's feedback, we're now engaging in some pretty intensive conversations with the House Ways & Means Committee and have already reached agreement on some revisions to the bill. We think we're putting the bill in a strong position for advancement, whether it's this year or next year during Congress's planned wholesale reform of the tax code.
- iv. With respect to how the bill will be broadened, we are still working through the language. The other 529 expansion-related bill that has gained some momentum is a bill that would allow individuals to use 529 plans to cover expenses associated with training programs that prospective pilots and other aviation professionals participate in on their way to becoming FAA certified "airmen." This bill has over 160 cosponsors. Sponsors tried to get it attached to an FAA reauthorization bill and the Ways & Means Committee, which has sole jurisdiction over 529, effectively asserted that they would not allow this to be included in the FAA reauthorization bill.
  - 1. Based on this, we amended the language of our bill to expand coverage of the types of programs that would relate to aviation

professionals more directly, which we believe is consistent with our bill's purposes. We made some changes to the language in the hopes that anyone who was supportive of that bill for aviation professionals will come to our bill and support it, too, since ours seems to be favored by the committee of jurisdiction.

b. Appropriations Update

- i. We're working on leveraging the federal appropriations process to achieve a priority we've had for a long time, which is to make sure individuals have a reliable place to go to access a directory of qualified, reputable certification programs that they can consider for career advancement.
- ii. We submitted directive report language, which aims to compel a federal agency to undertake an action. Our directive report language calls on the U.S. Department of Labor to begin the work necessary to achieve the establishment of such a directory.
- iii. Several Members of Congress submitted our language as part of the appropriations process. As a result, we had a meeting with the House Appropriations Committee staff about the language, and we appear to have some interest.

**VI. Outreach to National Governors' Association**

- a. We connected with Sytease Geib, the Project Manager for the National Governors Association (NGA) and their *Skills in the States* project, which is a program focused on states not as regulators but as employers. This caught our interest because what states do in their own capacity as employers may inform their views of what's important in terms of workforce policy.
- b. The *Skills in the States* project came about as a result of interest by many governors across the country in shifting to more equitable hiring and talent management processes by moving away from degree requirements for public sector jobs. They were interested in how to address workforce shortages, fill vacancies, and promote opportunity for public sector employment, etc., in ways that there can be a validated skills-based hiring system.
  - i. Note that the focus of the *Skills in the States* is on occupations and job positions that do not require a license; as such, this does not seem like an attempt to do an end-run around licensing requirements, but is rather a focus on unlicensed professions.
- c. They have engaged with several advisory groups, including Brookings, Aspen Institute, SHRM Foundation, and many more groups that have been helping them in the first phase of this, which was convening and discussing priorities around validating credentials (either micro credentials or credentials that are outside of

the community college system). We wanted to connect with them to provide information about certification and resources that the PCC has and can offer.

- d. Our hope is that we can be an information resource to the NGA, and also glean information useful to PCC members. With that in mind, we've invited Sytease Geib to speak at one of our upcoming meetings.

## **VII. Wrap-Up**

- a. This is the last call of the fiscal year. You should expect to receive invoices before the end of this month, so please be on the lookout for those.
- b. We'll plan on having another call in July to update you on some of these items and in all likelihood we will take the month of August off, given that it is typically a very slow month at the state and federal level.
- c. Again, we appreciate everyone joining today and we look forward to speaking next month.