

Comments on Proposed Historical Racing Rules

Comment Period: June 27, 2014 - July 28, 2014

TABLE OF CONTENTS

Comments from Legislators	1
Comments from Industry Organizations.....	14
Comments from Racetracks.....	24
Legal Briefs.....	35
Comments from Economic Development Organizations/Municipalities.....	92
Miscellaneous	98
Petitions	115
Transcript of Public Comment Hearing.....	126

LEGISLATORS

TEXAS HOUSE OF REPRESENTATIVES



ROBERTO R. ALONZO
DISTRICT 104

COPY

June 10, 2014

Dr. Robert Schmidt, M. D., Chair
Texas Racing Commission
8505 Cross Park Dr. #110
Austin, Texas 78754

Re: Request by Industry Representatives Proposing the Following Rule Amendments and New Rules Authorizing Historical Racing

Dear Chairman Schmidt:

The Texas racing industry urgently needs help to prevent its imminent collapse and to ensure its survival. As a member of the House of Representatives, I have heard from industry leaders that other states are providing more competitive and lucrative purses at race tracks. With that in mind, this is forcing Texans to pursue racing in neighboring states and move their horse operations (owners, breeders and trainers) to these more competitive environments. This pattern will only cause the Texas horse racing industry to continue its rapid decline, while neighboring states flourish.

On December 10, 2013, the Chair of the Texas Racing Commission appointed an Advisory Committee to explore ways of helping the Texas racing industry to survive. The Committee believes that allowing licensed Texas racetracks to offer pari-mutuel wagering on historical races is the best achievable means of providing such help and is working on rules to license and regulate such wagering.

A growing number of states, notably Kentucky and neighboring Arkansas, are allowing licensed racetracks to offer pari-mutuel wagering on horse races previously run at licensed tracks. In those states, wagering on historical races has increased the fan base for live races, the size of purses, and revenues for the states and their racetracks. Because other states are permitting their tracks to offer wagering on historical races, the Texas industry is at a growing competitive disadvantage. Horsemen are leaving Texas for states where higher purses are being offered as the result of wagering on historical races.

I support the efforts of the Texas Racing Commission to use its licensing, regulatory and rule-making powers to help the struggling Texas racing industry keep pace with new technological developments and with the new innovative pari-mutuel wagering opportunities those developments have made possible. The additional purse money, increased fan base and increased competitiveness in the racing industry will be felt throughout the horse racing and agriculture industries.

Please support this effort to save the desperate Texas horse industry.

Sincerely,

Honorable Roberto R. Alonzo
Texas State Representative
District 104 - Dallas

RRA/jrb

cc: Chuck Trout, Executive Director, Texas

TEXAS HOUSE OF REPRESENTATIVES

Roberto R. Alonzo, Vice-Chair
House Pensions Committee

Member, Higher Education, Calendars & Administration Committee
District 104

PO Box 2910
Austin, Texas 78768 2910

(512) 463 0408 • Fax (512) 463 1817
Toll Free (866) 449 5770

ROBERTO.ALONZO@HOUSE.STATE.TX.US

2014 JUN 11 PM 1:19
RECEIVED

CAPITOL OFFICE
PO Box 2910
Austin, Texas 78768 2910
(512) 463 0408
(512) 463 1817
(866) 449 5770

CLERK OF COURSE
PO Box 12345
Austin, Texas 78701
(512) 949 7101
Fax (512) 949 7101

TEXAS HOUSE OF REPRESENTATIVES



2014 JUL 25 FRI 6:02

PONCHO NEVÁREZ

DISTRICT 74

July 25, 2014

I previously wrote a letter to your Commission regarding my opposition to the Racing Commission's Proposed Rules on historical racing published On June 27, 2014, in the Texas Register at 39 Tex.Reg. 4873-4884.

I want to reiterate the fact that this proposed rule completely usurps the Legislative process. I would call on all of my colleagues in the Legislature to recognize that the policy-making ability of our Legislative body is being undermined by an agency not in a position to do so and by Commissioners who are not duly elected but appointed.

In addition, and no less important, let there be no doubt that any proposed rule that does not include an accomodation for the Kickapoo Nation should not be considered by the Commission or the Legislature.

Gaming means much more to the Nation than it means to the racetracks. It means health care where there was none, educational opportunities where there were none and economic opportunities where there were none. It has lifted a decent and noble people from abject poverty. This is why an accomodation must be part of the discussion. Your proposed rule change does not do that.

Please reconsider this change until the members of the Legislature have reconvened in the 84th and it can be discussed by the body or at least until you have heard back from our duly elected Attorney General on the matter.

With kindest regards, I remain,

Sincerely,

Poncho Nevárez

TEXAS HOUSE OF REPRESENTATIVES



PONCHO NEVÁREZ

DISTRICT 74

July 23, 2014

2014 JUN 23 PM 1:26

Ms. Mary Welch
 Assistant to the Executive Director
 Texas Racing Commission
 P.O. Box 12080
 Austin, Texas 78711-2080

Re: Texas Racing Commission's Proposed Rules on Historical Racing

I am writing to express opposition to the Racing Commission's Proposed Rules on historical racing published on June 27, 2014, in the Texas Register at 39 Tex.Reg. 4873-4884. The Proposed Rules would authorize historical racing machines, looking and playing like slot machines. The Proposed Rules would effectively authorize dozens of Las Vegas-style casinos across the State. Issuing the rules would unlawfully usurp the authority of the Legislature. Further, the Proposed Rules would greatly expand gambling but would not provide any revenue share to the State. Given the concerns with the Proposed Rules, I ask the Commission to reject them. The Commission should delay action until the Attorney General addresses a pending request to opine on whether the Commission has the authority to approve these games.

The Commission Should Take No Action Pending Attorney General Opinion.

It is my view that the Commission does not have the authority to authorize historical racing. Significantly, the Attorney General was asked to issue an opinion on this very issue. The July 22, 2014, opinion request letter states that the Texas Racing Act only authorizes pari-mutuel wagering on live and simulcast racing and that historical racing is not live or simulcast nor does it not fit within the Act's definitions of race or pari-mutuel wagering. It also states that historical racing machines would violate Article III, section 47(a) of the Texas Constitution, which prohibits lotteries. Further, it asserts that historical racing would violate the Penal Code's prohibition of gambling devices. The Proposed Rules concern significant issues of State law and policy, and if made final would dramatically change the face of gambling in the State of Texas.

It is reasonable for the Commission to wait for the Attorney General to opine on the Commission's authority to issue such rules before taking any action on them.

The Proposed Rules Would Usurp the Legislature's Authority.

The Commission's Proposed Rules would greatly expand gambling within the State, and it would do so simply through administrative action without input or involvement from the State Legislature. Yet, expansion of gambling in Texas must be left, at a minimum, to the Legislature and, more so, to the citizens of Texas through a consideration of a constitutional amendment.

Over the past decade, the Legislature has considered countless bills which sought to authorize expanded gambling in Texas. The Legislature has not passed any of them. A state administrative agency should not be able to make an end-run around the Legislature which is the proper forum for law and policy making. I believe this could hurt the overall goal of bringing Las Vegas-style gambling to Texas. The Commission, thus, should not be able to quietly authorize expanded gambling that the Legislature could not through the legislative process which allows robust and open discussion about what types of gambling are best for the State. Further, given that the Proposed Rules contravene the Penal Code, the Legislature would need to be the entity to act. Finally, in light of the Proposed Rules constitutional problems, the Legislature would need to propose a constitutional amendment for consideration by the people.

The State Will Lose Revenue from the Commission's Proposal.

The Proposed Rules make no provision for a State share from historical racing machines. This cuts directly against the State's interests as it would result in the State losing out on hundreds of millions of dollars in tax revenues that it otherwise could receive from the Commission's proposal if the proposal included a state revenue share. Further, the State would lose out on upfront licensing fees of at least a billion dollars. While I understand that the Commission's objective is to benefit the horse and greyhound racing industry, the State will receive no direct financial benefit from the proposal. In fact, the State would suffer a loss by not receiving any taxes or fees that it should receive from such an expansion of gambling within its borders.

Most, if not, all bills that sought to authorize gambling that were considered in the Legislature over the years included either a state tax on the resulting gambling revenues or a substantial fee to be paid to the State for a license to offer such gambling, or both. The purported benefit to the State in those legislative proposals was that the authorized gambling would benefit the State's budget. The Proposed Rules, however, would permit the racetracks to operate an unlimited number of profitable gaming machines with absolutely no licensing fee or portion of the revenues going to the State's budget. Any public interest that may be stated to exist in authorizing such gaming expansion actually does not exist as far as the State, itself, is concerned.

Also, I note that the Commission does not have the power to levy taxes. Further, it is not clear that the Commission has the authority to create new, tax-free forms of wagering in the State when the Texas Racing Act has explicitly provided for taxes on live and simulcast pari-mutuel wagering. TRA §§ 6.091, 6.093.

The Commission should wait for legislative action which could include levying a tax and/or license fee on historical racing prior to promulgating any rules governing historical racing.

I am a proponent of allowing complete Las Vegas-style gambling at the tracks and at the current locations where it is legal, being the Reservation of the Kickapoo Nation in Maverick County, Texas but the way the Racing Commission is going at this is unfortunate because it does not bring all the stakeholders to the table and it could create bad precedent that could hurt the end of bringing these games to Texas at the tracks.

For the aforementioned reasons, I urge the Commission to reject the Proposed Rules. At the very least, the Commission should refrain from acting on them while the request to the Attorney General for an opinion is pending.

