

November 12, 2014

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Senators and Representatives, thank you for allowing us to speak this morning. We are not here to protect our unpaid positions, but to preserve and perpetuate a program which has provided countless employment opportunities for persons with disabilities. We are here both to bury the myth of disability equaling powerlessness and to praise the empowerment of employment. We honor the work of those who might otherwise be forgotten or isolated and dependent solely on government subsidization.

As you know, the statutes in our state related to procurement focus on best value determinations. When we volunteer our time and expertise, digesting information, for example Friday's four hundred-eighty-six page Pricing Subcommittee book, no right thinking person could think a better value to the State is hiring more paid staff on the backs of Texas workers and businesses. As Governor Perry and the Texas Legislature built a legacy of exponential growth in prosperity during a period of national recession, there has been a resounding affirmation of the value volunteer oversight bodies provide to the State.

We complete many forms for disclosures of conflicts and financial interests, and it would not be probably to see the same transparency if these functions were moved within the bureaucracy. The vetting process was extensive. My resume and other supporting materials weighed by the Governor's Office required vastly more scrutiny than the materials submitted to voters when I won two elections to my city's council. The continuing ethics training also shows heightened accountability and expectations of excellence for appointed officials than almost any hired position.

The best value to the State is the continuance of our commitment to giving hands up rather than hand outs to our citizens. No 9 to 5-er could match the compassion and dedication of our Council. Proven leadership and pioneering progress are hallmarks of our service. Even a complainant conceded the accessibility of our Chairman via cell phone. Good luck trying to duplicate this receptivity, rapid responsiveness, and ready access in a bureaucrat... or even three of them--or is it two?

As a four-year college graduate working at a community college, I am daily reminded that one size does not fit all in education. Serving in the James Hall Chapter of the Disabled American Veterans Auxiliary, I am regularly informed on the need for diverse employment options, whether flexible work schedules or entrepreneurial development to accommodate distinct veterans' disabilities.

Being young, I tend to cite others' experiences to explain and support conclusions. Perhaps being raised by a teacher who grew up a black woman in the rural south pre-Civil rights era, or having a father who imparted values he proved in multiple tours in Vietnam, or even surviving a major automobile accident with a closed head injury and finishing law school despite common conceptions of video game playing persons. Three law licenses, a national purchasing certification, and numerous other achievements later, my traumatic event and brain injury may seem long past. Unfortunately, I grapple with cognitive and other issues to this day. Not

everyone has a two parent household like mine, a church family, and all the other forms of encouragement I enjoyed. The financial resources of my household alone made my journey of rehabilitation much smoother; not easy, but more manageable... they still help. Probably, my mother's experience as a minority and woman, and my father's as an immigrant and as veteran returning from Vietnam war only to find a hostile public, and even experiencing service-connected impairments, has helped their understanding of my struggles, and in turn, facilitated their effective assistance of my recovery. I definitely see their experiences as models of seeing adversity as opportunity.

I. Causality

Causality is simply the relation between the cause and effect, and this report neglects reasonably assessed causality in favor of non-contextually situated points in a vacuum. To examine sales figures without recalling that Governor Perry, Lt. Gov. Dewhurst and Speaker Straus requested agencies cut their budgets by another 10 percent above the 5 percent cuts agencies submitted in February 2010 is but one of many examples of this report failing to observe context or causality.[1] If the primary purchasers of goods and services promoting disabled persons' empowerment as contributing members to Texas communities and our state's economy were tasked with reducing expenditures, why would a drop in sales be surprising? Recall the importance of "showing your work" when you were in school. The integrity of the process is of at least equal importance as the result. Cass Sunstein's Cognition and Cost-Benefit Analysis offers clear assessment of the types of cognitive errors evidenced in this report. Primarily, the report drafters demonstrate the flawed thinking of considering a point singularly and without context rather than considering areas of improvement in comparison to others. Additionally, the focus on simple parts of complex issues causes the report to ignore the systematic impacts of their suggested actions.

As citizens and taxpayers in the State of Texas, the Council Members' objectives align with those of the Sunset Commission. We are here to serve our community through the contribution of our collective expertise, and strive to actualize optimal performance, recognizing that "good enough, isn't." As stated in my letter to the Commission's examining staff, the value of Sunset's mission cannot be overstated. So too, the mission of the State Use Program contributes to Texas' people and pocketbooks beyond description.

Here the Sunset staff has arguably applied personal preferences of big government, bureaucratic oversight, and elitism as a desired result and built arguments to support a preexisting bias or preferred result. Like an activist judge would selectively parse through the precedent buffet, the report looks like a judgment was reached and only information supporting this heterotaxic result was incorporated. Sunstein warns against creating judgments based on one's subjective recollection of past events and social influences of others' opinion in the place of facts and information. If the recalled events the report writers draw on are from life in less productive states than Texas, or the opinions of persons with a vested interest in expanding personal prestige at the expense of citizen oversight have provided weighty influence, then the conclusions of the report are suspect.

