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Congress of the United States House of Representatives

August 9, 2018

Dear Senators Birdwell, Buckingham, Hall, Nichols and Watson, and Representatives Paddie, Flynn, Lambert, Nevárez and Thompson:

I write today concerning a matter of great interest regarding the Sunset Advisory Commission's Staff Report (the Report) on recommendation 3.2 to change the composition of the Texas State Board of Public Accountancy (the Board). As a Certified Public Accountant (CPA), and as having had the honor to serve as Presiding Officer of the Texas State Board of Public Accountancy, ensuring the Board's integrity and efficiency are areas where I hope to offer some assistance.

Recommendation 3.2 of the Report recommends the replacement of three of the Board member positions currently reserved for CPAs with three non-CPA public members. This recommendation is troubling as it would eliminate three CPAs from the Board, resulting in the loss of professional expertise, a core tenet for both the Board's creation and existence. CPAs' experience and expertise are required on the Board to make decisions regarding complex technical accounting issues related to Generally Accepted Accounting Principles and Generally Accepted Auditing Standards. Non-CPA public members serving on the Board should not be expected to make those decisions with limited technical support any more than a layperson should be expected to make medical decisions for the Texas Medical Board.


Additionally, a licensing board controlled by active market participants over the occupation the board regulates must be actively supervised to be eligible for the state action antitrust immunity defense. (*North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101, 2015). Federal Trade Commission guidance (issued October 2015) states that, "Active market participants need not constitute a numerical majority of the members of a state regulatory board in order to trigger the requirement of active supervision." In other words, so long as the licensing authority has active market participants – which the Board will have as long as there is at least one CPA present on the Board – then the Board must have active state supervision. Removing members of the CPA profession will only diminish the effectiveness of the Board's decisions while not solving the underlying concern of recommendation 3.2.

I understand the Report's concerns and the unusual position state regulatory boards find themselves after the ruling of *North Carolina*. However, I am concerned with the ability of the Board as well as all regulatory boards in Texas to maintain the professional expertise necessary to make the best possible decisions to protect the public interest.

That is why I introduced H.R. 6515, the *Occupational Licensing Board Antitrust Damages Relief and Reform Act of 2018* (attached) which would provide state licensing boards, board members, and staff members with relief from damage awards – under certain requirements – stemming from private antitrust litigation. As the Report acknowledges, the Board and its members play a vital role in protecting the public good, yet this role can only be achieved by maintaining the necessary expertise that has served the State of Texas so well for over a century. This legislation does just that, and I encourage you and your staff to review it as you deliberate recommendation 3.2 of the Report.

Thank you for your time, and I hope these comments are helpful to you. Please do not hesitate to contact me or my Legislative Director (Matthew.Russell@mail.house.gov) with questions as you consider this important matter.

Sincerely,



K. Michael Conaway
Member of Congress

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