With kindest regards, I remain,

Sincerely,



Representative Poncho Nevarez

CAPITOL OFFICE
P.O. Box 12068
ROOM E1.804
AUSTIN, TEXAS 78711
(512) 463-0119
FAX: (512) 463-1017
DIAL 711 FOR RELAY CALLS

The Senate of The State of Texas



SAN ANTONIO DISTRICT OFFICE
3315 SIDNEY BROOKS DR., SUITE 100
SAN ANTONIO, TEXAS 78235
(210) 932-2568
FAX: (210) 932-2572

2014 JUL 24 PM 3:29

PECOS DISTRICT OFFICE
312 SOUTH CEDAR
PECOS, TEXAS 79772
(432) 447-0270
FAX: (432) 447-0275

EAGLE PASS DISTRICT OFFICE
MAVERICK COUNTY COURTHOUSE
501 EAST MAIN STREET, SUITE 114
EAGLE PASS, TEXAS 78852
(830) 758-0294
FAX: (830) 758-0402

Senator Carlos Uresti
District 19

DIAL TOLL FREE: 1-800-459-0119

July 23, 2014

Mr. Chuck Trout
Executive Director, Texas Racing Commission
8505 Cross Park Dr., Ste. 110
Austin, TX 78754

Dear Mr. Trout,

I am writing to state my opposition to the proposed rules which would allow casino-style gambling at racetracks. There exists controversy as to whether a decision like this should be made by the appointed commission, or the duly elected Legislature—and I strongly believe the latter.

I have been, and continue to be open minded on the expansion of gambling in Texas, to include slot machines at racetracks. There are many considerations that need to be given to this expansion of gambling that involve entities outside the purview of your commission, including the effects on existing charitable gaming, tribal gaming, and revenues received and used by the state to fund public education via our State Lottery. I believe these considerations are best weighed by the direct representatives of the people of Texas.

Right now, the Legislature is at home in our districts visiting with our constituents and hosting town hall meetings. Statewide elections will take place in less than four months and the Texas Legislature will reconvene in less than six months. At that point, the eyes and ears of the people of Texas will shift to Austin. Major decisions in our state, such as those that will expand casino-style gambling should be made during this time—in the public eye and with full transparency.

Therefore, I respectfully request that this issue not be decided upon until the Legislature has had an opportunity to hold committee hearings and debate on this matter in the upcoming legislative session. I look forward to working with you on this issue. Please feel free to contact myself or my staff in my Capitol office at (512) 463-0119.

Sincerely,


CARLOS I. URESTI

CIU/mr

Cc: Governor Rick Perry;
Lt. Governor David Dewhurst;
Speaker Joe Straus;
The Honorable Susan Combs;
Members of the Texas Senate;
Members of the Texas House of Representatives;
Members of the Texas Racing Commission.

MEMO

2014 JUL 25 PM 2:02

Date: July 25, 2014
From: The Senate Republican Caucus
To: The Texas Racing Commission
Re: Proposed Rules on Historical Racing

The Senate Republican Caucus urges the Texas Racing Commission to not adopt the proposed rules on historical racing. As explained below, historical racing goes beyond the statutory language and legislative intent, and is a matter best left to the Texas Legislature to consider.

Gambling, with certain narrow exceptions, is illegal in Texas. One of those exceptions is for pari-mutuel wagering on horse and greyhound races. As defined in the law, pari-mutuel wagering requires the full amount wagered by all parties on any single race be split among the race contestants, the racetrack, and the winning bettors. In this manner, the payoff odds on any particular race vary based on the total amount wagered and the number of successful bettors. The Racing Commission is charged with the control of pari-mutuel wagering on horse and greyhound races.

The prohibition on gambling in the state contains a cross reference to the law allowing pari-mutuel wagering on horse and greyhound races. While pari-mutuel bets on horse and greyhound races made in accordance with the Commission's regulations are not illegal, any gambling in Texas on horse or greyhound races that does not comply with those regulations is a crime. For this reason, any action taken by the Racing Commission to broadly interpret pari-mutuel wagering necessarily limits the Texas gambling prohibition.

Historical racing is allowed only under a broad reading of the pari-mutuel wagering law. By its own terms, historical racing does not split the money as required by the pari-mutuel statute, as those persons winning bets placed on the race when it was originally won are long forgotten, and will not be tracked down and paid additional funds. Further, with each bet placed on a particular race, the odds change, making the payout rates change accordingly.

These rules appear to be an attempt by the Racing Commission to circumvent the Legislature's authority to decide what types of gambling are and are not legal. In the rule proposal, the Commission essentially admits that it is expanding the definition of pari-mutuel wagering, as it says the "mode and manner of pari-mutuel wagering...continues to evolve", and that historical racing "is distinct from live or simulcast racing". The proposed rules note the "primary advantage of historical racing is the additional revenue it provides" for horse and greyhound racing. While adopting new rules to reflect new or changing technologies is a good thing for

the state, adopting rules that fundamentally change the types of activities regulated, or allowed, is not an activity state agencies should undertake.

This is not an appropriate decision for the Racing Commission. This change in policy—the expansion of pari-mutuel wagering beyond the confines of the Racing Act—has broader consequences than simply increasing revenue of existing racetracks. The expansion of pari-mutuel wagering necessarily limits the application of other laws in this state—laws outside the Commission’s jurisdiction. While the Racing Commission regulates only a small (albeit important) part of the Texas economy, the Legislature represents the entire state.

As a caucus that represents diverse and widespread areas of the state, the members of the caucus may agree or may not agree on how or if historical gambling should be allowed in Texas. However, we do strongly agree that the legislature is the appropriate authority to weigh the consequences and impact of the historical racing proposal, as it has ramifications that will be felt statewide. For these reasons, we strongly encourage the Racing Commission not to adopt the proposed rules on historical racing.



Senator Brian Birdwell



Senator Donna Campbell, MD



Senator John Carona



Senator Robert Deuell, MD



Senator Kevin Eltife



Senator Craig Estes



Senator Troy Fraser



Senator Kelly Hancock



Senator Joan Huffman



Senator Jane Nelson



Senator Robert Nichols



Senator Dan Patrick



Senator Charles Schwertner, MD



Senator Kel Seliger



Senator Larry Taylor



PAUL D. WORKMAN
STATE REPRESENTATIVE
District 47

July 28, 2014

Dr. Robert Schmidt
Chair
Texas Racing Commission
8505 Cross Park Drive, No. 110
Austin, TX 78754

Dear Dr. Schmidt:

I am writing to express my opposition to the Racing Commission's proposal to adopt new rules that would define, authorize, and regulate "historical racing" in the State of Texas. The Legislature has consistently opposed the statutory expansion of gambling in Texas and has not given the Racing Commission the authority to expand casino-style gaming through the back door via rule.

The Texas Racing Act requires the Racing Commission to adopt rules for pari-mutuel wagering on live and simulcast racing. Since historical racing is neither a form of pari-mutuel wagering nor is it live or simulcast, a question has been raised as to whether or not the Racing Commission has the authority to enact these rules. This type of wagering is just another way to place a bet against the outcome of a randomized number, which is not permitted under Texas law.

Any decision to expand gambling in this state must be made by the duly elected members of the Legislature who are answerable to the people of Texas. I do not support casino-style gambling in Texas and I do not foresee a situation in the near future where the Legislature would authorize its expansion. I am therefore requesting the Racing Commission to withdraw its consideration of these proposed rules.

Please feel free to contact my office at (512) 463-0652 if you would like to discuss this matter with me in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul D. Workman", with a horizontal line extending to the right from the end of the signature.

Paul D. Workman

REPUBLICAN NOMINEES FOR THE TEXAS SENATE 84TH LEGISLATURE

July 27, 2014

Ms. Mary Welch
 Assistant to the Executive Director
 Texas Racing Commission
 P.O. Box 12080
 Austin, Texas 78711-2080

As Republican nominees for the Texas Senate, we are pleased with the unified stance the current Republican caucus has taken in opposing the Racing Commission's proposed rule on historical racing. Similar in nature to slot machines, historical racing would effectively authorize Las Vegas style gaming in Texas. We, the undersigned, write today to add our voices to the those concerned with the proposed rule, which would greatly expand gambling in Texas without legislative approval.

Aside from certain narrowly defined exceptions, gambling in Texas is illegal. Furthermore, over the past decade the Legislature has considered, and ultimately rejected, every bill brought before it that sought to expand gambling in Texas.

The Texas Legislature is the proper arena in which to make such changes to public policy, not via an agency rule that stands in contradiction to the law of our state. Instituting such a rule would effectively usurp the authority of the Legislature and deprive the public from robust debate and open discussion on the issue.

While thoughtful legislators on all sides of the political spectrum can debate if or how historical racing should be allowed in Texas, attempting to do so behind closed doors without legislative approval violates our state's system of checks and balances. In order for a bill to become law it must withstand public scrutiny and expert testimony. The attempt of an agency to make law void of the legislative process opens the door to a host of unintended consequences and poor policy decisions.

We strongly support Texas' constitutional process. As such, any expansion of gambling in Texas requires legislation that goes through the full legislative process. For this and other reasons, we entreat the Racing Commission to withdraw their proposed rule which most clearly breaks existing law.

Konni Burton

Bob Hall

Don Huffines

Van Taylor

INDUSTRY ORGANIZATIONS



T E X A S
H O R S E M E N ' S
P A R T N E R S H I P

P.O. Box 142533

Austin, Texas 78714

512.467.9799

Fax 512.467.9790

July 9, 2014

Mr. Chuck Trout
Executive Director
Texas Racing Commission
P.O. Box 12080
Austin, TX 78711

2014 JUL 10 AM 2:15

TEXAS RACING COMMISSION
P.O. BOX 12080
AUSTIN, TX 78711

Dear Mr. Trout:

On behalf of over four thousand licensed members of the Texas Horsemen's Partnership, I would like to thank the staff of the Texas Racing Commission for hosting this meeting for the purpose of hearing public comment on the proposed rules which would allow Historical Racing Terminals at licensed Texas racetracks.

As a twenty year employee of the recognized horsemen's organization, I watched as racing grew and prospered and then started its decline. The numbers of horsemen that we represent and assist has also declined along with the industry. For our members, racing is both a passion and a business. There is only a certain amount of time that a person can continue to keep his business afloat and live only on his passion for the sport. Unfortunately, more than half of our members, since 2006, have made the hard decision to leave Texas for other racing states with much higher purses. Most of those horsemen would like nothing better than to have a financial incentive to return to Texas.

The adoption of the rules which have been proposed to the Texas Racing Commission concerning Historical Racing would provide just that incentive to attract horsemen back to the Texas tracks.

In almost every facet of our lives, things move forward and we must keep up with advancing technology in order to live and work in today's world. Horse racing is no different. Racing has been slow to find innovative ways to attract new patrons, especially a new generation of younger fans. Gadgets, devices and social media are important parts of the lives of most people. Very slowly, racing is coming around and finding ways to meet the demands of a tech society.