Accessibility – How will the Comptroller's Office ensure the level of accessibility afforded to CRPs by a citizen body if these functions move into the bureaucracy? At present, CRPs can contact any Council Member by cell phone or at his or her home address. It is improbable that public workers can be compelled to adhere to this high degree of accessibility.

Even if we agree the answer to an arithmetical riddle is "2," the process must be sound to protect the integrity of the conclusion. I see many instances where a determination is espoused with no supporting information. If this sort of reporting is acceptable, I should go to my boss and

say "I eat cheese, therefore I deserve a raise." Where is the correlation? I will simply offer an off the cuff view on "expertise," but still maintain that any of the proposed growth areas are due to lack of CPA support—an easier fix than shifting the function to a disinterested/multi-purposed agency—or unclear mandates that are demanded by the Sunset reviewers without enumeration in statute, not TCPPD failing through demonstrating the principles that have made Texas' economy a global magnet.

Some of the lost "expertise," as I alluded to in my letter to sunset, was unexpected and unforeseeably rapid. That is, it is unlikely or improbable to expect several members to leave at once as occurred with the move out-of-state of one and agency represented switch of another.

The "expertise" comment still evades my comprehension. If the thought is that a geographically diffuse entity cannot oversee a geographically diffuse collection of CRPs, how is centralizing the functions in Austin an improvement? If the diverse backgrounds of nine appointed persons are not sufficient to offer guidance to the goals and mission of the State, how will group-think of people sharing a common appeal to the hiring authority and under the thumb of that bureaucratic functionary improve this perceived issue? If people with credentials and experience common to that found in the Comptroller's Office, for instance me with equal or greater procurement credentials to the Director of the proposed function-housing department, are not capable of sufficient "particular" or "specific" knowledge, how will these comparably equipped full-time employees on the State's payroll do better, all while managing a \$1 billion of other spend? I have yet to meet the person with subject matter expertise in all matters, but Sunset posits that three such persons exist.

There are many flaws in the process and sequence of conclusions. For example, to say that an independent, volunteer body of the public should be replaced by more government due to perceived expertise of state employees assumes more than is proven. Further, it misses the whole point of democratic government. The latter is disposed by simply asking if all elected state leaders who are effective possess Masters of Public Administration or Doctorates in Public Policy? Looking at the qualifications for elective office, and those not required, are qualifications more related to the true purposes of entities like TCPPD: to provide oversight and citizen input outside of the political sphere of influence of the Comptroller, and for that matter, the executive branch due to the six year terms being tempered only by impeachment once confirmed by the State Senate.

To the former, a much lengthier response is needed. Not complex, but extensive, due to the many points resonating a non sequitur tone. If a group overseeing \$135 million is overtaxed, then how is a group overseeing a billion dollars of expenditures not similarly burdened? If the legislature requires all Council members to take courses in contract management and purchasing from TPASS, how are they less equipped than the staff of CPA taking those same types of courses? If experience is the issue, how do our Agency representatives, represented on each subcommittee compare to staff at the CPA?

Only in the universe of the report drafters would Texans prefer more government over public oversight. A 1950's show, perhaps Lawrence Welks, had a song with lyrics, "What's more American than apple pie? I am. I am. I am." We can counter that with this report, by asking what is more un-American than pigeon-holing folks into a one size fits all mold of universal conformity. E pluribus Unum means "out of many, one." Our differently-abled citizens should be able to celebrate their unique skill and capacity offerings as contributors to our great state.

II. Purpose of Oversight Bodies

Appointed bodies in the State of Texas are tasked with “asking tough questions, gathering facts and searching for the truth.” We are not expected to be—although TCCPD’s composition proves exceptional, relevant aptitude—subject matter experts, instead partnering with a Central Non-Profit and the Office of the Comptroller to collect information. Must our Governor have a Master of Public Administration? Must our legislators be lawyers or hold Master of Public Policy credentials to be elected in those lawmaking capacities? Just as elected state representatives and senators represent the interests of Texas citizens, especially those in your district, we too represent the public. Not as purchasers or contract managers, but as a diverse group of Texas taxpaying voters with unique perspectives and varied education and experience backgrounds. This specific appointed body is charged by the legislature with expressly stated legislative mandates. The report shows an activist interpretation that imagines ideas not evidenced in the words or legislative intent of HR Code... The report states that “the mission of TCCPD is to ‘further the state’s policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful productive employment activities.’”[2] The encouragement of employment through promotion of purchase of products and services from persons with disabilities is distinctly different from rehabilitative functions. This facet of the mission is also clearly unrelated to the report’s emphasis on competitive solicitation capacity of the Comptroller’s Office.

The report concludes that ten people “cannot adequately oversee this \$135 million program,”[3] but somehow three, or is it two—the report has a bit of discord in the numbering—staff will be able to do this? The attention of ten people to \$135 million is also somehow insufficient, while the report drafters see hiding this within the billion dollar Comptroller’s oversight as a way to ensure closer monitoring?