Historical Racing is a positive step in the right direction. Pari-mutuel wagers on historical races, using these terminals, is a way to place horse racing in front of patrons who might not otherwise visit our Texas

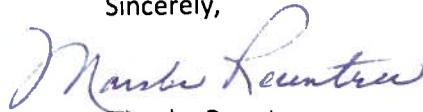
tracks. The technology is attractive to a wider range of patrons and will certainly bring new fans to the sport.

Along with new patrons at our tracks, comes higher purses for our horsemen, a robust breeding industry and many new jobs for the state's economy.

Mr. Trout, none of the information contained in my letter is new. We have all heard the story of the decline in Texas racing over and over again. The Texas Racing Commission has the authority to implement the proposed rules allowing pari-mutuel wagers on Historical Racing, which would change that story from one of decline to one of growth.

Thank you for the opportunity to express my thoughts on this important topic which will be before the Commission in August.

Sincerely,



Marsha Rountree

Executive Director

Texas Horsemen's Partnership, LLP

AMERICAN
QUARTER
HORSE
ASSOCIATION

July 16, 2014

Texas Racing Commission
Attn. Chuck Troutt - Executive Director
8505 Cross Park Dr., #110
Austin, TX 78754

Dear Mr. Troutt and Members of the Texas Racing Commission:

The American Quarter Horse Association located in Amarillo, Texas, is the world's largest equine breed registry and membership organization, with nearly 300,000 members and some six million horses on the roster. In Texas alone, AQHA's largest state, there are more than 425,000 American Quarter Horses owned by nearly 105,000 Texans.

It is AQHA's mission to support initiatives that will promote and enhance the growth of this already popular breed. As it relates to the racing American Quarter Horse, AQHA is committed to increasing opportunities for the breed and to grow purses for owners of racing American Quarter Horses.

To that end, AQHA is a strong supporter of the efforts to introduce historical racing terminals at racetracks and other approved facilities in the Lone Star State. As President of AQHA, a Texan, an owner of horses that race in Texas and a breeder of hundreds of American Quarter Horses, I am writing to encourage the Texas Racing Commission to place this matter on an upcoming agenda and to pass this for the benefit of the racing industry in Texas.

It is conservatively estimated that Texas racing influences nearly 18,000 jobs (directly and indirectly), and makes nearly a \$1 Billion impact on the state's economy. Bringing historical racing terminals to racetracks and selected locations will substantially increase these numbers, make it more attractive to race in Texas and put Texas back into a competitive situation with the states it borders.

Please give the Texas racing industry the resources it needs to be competitive and vote to allow historical racing terminals at Texas racetracks.

Sincerely

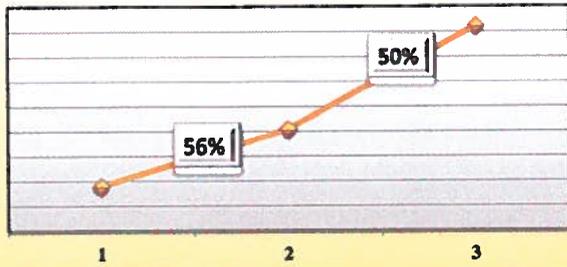


Johnny Trotter
President
American Quarter Horse Association

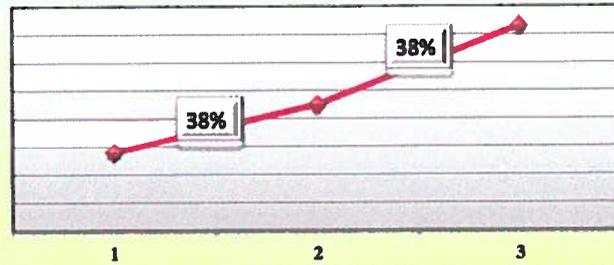
1600 Quarter Horse Drive • Amarillo, TX • 79109 • P.O. Box 200 • Amarillo, TX • 79168
806-376-4811 • www.aqha.com

Estimated Economic Impact of HRT's in Texas

Kentucky Purse Increase Since Inception of HRT's

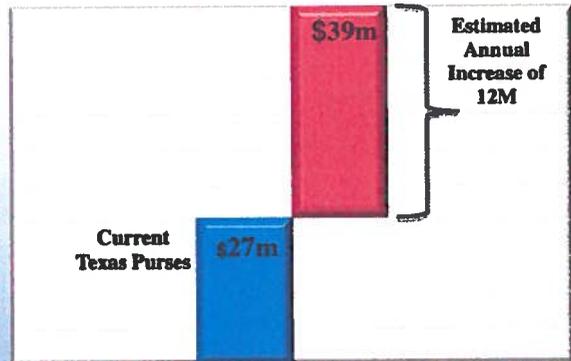


Arkansas Purse Increase Since Inception of HRT's



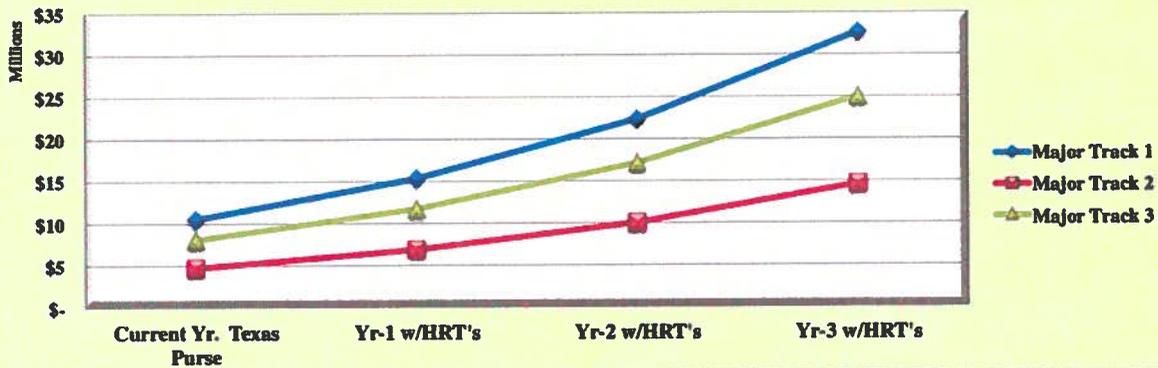
Arkansas and Kentucky have a short history to compare upon but results have been positive. With the introduction of Historical Racing at Oaklawn in Arkansas in 2001 and Kentucky Downs in 2011, both tracks showed a steady increase in their Daily Average Purse Distribution. Kentucky averaged a 53 % purse increase over the first 3 years while Arkansas showed an average increase of 38% in their first 3 years.

Estimated Texas Purse Increase w/HRT's

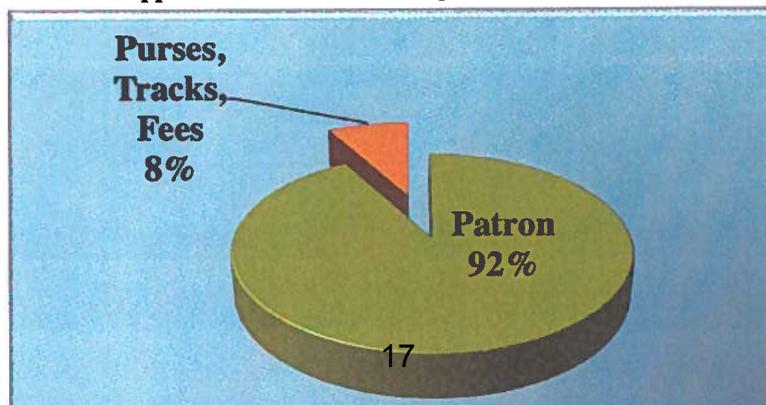


Alternatively, Kentucky Downs HRT's contributed over 9.6M to purses over 30 months since its inception. Therefore, it is reasonable to assume the 3 major operating tracks in Texas could contribute similarly, resulting in a purse increase of 46% over current Texas purses of 27M in 2013 of 12M a year.

46% Average Annual Purse Estimates Texas' 3 Major Tracks With HRT's



Approximate Distribution of \$100 HRT Wager



July 28, 2014

TRC Chairman Robert Schmidt
Texas Racing Commission
P O Box 12080
Austin, TX 78711

Dear Chairman Schmidt,

It is our understanding that the Senate Republican Caucus has recently urged the Texas Racing Commission not to adopt the proposed rules on historical racing, and we would like to outline the reasons that we respectfully disagree with their arguments. Numerous qualified attorneys with many years of collective experience in the racing industry all agree that the Commission has the legal authority to adopt the proposed historical racing rules.

We assert that historical racing is allowed under a broad reading of the Texas Racing Act, which is the proper way to interpret it, as the Government Code says the Act is to be liberally construed. The Act expressly authorizes pari-mutuel wagering on horse racing. Since 1989, the legislature has twice amended the Act to broaden the Commission's power to "license and regulate *all aspects*" of Texas horse racing and to "*take any other necessary action*" relating to such racing. The Commission is properly exercising the authority the legislature has given it.

The proposed rules require all historical wagering options to be pari-mutuel and substantively identical to the wagers already occurring at Texas racetracks, and for the Commission to disapprove any historical wagering option that is *not* pari-mutuel or would violate the gambling prohibitions of the Texas Constitution.

Any concern over the composition of pari-mutuel wagering pools on historical races is unfounded. We have been advised that nothing in the Act requires all wagers on a race to be placed in a single pool or to be made simultaneously in order to be "pari-mutuel." A pool can consist of wagers made on different races and on different days. Such wagers are made almost daily at Texas racetracks. The proposed rules, in fact, require all historical racing wagers be pooled consistent with pools and wagers already authorized by the Commission's existing rules.

The undersigned horse organizations speak for over 11,000 Texans. We represent a significant component of the Texas agricultural industry, to which in excess of 36,000 jobs and \$5.5 billion of economic impact can be attributed. Yet our Texas breeding and racing industry is dying because of intense competition from other states. We have suffered documented losses of 62% of our race days, 61% of pari-mutuel wagering handle, and half of our purses for horses, between 2000 and 2013. Adoption of the proposed rules will help us survive by leveling the playing field. We believe pari-

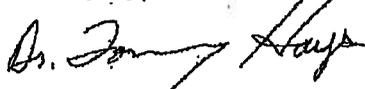
mutuel wagering on historical horse races will provide a desperately needed 40 percent increase in purses for our racehorses,

Just as the Texas horse industry requested the Texas Racing Commission consider adopting rules to authorize and regulate pari-mutuel wagering on historical races, we now ask you to place the proposed rules on the agenda for the August 12 TRC meeting and vote to adopt them.

Thank you for supporting the Texas breeding and racing industry.



Ed Wilson
Texas Arabian Breeders Association



Tommy Hays
Texas HBPA



Billy Smith
Texas Paint Horse Breeders Association



Val Clark
Texas Quarter Horse Association



Mary Ruyle
Texas Thoroughbred Association



Jan Haynes
Texas Thoroughbred HBPA



2014 JUL 28 PM 1:09
 512-458-5202
 512-458-1713

July 28, 2014

Chuck Trout
 Texas Racing Commission
 P.O. Box 12080
 Austin, Texas 78711-2080

Dear Mr. Trout,

The Texas Quarter Horse Association supports proposed rule 309.13 and also supports placing this item on the August 12th agenda for adoption.

As proposed, rule 309.13 would allow current "Active/Other" designated racetracks to operate while funding purses for horsemen at other racetracks until they have completed their construction.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Rob Werstler". The signature is fluid and cursive, written over a white background.

Rob Werstler
 Director of Racing



texas greyhound association

Dr. Robert Schmidt, M.D., Chair
Texas Racing Commission
P.O. Box 12080
Austin, Texas 78711

Dear Chairman Schmidt,

I have been advised the Senate Republican Caucus has recently by letter urged the Texas Racing Commission not to adopt the proposed rules on historical racing. The TGA would disagree with the argument the Commission does not have the authority to decide this under its rules and statute.

Historical racing is, we believe, allowed under the Texas Racing Act which is the proper way to interpret this particular pari-mutuel wager. The Act has been amended to broaden the Commission's power to "license and regulate all aspects" of Texas horse and dog racing. Therefore, the Commission is executing its authority under the act.

The greyhound industry has downsized greatly in the last decade when there were three tracks running yearly. We now have only one track holding races on a consistent basis and our greyhound farms have been reduced from the hundreds to fewer than fifty now. This new form of wagering will hopefully bring new farms and a great agricultural impact to Texas.

As the TGA asked the Commission to consider adopting rules to authorizing and regulating pari-mutuel wagering on historical racing, we would now ask you to place the proposed rules on the August 12, 2014 Commission agenda and vote to adopt them.

Sincerely,

Nick James,
Executive Director, Texas Greyhound Association



texas greyhound association

**STATEMENT BY TEXAS GREYHOUND ASSOCIATION
Nick James, Executive Director**

As the Texas Racing Commission considers the "Instant Racing" proposal, commission members are being flooded with orchestrated opposition from well-funded East Coast animal rights groups claiming to "speak up for Texas greyhounds." These organizations know nothing about greyhounds, and they provide no direct services or benefits for the dogs.

Greyhound breeders in Texas, along with those in other states, are in the business because we enjoy working with the dogs. Very few of us become wealthy in racing, but we remain in the sport because we love it. Most greyhound farms are family operations, and some have been in the racing business for two or three generations. We know how to raise and care for healthy greyhounds.

Members of the Texas Greyhound Association (TGA) work under the rules and policies of the National Greyhound Association, which has established high standards for the care of racing greyhounds. Those standards cover virtually every aspect of greyhound care, including housing, nutrition, exercise, sanitation and management. They are based on expert veterinary recommendations and sound animal science.

Those who are found guilty of serious greyhound welfare violations are banned from the sport for life, and other industry members prohibited from doing business with them. That shows how seriously we take our responsibility for proper greyhound care.

When our greyhounds move from the farm to the track, we work closely with track officials to ensure that racing conditions are safe. Our communication with track management is regular and open. Together, we have succeeded in improving track safety and reducing injuries. Today, less than one percent of all racing starts result in injury, and in most cases the greyhounds return to racing in a week or two. If a return to racing is not possible, the dog transitions into an adoption program for placement in a loving home.

We respectfully urge the Commission to base its decision on the facts, and not on misleading smear campaigns driven by radical out-of-state animal rights groups.

RACETRACKS



2014 JUL 02 PM 4:42

COMMENTS OF SAM HOUSTON RACE PARK, VALLEY RACE PARK, AND LAREDO RACE PARK ON PROPOSED HISTORICAL RACING RULES

Sam Houston Race Park (SHRP), Valley Race Park (VRP) and Laredo Race Park (LRP) (collectively, the SHRP Group) submit these comments on the proposed historical racing rules published in the Texas Register on June 27, 2014.

I. GENERAL COMMENTS

The SHRP Group appreciates the efforts of Commission Staff in working with all of the various horse and greyhound interests in the state to develop the proposed rules. The SHRP Group also thanks the Commission for its initiative in establishing the Subcommittee on Pari-Mutuel Wagering to examine issues related to historical racing, and for moving forward with publishing the proposed rules for comment.

The decline of the Texas horse and greyhound racing industries has been well-documented and publicized. The Commission's Annual Reports plainly illustrate this decline:

- In 2003, the total handle on Texas's live horse races was \$443 million. By 2013, this number had dropped by more than 70% to \$130 million.¹
- In 2003, Thoroughbred-earned purses were \$27.5 million, falling to \$14.5 million last year, more than a 50% decline.²
- In 2003, Quarter Horse-earned purses were \$7.1 million. In 2013, they were \$4.1 million, more than a 40% decline.³
- In 2003, there were 201 Thoroughbred race days between the Class I tracks. In 2013, all three tracks combined held 109 race days, a 45% decline.⁴ At Sam Houston Race Park, this number fell to just 32 days this year.
- The Commission issued 14,168 occupational licenses at horse and greyhound tracks in 2003. By 2013, that number had dropped to 5,961, representing nearly a 60% decline.⁵

¹ Texas Racing Commission 2003 Annual Report at 27; Texas Racing Commission 2013 Annual Report at 20. Texas Racing Commission Annual Reports, beginning with the 1988 report, are all available at http://www.txrc.texas.gov/agency/reports/AnnualRpt/annual_reports.plip.

² 2003 Annual Report at 25; 2013 Annual Report at 18.

³ 2003 Annual Report at 25; 2013 Annual Report at 18.

⁴ 2003 Annual Report at 36, 38, and 40; 2013 Annual Report at 26-28.

The direct cause of these staggering losses is the significantly higher purses available in neighboring states like Louisiana, Arkansas, and Oklahoma, which supplement purses with revenue from expanded gambling.

The SHRP Group believes that historical racing provides the best available opportunity to make Texas purses more competitive with purses in other states while complying with the Texas Racing Act. Purses at the two Kentucky tracks that conduct historical racing, Ellis Park and Kentucky Downs, increased by 27% from 2012 to 2013. Arkansas's experience is similar. Purses had diminished every year from 1994 to 2002 in Arkansas. After its first modest installation of historical racing machines in 2001, Oaklawn Park paid \$11.4 million in purses in 2002, an increase of nearly \$398,000, or 3.6%, from 2001. Now, purses at Oaklawn Park are at an impressive \$18.8 million, nearly a 71% increase over 2001. The historic Red Mile racetrack in Lexington recently announced that it intends to develop a new \$25 million facility for historical racing, which will create 150 new and permanent jobs. Keeneland, which will host the 2015 Breeders Cup, has also announced plans to build a multi-million dollar facility to house its historical racing operations, which is expected to create 60 to 75 new permanent jobs. The SHRP Group expects similar results in Texas.

The SHRP Group, in conjunction with the other Class I tracks, has conducted some projections of purse increases in Texas if historical racing is adopted. Based on the total statewide purses, which were \$27 million in 2013, and using the same per-terminal purse contributions as Kentucky Downs, the SHRP Group expects purses in Texas to increase by approximately 40% if the Commission approves historical racing.⁶ That is more than \$10 million dollars annually going to horsemen and breeders, with ancillary economic impacts for agriculture, veterinarians, and other racing-related industries.

There will also be significant direct economic development benefits for the state. The SHRP Group has used standard economic input and output analysis to estimate some of these long-term impacts. The SHRP Group estimates that total economic activity in the state will increase between \$500 million and \$600 million as a result of adopting historical racing. The

⁵ 2003 Annual Report at 15; 2013 Annual Report at 13.

⁶ At Kentucky Downs, 390 historical racing terminals increased purses by approximately \$4 million. Assuming 1,000 terminals are implemented statewide in Texas, this is just over \$10 million. Total purses statewide in 2013 were \$27 million, so that would represent a 37 percent increase. The SHRP Group believes this is a conservative estimate.

SHRP Group also estimates that historical racing will add somewhere between 3,800 and 5,000 permanent jobs here in Texas.⁷

A. Response to Bingo Advocates

The SHRP Group would like to respond to the issues raised at the recent public hearing related to potential impacts on charity bingo. Despite the claims made by bingo advocates at the hearing, there has been no concrete information provided to demonstrate that historical racing will decrease participation in charitable bingo. For example, since Arkansas adopted the lottery in 2009, charitable bingo participation has actually increased each year since then. And while charitable bingo is declining overall in Kentucky, that trend has been in place since at least 2009, long before the recent establishment of historical racing. Notably, this trend has been changed in Simpson County, where Kentucky Downs is located. Kentucky Downs is only one of two tracks that operated historical racing in 2013. It also hosts charitable bingo. Despite a statewide decline in 2013 from 2012 in total gross receipts for charitable gaming in Kentucky, charitable gaming gross receipts *increased* in 2013 in Simpson County by nearly \$330,000, or 1.4%, for a total of \$23.3 million. Simpson County is also the second largest county in Kentucky ranked by total gross receipts, next to Jefferson County. However, Simpson County is only ranked 66th in population while Jefferson County, where Louisville is located, is the most populous county in Kentucky. Simply put, there is no evidence that historical racing will have any impact on bingo operations in Texas—particularly given how widespread bingo operations are in relation to the few licensed horse and greyhound tracks in Texas. In addition, the Commission should be mindful that it has a statutory duty “to consider the effect of a proposed commission action on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.”⁸ These interests will directly and substantially benefit from the establishment of historical racing.