The collegiality of our Council members, smooth interface with our Central Nonprofit, and preparation prior to actual meetings answer any question about our functionality. We should not be condemned for courtesy, or punished for proper preparation prior to meeting. For the sake of appearances, we could ask questions that have already been answered or contentiously bicker, but the reality is that our staff and Central Non-Profit support allow us to clearly comprehend the information deliberated upon in the Full Council and Subcommittee meetings. Glenn Hagler and Dan Bremer would likely laugh at the proposition that any three new hires would have comparable state purchasing experience, even in aggregate, the real problem with comparing the Council to bureaucratic functionaries is a difference of purpose. The State Legislature and Council alike are not selected to provide technical expertise. We are tasked with representing the public in an oversight role. Fluency in the use of industry terms and aptitude in assessing the subject matter come naturally to us, but citizen bodies in themselves exist to offer citizen perspective. Some representatives have acknowledged the problem of consolidating independent appointed roles into agencies due to politicization concerns.

The CPA is already tasked with providing the technical support of the Council, and state agency representatives on the Council augment this. If there is a problem with the analysis of prices, for example, then Sunset should more appropriately empower the Council with the authority to hold CPA accountable for timeliness of response and accuracy of data provided.

III. Unsupported Conclusions

A non-sequitur is an argument in which its conclusion does not follow from its premises and whether the conclusion is deemed true or false, the argument is fallacious because there is disconnection between the premise and the conclusion.

We have seen in this report an absence of evidence-based reasoning.

The importance of showing your work was emphasized throughout school, with the realization that you might stumble across a desired result without understanding the process or knowing how to reach accurate and correct conclusions.

We appreciate that “the Comptroller often considers a number of factors when determining the best value including the lowest bid price, quality of goods and services, vendor performance, and anticipated economic impact to the State,” but that is no different than what most of the Council Members do daily in our jobs.[4] Whether the report means three or two new hires being added to the taxpayers’ expense at the Comptroller’s Office, it would be unfathomable to imagine these new hires coming remotely close to the education, procurement experience, and professionalism of Glenn Hagler or Dan Bremer, much less the aptitude found in each and every other member of TCPPD.

The Comptroller’s “pricing and contract oversight expertise” may be “the reason for TCPPD’s administrative attachment to the Comptroller’s Office,” but this is not the exclusive procurement area for the State. Similar expertise is found within TXDOT and HHSC, and these two agencies have representatives on the Council. Further, liaison with the Texas Workforce Commission would better address the concerns claimed in the report about wages.

“Under current law, however, the Comptroller only provides administrative and legal support to TCPPD,” providing ample and innumerable opportunities to offer advice on pricing and contract monitoring.[5] There is no need for additional authority to be imparted to the Comptroller’s Office since that action would defeat the purpose of an autonomous oversight body capable of making tough decisions without politicization that would occur if centralizing all procurement in the state under one, omnipotent agency.

While the report looks to other States, which is inherently flawed since Texas is the stands apart such as New Jersey, Oklahoma, Oregon, and Pennsylvania, more appropriate comparisons to New York’s program are avoided since this would more accurately reflect the importance of the independent Council model.

Additionally, if our lack of vetoing any pricing recommendations presented by TIBH is a problem, does that mean that governing bodies that lack the boisterous or contrived contentiousness of peer entities are suspect. Collegiality and “doing our homework” is thus punished. We could host 3-hour meetings where we explore the nuances of every product and second-guess weeks of research done by TIBH’s experienced staff. I thought it was a positive sign that we take time out of our personal days to review the information at least a week in advance and present questions for response to TIBH well in advance of the actual meeting. Rehashing any concerns, Google searches, e-mail correspondence with colleagues, and reflection on personal knowledge seems to just be a show rather than adding any substance to the hard work we already do responsibly in advance. Rather than longer meetings consisting of self-aggrandizing chatter, we have meetings where each of us is prepared and can deliberate and share opinions at the meeting—not read the material at that point.

I would be remiss if I did not thank my Directors, Rogelio Anasagasti and Christopher Burton for their allowance of time to attend today’s hearing as well furthering my professional growth by sharing of their expansive purchasing experience.

Theresa Spears, Gaby Fuentes, and Governor Perry honored me with this opportunity to volunteer service to Texas.

Thanks to the mentoring of Chairman Luna, Vice Chairman Stovall, and my fellow members of Council, including past Members of Council Meg Pfluger and Les Butler, I better appreciate the mission and purpose of the Council’s great benefit to the taxpayers of Texas, persons with disabilities and their caretakers, and the honor and dignity of our great State’s character.

Finally, I must express gratitude to my parents, Wolf and Patsy Ann von Biedenfeld, long-time civil servants in their own right, who imparted Christian principles, the value of hard work, the importance of integrity and humility, and overall provided the support and encouragement that are evidenced by those participants in the State Use Program—I better appreciate their struggle and successes thanks to my family's high expectations with corollary provision of tools to succeed.