Historical racing will not eliminate all of the challenges faced by the Texas horse and greyhound racing industries due to much higher purses in neighboring states that have expanded gambling. However, historical racing is an important technological development that will allow

⁷ Note that these estimates represent permanent, long-term impacts and do not reflect the expected short-term benefits, such as those to the construction industry.

⁸ Racing Act § 3.02(g).

Texas racing to be more competitive than it has been in years, which will boost the economics and the profile of the state's racing, agriculture, breeding, and training industries. For these reasons, the SHRP Group strongly supports adopting the proposed rules at the August Open Meeting, with a few technical and practical corrections, as explained below in Section II.

B. Response to Recent Legislative Press Releases and Request for Attorney General Opinion

In the past week state Representative Dan Flynn requested an opinion from the Attorney General (AG) on whether the proposed rules are within the Commission's authority, and some Republican senators have submitted press releases stating their opinion that historical racing should be a legislative issue. The SHRP Group respects these legislators' interest in this important issue, but respectfully disagrees with various factual misstatements and incorrect legal conclusions in their submittals.

The SHRP Group plans to fully respond to Representative Flynn's request for an AG opinion by August 12, 2014, the briefing deadline set by the AG's office. However, there are several immediately apparent factual misstatements and legal errors in that request:

1. Historical racing is not "house-banked rather than pari-mutuel wagering." There is no house banking permitted under the proposed historical racing rules. In fact, under other forms of pari-mutuel wagering that exist today, tracks are often responsible for minimum payouts, while the historical racing rules provide for minimum payouts to be covered through seed pools created from patrons' wagers.⁹ Historical racing therefore has an even greater "pari-mutuel" character than track-funded minimum payouts.
2. The request points out that patrons may be wagering on different races, but this does not impact whether the wagering is legally "pari-mutuel." There are many wagers that exist today where wagers on different races are pooled. Requiring all bets on a given race to be in the same pool is not a statutory requirement of pari-

⁹ The only exception to this is for the initial seed pools, which is a one-time startup issue; but again, that is equivalent to minimum payouts at tracks today.

mutuel wagering, and this argument runs counter to current Commission rules and decades of track operations in Texas and elsewhere.

3. It is not accurate that, under the proposed rules, “[p]layers need only push a single button to play, and the machine can make all of the wagering choices for the player.”¹⁰ The single-button play feature offered in other states and the “hand-helper” are handicapping tools that increase the patron’s chance of selecting the winning horse(s). These features do not inject “chance” into the mechanics of the wager, as Representative Flynn suggests. Further, while the SHRP Group sees no legal issue with implementing these features in Texas, the proposed rules do not alone authorize them. Instead, the specific designs and features of the historical racing terminals at Texas tracks will be subject to subsequent Commission review and approval when tracks submit their individual proposals for historical racing installations. The rules explicitly require the Commission reject any features that (1) are not pari-mutuel, or (2) would violate constitutional gaming prohibitions.
4. Legally, it is not true that the Racing Act only authorizes live and simulcast racing. These two types of racing are subject to certain specific provisions of the Act, but the Commission’s grants of authority relate to “pari-mutuel wagering in connection with horse and greyhound racing,” which is broader than just live and simulcast racing and encompasses historical racing. This threshold legal issue has already been discussed at length in prior briefing and at prior meetings.

Regarding the various press releases from Republican state senators, these releases do not raise any new or compelling reasons not to adopt the proposed rules. The releases acknowledge that there are “narrow exceptions” to the gambling prohibition in Texas. Historical racing falls within one such exception—the exception for pari-mutuel wagering on horse and greyhound racing. Contrary to the Senators’ suggestion, there is no legal requirement that all wagers on a given race must be in the same pool, or that all pools must be for the outcome of a single race. Again, there are many pari-mutuel pools at tracks today that mix wagers on different races, or that do not combine all wagers on a given race. While it is indisputable that it is the legislature’s

¹⁰ Request for AG Opinion at 1.

job to write the law, it is the Racing Commission's job to interpret and apply that law. This must be done in a manner that benefits the interests the agency is charged with protecting, such as the horse and greyhound training and breeding industries, and related industries like agriculture, veterinarians, farriers, and others.¹¹ The law as it stands today provides the Commission with authority and, in many respects, the statutory responsibility to move forward with the proposed rules.

II. COMMENTS ON SPECIFIC RULE PROVISIONS

Comments on § 321.703. Historical Racing.

The proposed rules contain a technical error in subsection (f) of that should be corrected to comply with the statute. Consistent with § 6.08(h) of the Racing Act, the rule allocates two percent of the breakage on historical racing to the equine research account, and then defines the remaining 98% of the breakage as "total breakage." The rule then specifies in subparts (f)(1)(A), (B) and (C) how 80% of that "total breakage" is to be allocated to the breed registries, consistent with § 6.08(j) of the Racing Act. However, the proposed rule also requires all of the "total breakage" (i.e., the full 98%) to be deposited to breed registry accounts up front, rather than just the 80% that is specifically allocated in the rule. This appears to have been an oversight and should be corrected by amending § 321.703(f)(1) as follows:

(f)(1) Two percent of the breakage derived from historical racing by a horse racing association shall be allocated to the equine research account under Subchapter F, Chapter 88, Education Code. Pursuant to § 6.08(h) of the Act, the remaining 98 percent of the breakage derived from historical racing constitutes "total breakage" and shall be transferred by the association into accounts maintained by the breed registries. The allocation among the breed registries of breakage derived from historical racing shall be determined within the written agreement described in paragraph (c)(2) of this section. The appropriate state horse breed registry shall pay out 80 percent of the total breakage as follows:

(A) 40 percent is allocated to the owners of the accredited Texas-bred horses that finish first, second or third;

(B) 40 percent is allocated to the breeders of the accredited Texas-bred horses that finish first, second or third; and

¹¹ Racing Act § 3.02.

(C) 20 percent is allocated to the owner of the stallion standing in this state at the time of conception whose Texas-bred get finish first, second or third.

Comments on § 321.705. Request to Conduct Historical Racing.

The SHRP Group has two suggested changes to this section. First, in subpart (a) of the rule, two existing Commission rules related to approval of a totalisator system are cross-referenced. The rule specifically references § 321.15, License to Provide Totalisator Services, which requires the totalisator provider to be licensed by the Commission, and § 321.101, Totalisator Requirements and Operating Environment, which provides the technical requirements for a totalisator system. For clarity, the rule should also reference the existing rule requiring tracks to submit and obtain approval of the totalisator contract, which is § 309.162, Management Totalisator Companies, and Concessionaires Contracts. The SHRP Group proposes to add a reference to this rule in § 321.705(a) as follows:

(a) In addition to the requirements of § 309.126, Management Totalisator Companies and Concessionaires Contracts, § 321.15, License to Provide Totalisator Services, and § 321.101, Totalisator Requirements and Operating Environment, an association must submit a written request to the Commission to receive approval to conduct historical racing, to offer new types of wagers, or to change the presentation or appearance of previously-approved wager types.

The SHRP Group also proposes to clarify the approval process to prevent tracks from being caught in a situation where they cannot get approval for a historical racing system without first installing it, but cannot install the system without first getting Commission approval. This scenario could arguably result from the current wording of § 321.705(a)(2), which requires a request to conduct historical racing to be accompanied by “a certification and the associated report from an independent testing laboratory verifying that the historical racing totalisator system has been tested to ensure its integrity and proper working order, and that the system and the proposed wagers meet jurisdictional rules for historical racing.” Under a reading that required up-front testing of the totalisator system, tracks would be unable to get a certification of the “working order” and “integrity” of the historical racing totalisator system until after it is installed at the track. However, tracks could not get approval to install the system without first

submitting this certification under the proposed rule. This would put tracks in an impossible situation. To resolve this tension, the SHRP Group proposes to require that a certification of the proposed system and wagers be provided upfront to obtain conditional Commission approval, and that testing to ensure that the installed system complies with the Commission's rules and technical standards be conducted once the system is installed following conditional approval. This is consistent with how the approval process has worked in other jurisdictions. The SHRP Group proposes the following revisions to 321.705(a)(2):

(a)(2) The request must be accompanied by a certification and the associated report from an independent testing laboratory verifying that the proposed historical racing totalisator system has been tested to ensure its integrity and proper working order, and that the system and the proposed wagers meets jurisdictional rules for historical racing. When all other requirements for conducting historical racing have been met, the Commission shall issue a conditional approval to allow an association to install the historical racing totalisator system. An independent testing laboratory must test the installed system to ensure its compliance with the commission's rules and technical standards, and the association shall submit the results of this testing and the associated report to the agency to obtain final approval to operate the historical racing totalisator system.

III. CONCLUSION

The SHRP Group appreciates the opportunity to provide these comments and urges the Commission to adopt the proposed rules, with the technical and practical corrections offered by the SHRP Group in these comments. The SHRP Group will have a representative available at the August Open Meeting to answer any additional questions the Commissioners may have.

Sincerely,



Andrea B. Young
President

MOLTZ | MORTON | GLENN
LLP

11A JUL 23 PM 2:15

William J. Moltz
(512) 439-2171
wmoltz@MMandG.com

Travis Oaks Building
5113 Southwest Parkway, Suite 120
Austin, TX 78735
(512) 439-2170
Facsimile (512) 439-2165

July 28, 2014

Mary Welch
Assistant to the Executive Director
Texas Racing Commission
P.O. Box 12080
Austin, TX 78711-2080

RE: Comments Relating to Proposed Historical Racing Rules

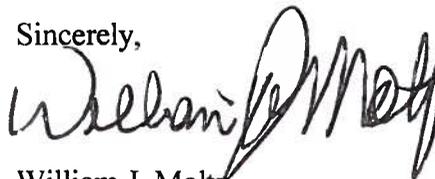
Dear Ms. Welch:

Enclosed please find comments regarding the Proposed Historical Racing Rules as published in the June 27, 2014 Texas Register. These comments are being filed on behalf of:

Laredo Downs
Tesoros Race Park
Gulf Greyhound
Gillespie County Fair and Festivals
Gulf Coast Racing

Thank you for your assistance.

Sincerely,



William J. Moltz

WJM/ktg

**COMMENTS OF LARADO DOWNS, TESOROS RACE PARK, GULF GREYHOUND,
GILLESPIE COUNTY FAIR AND FESTIVALS, AND GULF COAST RACING ON
PROPOSED HISTORICAL RACING RULES**

Laredo Downs, Tesoros Race Park, Gulf Greyhound, Gillespie County Fair and Festivals, and Gulf Coast Racing (collectively, the “Commenters”) submit these comments in support of the Texas Racing Commission’s (“TRC” or “Commission”) proposed rules relating to historical racing published in the Texas Register on June 27, 2014, at 39 Tex. Reg. 4873-4877 and 4880-4884 (“Proposed Rules”).

The TRC and industry participants are acutely aware of the decline of the racing industries in Texas, and the need for opportunities to make Texas purses more competitive with those offered in other states. While they may not completely solve the problems the industry is facing in Texas, the Proposed Rules will provide a much needed and welcomed avenue for Texas to become more competitive. Further, the State will clearly benefit overall from an economic development perspective.

With respect to the Commission’s statutory authority to adopt the rules, we agree with the rationale expressed in the Proposal. Section 1.02 of the Texas Racing Act (Texas Revised Civil Statutes Article 179e, “the Act”) clearly states that “[t]he purpose of this Act is to provide for the strict regulation of horse racing and greyhound racing and the control of pari-mutuel wagering in connection with that racing.” Further, Section 3.02 of the Act clearly gives the Commission not only the authority but the duty to adopt regulations furthering that purpose when it states the Commission “shall regulate and supervise every race meeting in this state involving wagering on the result of greyhound or horse racing.” The Proposed Rules’ detractors merely seek to play word-games with the Act and raise their purported perceptions to legal requirements. The Proposed Rules themselves require that the totalisator system used be in compliance with the pari-mutuel requirements of the Act (*see*, Proposed Section 321.705(b)(1)) and further require submittal of a third party certification of that fact (*see*, Proposed Section 321.705(a)(2)). Furthermore, Proposed Section 321.705(c) provides that “[t]he Commission shall not approve any wager that would violate the prohibitions in Article III, Section 47 of the Texas Constitution.” It can not be reasonably said that the Proposed Rules are beyond the

authority of the Commission. Further, there is no support for any assertion that the Proposed Rules would somehow authorize illegal gaming or violate the Texas Constitution.

The TRC Subcommittee on Pari-Mutuel Wagering closely examined various legal issues related to historical racing. It is clear that the Texas Legislature has given the TRC authority to adopt the Proposed Rules and we urge the Commission to do so.

The Commenters also understand Sam Houston Race Park (“SHRP”), Valley Race Park (“VRP”) and Laredo Race Park (“LRP”) (collectively, the “SHRP Group”) are submitting comments, which include a few proposed minor wording changes to the Proposed Rules. The Commenters support those wording changes as discussed in SHRP Group’s comments.

We appreciate the opportunity to provide these comments, and further appreciate the effort undertaken by the Commission, the Commission’s Staff, and the Pari-Mutuel Wagering Subcommittee in analyzing and moving forward with these Proposed Rules.

LEGAL BRIEFS

**TRADITIONAL
COUNCIL**

CHAIRMAN
Juan Garza, Jr., Kisisika

SECRETARY
Jesus Anico, Chakodata

TREASURER
Rogelio Elizondo, Apichinea

MEMBERS
Kendall R. Scott, Muteh
Namate Hernandez, Namatea

KICKAPOO

**TRADITIONAL
TRIBE OF TEXAS**

162 Chick Kazen Rd.
Eagle Pass, Texas 78852



TRIBAL COUNCIL

July 22, 2014

Ms. Mary Welch
Assistant to the Executive Director
Texas Racing Commission
P.O. Box 12080
Austin, Texas 78711-2080

Re: Comment in Opposition to the Texas Racing Commission's Proposed Rules Illegally Authorizing Slot Machine Gaming

Dear Commissioners:

I write on behalf of the Kickapoo Traditional Tribe of Texas to express our opposition to the Texas Racing Commission's Proposed Rules, 39 Tex.Reg. 4873, 4873-4884 (June 27, 2014) (Proposed Rules). The Proposed Rules would dramatically and illegally expand gambling in the State of Texas by authorizing slot machine gaming at state-licensed horse and greyhound tracks. Although game outcomes for these so-called historical racing terminals or instant racing machines¹ are derived from a set of previously run races, the game is housed in a slot machine cabinet and the primary display is video slot machine reels. Further, the game can be played at high speed through the push of a single button per play. Finally, the machines award minimum value prizes based on a pay table and, thus, are house-banked rather than pari-mutuel games. Pictures of these games as implemented in other jurisdictions are included as Attachments A.

The Kickapoo Traditional Tribe of Texas opposes the Texas Racing Commission's Proposed Rules. The Proposed Rules are beyond the Commission's authority. They are also yet another attempt by a State governmental entity to greatly expand gambling within the State while ignoring the Tribe's right to conduct Class III gaming on its lands. The Commission's Proposed Rules would permit an unlimited number of slot machines at Texas's racetracks. Yet, the State has consistently refused to enter a Class III gaming compact with the Tribe despite the Tribe's

¹ Instant racing machines are the same as historical racing terminals as described in the Proposed Rules. These comments use the term "historical racing" as the Proposed Rules do.

2014 JUL 24 PM 12:23

right to conduct such gaming. In fact, the State has actively worked to stymie the Tribe's efforts to conduct Class III gaming, countering that Class III gaming is against the State's public policy. The Commission's Proposed Rules are, thus, hypocritical and contrary to the State's asserted position about the scope of gaming permitted under Texas law. The State should not be allowed to take opposing positions to benefit itself, while at the same time arguing that such games are not available to the Tribe. Further, the Commission, a state administrative body, should not be allowed to bypass the legislature and make major changes in the State's gambling laws and policies. The proper forum for such discussions is the Texas State Legislature.

We urge you to reject the Proposed Rules because they exceed the statutory authority of the Texas Racing Commission ("Commission"). The Texas Racing Commission only has authority to adopt rules that are consistent with the Texas Racing Act, and the Act, in turn, only authorizes pari-mutuel wagering on live or simulcast racing. Historical racing machines, which use outcomes from "historical" races, are not live races and they do not fit within the Texas Racing Act's definition of simulcast races. Even if the Commission possessed authority to regulate pari-mutuel wagering more generally, rather than being restricted to live and simulcast racing, instant racing does not involve pari-mutuel wagering under the Texas Racing Act. Thus, the Commission lacks the statutory authority to authorize instant racing. Further, historical racing is a constitutionally prohibited lottery because, as discussed below, chance predominates in games played on instant racing machines. Even if chance did not predominate, historical racing machines would nonetheless fall under the definition of illegal gambling devices. Finally, the dramatic expansion of gambling in the State of Texas that would result from the Proposed Rules' authorization of historical racing machines would be contrary to public policy. Any such expansion, if desired by the State, should be led by the people and their elected representatives, either through legislative enactment or constitutional amendment.

A. The Proposed Rules Exceed the Racing Commission's Statutory Authority.

Enacting the Proposed Rules would exceed the Commission's statutory authority. The Texas Racing Act authorizes the Commission to regulate only live and simulcast, not historical or instant racing. Thus, if the Commission promulgated the Proposed Rules, it would be acting beyond its authority. Further, even if the Commission had broad authority to regulate pari-mutuel wagering, instant racing does not involve pari-mutuel wagering as it is defined under the Texas Racing Act. Therefore, the Commission should reject the Proposed Rules.

1. The Texas Racing Commission only has authority to adopt rules that are consistent with wagering authorized by the Texas Racing Act.

Proposed Subchapter F, entitled "Regulation of Historical Racing," would authorize licensed pari-mutuel racetracks to operate instant, or "historical," racing. 39 Tex.Reg. at 4882. The Proposed Subchapter would include new section 321.701, which states: "The Commission finds that pari-mutuel wagering on historical horse and greyhound races falls within its statutory grant of authority to regulate pari-mutuel wagering in connection with horse and greyhound racing." 39 Tex.Reg. at 4882. The Commission's statutory authority, however, does not permit the Commission to authorize historical racing. Simply because the Commission asserts that it has the authority does not make it so.

The Commission has only the authority delegated to it by the Legislature through the Texas Racing Act ("TRA"), Tex. Rev. Civ. Stat. art. 179e, which created the Commission. TRA at § 2.01 *et seq.* The TRA states that "[t]he purpose of this Act is to provide for the *strict* regulation of horse racing and greyhound racing and the control of pari-mutuel wagering in connection with that racing." Tex. Rev. Civ. Stat. art. 179e § 1.02 (emphasis added). The TRA articulates the powers and duties of the Commission, stating:

The commission shall regulate and supervise every race meeting in this state involving wagering on the result of greyhound or horse racing. All persons and things relating to the operation of those meetings are subject to regulation and supervision by the commission. The commission *shall adopt rules for conducting greyhound or horse racing in this state involving wagering and shall adopt other rules to administer this Act that are consistent with this Act.* The commission shall also make rules, issue licenses, and take any other necessary action relating exclusively to horse racing or greyhound racing.

Id. § 3.02 (emphasis added). The TRA does not delegate to the Commission sweeping authority over all pari-mutuel wagering, nor does it delegate to the Commission any authority over wagering that is not pari-mutuel in nature. Rather, the TRA authorizes the Commission to promulgate rules only insofar as such rules are consistent with the Act. The Commission, therefore, is empowered to regulate wagering on greyhound or horse racing to the extent such wagering is authorized by the Texas Racing Act.

The Commission cites section 3.021 of the TRA as authority for the Proposed Rules to authorize instant racing, stating that this section "authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering." See 39 Tex.Reg. at 4873, 4875, 4876, 4877, 4878, 4881, and 4882. The Commission, however, misconstrues section 3.021 as a broad grant of authority. Section 3.021 merely authorizes the Commission to regulate aspects of greyhound and horse racing that does not involve wagering of any kind. It does not empower the Commission to authorize wagering that is not pari-mutuel in nature.

The Texas Attorney General has already opined that section 3.021 cannot confer unrestricted authority on the Commission. In 1990, what is now section 3.021(a) stood alone and therefore the entirety of section 3.021 stated: "Any provision in this Act to the contrary notwithstanding, the commission may license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering." Based on this language, the Commission promulgated regulations governing racetracks that did not engage in pari-mutuel wagering. 14 Tex.Reg. 1364-65 (Mar. 14, 1989). The Attorney General, however, found section 3.021 unconstitutional as written and, therefore, opined that the Commission's regulations governing non-pari-mutuel racetracks were invalid. Tex. Att'y Gen. Op. JM-1134 at 6 (Jan. 8, 1990). The Attorney General said: "We think that the legislature intended to authorize the commission to regulate nonpari-mutuel racetracks when it enacted [section 3.021], and we do not question that intent. . . . However, the power delegated to the commission by the statute as it is written is so broad that it leaves all policy-making and rulemaking discretion to the

commission. Without sufficient guidelines, such a delegation of authority grants the commission a law-making function and violates the Texas Constitution." *Id.* at 6 (citations omitted).

The following year, the Legislature amended section 3.021. It turned the above-quoted language into subsection (a) and added subsections (b) and (c), which explicitly refer to racetracks that do not offer pari-mutuel wagering and provide guidelines for the exercise of certain regulatory authority over them. *See* 1991 Tex. Rev. Civ. Stat. art. 179e § 3.021.² The subsections of section 3.021 need to be read together. The Attorney General's 1990 opinion, the subsequent legislative history, and the current structure of the Act make clear that section 3.021(a) may not be interpreted as conferring unbridled authority on the Commission. The Commission may not, therefore, authorize *wagering* that is not pari-mutuel in nature. Rather, section 3.021 empowers the Commission to regulate aspects of greyhound and horse racing that does not involve wagering of any kind. The Commission's reliance on section 3.021 of the TRA as authority for its Proposed Rules is faulty as that section does not provide the authority to the Commission that the Commission asserts.

2. The Texas Racing Act only authorizes pari-mutuel wagering on live and simulcast racing.

Historical racing machines do not operate pari-mutuel wagering within the terms of the TRA. Even if instant racing were considered a form of pari-mutuel wagering, the Commission would still lack the authority to authorize historical racing because the TRA only authorizes live or simulcast racing.

² Section 3.021 was subsequently further amended to add subsection (d). The section currently provides:

- (a) Any provision in this Act to the contrary notwithstanding, the commission may license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering.
- (b) To protect the health, safety, and welfare of race animals and participants in racing, to safeguard the interest of the general public, and to promote the orderly conduct of racing within the state, the commission may adopt rules for the licensing and regulation of races and workouts at racetracks that do not offer pari-mutuel wagering and for workouts at training facilities to secure past performances and workouts.
- (c) The commission may charge an annual fee for licensing and regulating a racetrack that does not offer pari-mutuel wagering or a training facility in a reasonable amount that may not exceed the actual cost of enforcing rules adopted for the licensing and regulation of races and workouts at such a facility.
- (d) The commission may not adopt rules restricting competitive bidding or advertising by a licensee except to prohibit false, misleading, or deceptive practices. In its rules to prohibit false, misleading or deceptive practices, the commission may not include a rule that:
 - (1) restricts the use of any medium for advertising;
 - (2) restricts the use of a licensee's personal appearance or voice in an advertisement;
 - (3) relates to the size or duration of an advertisement by the licensee; or
 - (4) restricts the licensee's advertisement under a trade name.

Article 11 of the TRA provides:

The commission shall adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering. Wagering may be conducted only by an association within its enclosure. A person may not accept, in person, by telephone, or over the Internet, a wager for a horse race or greyhound race conducted inside or outside this state from a person in this state *unless the wager is authorized under this Act.*

TRA. § 11.01(a) (emphasis added). Additionally, the TRA clearly states that:

Only a person inside the enclosure where both live and simulcast race meetings are authorized *may wager on the result of a live or simulcast race* presented by the association in accordance with commission rules. *Except as provided by this section, a person may not place, in person, by telephone, or over the Internet, a wager for a horse race or greyhound race conducted inside or outside this state.*

...

Id. § 11.04(a) (emphasis added). The Act thus authorizes wagering on live or simulcast races. There is no authorization of any race that is not live or simulcast. The Act also provides that "[a] person shall not wager on the result of a greyhound race or horse race in this state *except as permitted by this Act.*" *Id.* § 11.05 (emphasis added).³

The TRA defines racing, stating that a "[r]ace" includes a *live audio and visual signal of a race.*" *Id.* § 1.03(74) (emphasis added).⁴ The Act likewise defines "[s]imulcast" as "the telecast or other transmission of *live audio and visual signals of a race*, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on a race at the receiving location." *Id.* § 1.03(61) (emphasis added). The Act also defines "pari-mutuel pool" and then defines "live pari-mutuel pool" and "simulcast pari-mutuel pool." *Id.* § 1.03(19), (62), and (63). By enumerating these two types of pari-mutuel pools, the Act excludes other types of pari-mutuel pools or wagers.

The TRA's articulated definitions and express authorization of live and simulcast racing make clear that the Commission is only permitted to authorize wagering on live or simulcast racing. The history of including simulcast racing in the TRA also makes clear that the Act cannot be interpreted to encompass types of racing that are not expressly included. The TRA originally made no express provision for simulcast racing. In 1989, the Attorney General rejected arguments that the Commission had such broad authority that it could regulate simulcast racing in addition to live racing. *Tex. Att'y Gen. Op. JM-1102* (Sept. 25, 1989). The Attorney General noted that "the act confers broad authority regarding regulation and supervision of races

³ Note also that the drafters knew how to express when an action may be authorized by the Act or by Commission rule. For instance, the Act states: "A person commits an offense if . . . [the person participates in or wagers on a race and] the race is not part of a performance or meeting conducted under this Act *or commission rule.*" TRA § 14.14 (emphasis added). The Act uses this language in two additional places as well. *See id.* §§ 1.03(70)(C) and 3.07(g).

⁴ This language reflects the Legislature's expansion of pari-mutuel wagering to include simulcast racing in 1991. *See Texas Racing Act of September 3, 1986, 69th Leg., 2d C.S., ch. 19, 1986 Tex. Gen. Laws 48; H.B. 2263, 1991 Tex. ALS 386.*

involving wagering." *Id.* at 1 n.1. However, the Attorney General stated that "[t]he act is detailed, expressly conferring comprehensive regulatory authority on the commission. If the legislature had intended that wagering on simulcast be permitted, one reasonably would expect the act to confer such regulatory authority expressly...." *Id.* at 2. The Attorney General stated that "[a]n agency may not exercise authority that exceeds the clear intent of the legislature, nor may it enlarge its powers by its own orders." *Id.* at 10 (citations omitted). The Act was, therefore, amended in 1991 to include simulcast racing. *See Texas Racing Act of September 3, 1986, 69th Leg., 2d C.S., ch. 19, 1986 Tex. Gen. Laws 48; H.B. 2236, 1991 Tex. ALS 386.*

Just as the original TRA could not be interpreted to impliedly authorize simulcast racing, the current law may not be interpreted to authorize wagering on historical races used for historical racing machines. The Act only expressly authorizes wagering "on the result of a live or simulcast race," TRA § 11.04(a), and prohibits wagering on races "except as permitted by this Act," *id.* § 11.05. The Commission acknowledges in the Proposed Rules, in proposed section 321.701, that "[h]istorical racing is distinct from live or simulcast racing." 39 Tex.Reg. at 4882. Additionally, historical races operated on an historical racing machine cannot fit the definition of "racing" in the Texas Racing Act because they are neither live races nor live audio and visual signals of a race. Instead, historical racing involves races that have already run in the past. Had the Act intended to authorize the Commission to regulate pari-mutuel wagering beyond live and simulcast racing and to allow and regulate historical racing, it would have expressly included this authority. In line with the Attorney General's Opinion in 1989 regarding simulcast racing, if the legislature had intended that historical racing be permitted, it would be expected that the TRA would have expressly conferred such regulatory authority. The TRA, however, does not confer such authority to the Commission. Thus, as with the 1991 amendment which was required for including simulcast racing, legislative action is needed prior to the Commission authorizing wagering on historical racing.

3. Historical Racing is not pari-mutuel wagering.

Historical racing does not involve pari-mutuel wagering. Thus, even if the Commission were authorized to regulate pari-mutuel wagering beyond live and simulcast races, historical racing would not be permitted. As mentioned above, the Commission is authorized to "adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering." TRA § 11.01(a). The Commission is not authorized to regulate other forms of wagering. Although the Proposed Rules attempt to characterize historical racing as merely another form of pari-mutuel wagering, historical racing does not constitute pari-mutuel wagering within the meaning of the TRA.

The Proposed Rules state at proposed section 321.701: "[T]he mode and manner of pari-mutuel wagering on horse and greyhound races continues to evolve as the result of new technologies and innovations. . . . The Commission finds that its rulemaking authority can and should be used to respond to the changing technological, commercial, and societal needs, conditions, and patterns of the horse and greyhound racing industry." However, historical racing is not merely a new form of pari-mutuel wagering using technological advances, as the Commission asserts. Rather, historical racing machines are house-banked games as they award minimum value prizes based on a pay table. They also do not involve wagering that fits the

TRA's definitions of pari-mutuel wagering or pari-mutuel pool. The Commission is not empowered, without further legislative action, to authorize other types of wagering or technological advances that violate current Texas law.

The Proposed Rules describe the historical racing terminals as paying out a minimum payout for a winning wager. Section 321.711(b) of the Proposed Rules states

Seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum payout for a winning wager as specified by the historical racing terminal through which the wager is placed.

Proposed Rules Section 321.711(b) (emphasis added). This minimum payout feature of the historical racing terminals make them house-banked games as opposed to a means for pari-mutuel wagering.

Significantly, too, the TRA requires that all wagers for each race be pooled and specifies the four types of mutuel pools that are permitted. The TRA defines "pari-mutuel wagering" as:

the form of wagering on the outcome of greyhound or horse racing in which those who wager purchase tickets of various denominations on an animal or animals and all wagers for each race are pooled and held by the racing association for distribution of the total amount, less the deduction authorized by this Act, to holders of tickets on the winning animals.

TRA § 1.03(18) (emphasis added). Additionally, the Act defines "pari-mutuel pool" as "the total amount of money wagered by patrons on the result of a particular race or combination of races, the total being divided into *separate mutuel pools for win, place, show, or combinations.*" *Id.* § 1.03(19) (emphasis added). These are the only four pari-mutuel pools permitted by the Act.

Wagering on historical races through historical racing machines cannot be considered pari-mutuel wagering within the meaning of the TRA because wagers for each race are not pooled and pools are not limited to the four pari-mutuel pools authorized by the Act. As AmTote International describes, an historical racing terminal has over 60,000 digitized videos of previously run races. AMTOTE.COM, *Instant Racing*.⁵ Bettors choose three horses to bet upon, in projected order of finish. AmTote International describes the betting pools for historical racing machines as follows:

Winners receive graduated payoffs by correctly selecting the first three finishers in order, the first three in any order, the top two finishers, the winner or any two of the top three finishers. Payoffs are also determined by timing – bettors may be playing different races, but the wagers are lumped into the same pool and the player who hits first receives the highest payoff.

Id. Historical racing, therefore, cannot meet the TRA's definition of pari-mutuel wagering because bettors are not even wagering on the same race and thus wagers on the same race cannot

⁵ Available at <http://www.amtote.com/content/instant-racing>.

accumulated in the applicable betting pool at the time of that person's successful bet." *Id.* The Maryland Attorney General noted that in traditional pari-mutuel wagering, bettors participate in setting the odds whereas in instant racing, this is not true because players are not betting on the same race. *Id.* at 40-41. The Maryland Attorney General also rejected the legality of Minimum Fund or seed pools, stating they are "a concept foreign to pari-mutuel betting" and not provided for under Maryland law. *Id.* at 41-42. The Attorney General concluded that "[t]his may be pooled betting, but it is not pari-mutuel betting as contemplated in the Maryland Horse Racing Act." *Id.* at 40.

The Wyoming Supreme Court, relying heavily on patent documents describing historical racing, upheld a lower court decision which found that historical racing could not be considered pari-mutuel wagering under Wyoming law. *Wyo. Downs Rodeo Events, LLC v. State*, 134 P.3d 1223, 1229-21 (Wyo. 2006) ("We are unwilling to embrace a more expansive meaning of pari-mutuel than that which can be discerned from the governing statutes and those sources . . . which provide us with additional insight as to its usual meaning."). The court, therefore, found that historical racing machines could not be considered new technology that is a "mere accoutrement of pari-mutuel wagering." *Id.* at 1230. The court concluded "we are not dealing with a new technology here, we are dealing with a slot machine that attempts to mimic traditional pari-mutuel wagering. Although it may be a good try, we are not so easily beguiled." *Id.*

Historical racing is not and cannot be considered pari-mutuel wagering. It does not fit within the definitions of pari-mutuel wagering and pari-mutuel pools provided by the TRA. As other jurisdictions have recognized, historical racing machines are not mere technological advances that engage in the same type of pooled betting that occurs in traditional pari-mutuel wagering. Historical racing is something "distinct from live or simulcast racing," as the Commission, itself, admits. 39 Tex. Reg. at 4882. Thus, even if it were in the Commission's authority to broadly regulate all aspects of race wagering rather than merely live and simulcast wagering, which it is not, the Commission still would not have the authority to authorize historical racing machines. For the Commission to have the authority it claims, legislative action is needed to amend the Texas Racing Act. We, therefore, urge the Commission to reject the Proposed Rules.

B. The Proposed Rules Violate the Texas Constitution and Penal Code.

The Proposed Rules are clearly beyond the authority of the Commission under the TRA. They also would violate the Texas Constitution and the Texas Penal Code. As discussed above, historical racing which uses historical races is not pari-mutuel wagering. Instead, historical racing constitutes a prohibited lottery under Texas law. Further, historical racing machines are illegal gambling devices under Texas law.

1. Historical Racing constitutes a prohibited lottery.

The Texas Constitution states that "[t]he Legislature shall pass laws prohibiting lotteries and gift enterprises in this State other than those authorized by subsections (b), (d), and (e) of this section." Tex. Const. art. III, § 47(a). Subsections (b), (d), and (e) then authorize charitable

bingo, charitable raffles, and a state lottery. The Legislature has, therefore, banned lotteries in the Texas Penal Code, which defines "[l]ottery" as:

any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift enterprise, sale, policy game, or some other name.

Tex. Penal Code § 47.01(7).

The Texas Supreme Court has stated that the necessary elements of a lottery are "the offering of a prize, the award of the prize by chance, and the giving of a consideration for an opportunity to win the prize." *Wink v. Griffith Amusement Co.*, 100 S.W.2d 695, 701 (1936). Additionally, "the Constitution condemns those things which fall short of containing all the essential elements of a lottery, -- namely, those things which involve the lottery principle, of which "chance" is the one which constitutes the very basis of a lottery, and without which it would not be a lottery." *Id.*

"Texas courts have consistently found that the term 'lottery' includes a wide range of activities involving the distribution of something of value by chance in exchange for valuable consideration." Tex. Att'y Gen. Op. DM-302 at 3 (Aug. 23, 1994). Further, "if chance predominates over skill or judgment and permeates the whole plan, a lottery is established." Tex. Att'y Gen. Op. JM-1267 (Dec. 20, 1990) (citations omitted); *see also* Tex. Att'y Gen. Op. DM-302. This determination is to be made on a fact-specific basis and "it is the character of the game, and not the skill or want of skill of the player, that determines whether the game is one of skill or chance." Tex. Att'y Gen. Op. JM-1267.⁷

As discussed above, the Proposed Rules attempt to characterize historical racing as merely a technological aid to pari-mutuel wagering. *See* 38 Tex.Reg. at 4884 (proposing section 321.701, which discusses technological advances and changing technological needs). This, however, is not the case. Rather than being a mere technological aid or constituting a new form of pari-mutuel wagering, historical racing uses historical races as number generators in a game predominated by chance.

Historical racing machines are designed to diminish the role of skill. Historical racing machines select a race at random from a database and prompt a player to choose three winning horses in the order they will finish the race. 39 Tex.Reg. at 4884 (proposing section 321.701, which describes requirements for operating an historical racing totalisator system); U.S. Patent No. 6,450,887 col. 12 l. 50 (describing the game Thoroughbred Mania). However, players may use a "quick pick" or "handi-helper" feature in which the computer chooses the horses for the player. *See* U.S. Patent No. 6,450,887 col. 8-9 (describing the "quick pick" option); U.S. Patent Application No. PCT/US2013/056799 (describing the "handi-helper" option).⁸ Thus, *all*

⁷ Significantly, the Attorney General noted that the Penal Code broadly defines and prohibits gambling. Thus, if a game is not considered a prohibited lottery, the Legislature may amend the Penal Code to allow the game. Tex. Att'y Gen. Op. JM-1267.

⁸ Available at

<http://patentscope.wipo.int/search/en/detail.jsf;jsessionid=0DBCL4C297C2D227C6548C554C0D4A00.wapp1nB?d>

decisions may be made by the machine, eliminating any player choice. Therefore, chance predominates in historical racing.

In the actual play of historical racing machines, players frequently choose to exercise this quick-pick or handi-helper option. Thus, any data that may be provided is irrelevant, as "[m]ost people never even look at it." AMERICASBESTRACING.NET, *Instant Racing Gaining Popularity with Tracks* (Jul. 8, 2013).⁹ Rather, "[t]he entire experience feels almost exactly like playing a slot machine." *Id.* As one commentator has observed, "[o]stensibly, players will be wagering on historic horse races . . . [m]ore likely, they'll press the "Handi Helper" button to let the system pick their selections, then watch the last few seconds of a race to find out if they won." Chuck Stinnett, *Geary's Dream of Instant Racing Machines Coming to Life Today at Ellis Park*, Courier & Press, Aug. 31, 2012.¹⁰ A game in which players have handed over their selection of winning picks to a computer cannot be considered a game of skill.

Even if players choose to pick their own horses, they are provided with extremely limited information. A player may examine past performance charts that provide certain past performance data that was available on the day of the race, such as a simple pie chart with relative performance data. See 39 Tex.Reg. at 4884; U.S. Patent No. 6,450,887 col. 5 l. 40. To view additional charts, a player must hit a button marked "More." U.S. Patent No. 6,450,887 col. 9 l. 54. A player is limited to fewer than the total number of available charts. *Id.* The availability of simple pie charts as an aid in guessing winning horse combinations does not mean that skill predominates. Further, because players are not betting on the same race, unlike in pari-mutuel wagering, payout is not determined by the relative skill in analyzing horse performance data and predicting the winner of a particular race as compared to others. Instead, chance predominates.

Significantly, historical racing's emphasis on speed also diminishes any role that skill could play. As mentioned above, AmTote International's description of instant racing states that payoffs are determined in part by timing, such that the player that wins first in a given pool receives the highest payoff. AMTOTE.COM, *Instant Racing*. Players have the ability to increase the speed of the game. The quick-pick or handi-helper option reduces the playing time of the game. Players may also choose to watch clips of the race that are only several-seconds long rather than watching the actual historical race. See 39 Tex.Reg. at 4884 (proposing section 321.707(e) which states racing machines shall "show the race, or a portion thereof."). Players using both the quick-pick or handi-helper option and choosing to watch only clips of the race enables them to play up to 12 times per minute. See *Arkansas Anti-Gambling Leader Says Instant Racing Devices Are Slot Machines*, LAS VEGAS SUN, Feb. 14, 2000.¹¹ This emphasis on speed discourages players from taking the time to weigh the little information they may be given or to exercise the option to view additional charts with data on a particular race. Thus, historical racing is *intentionally designed* to diminish the role of skill.

ocId=WO2014035968&rcNum=1&maxRec=&office=&prevFilter=&sortOption=&queryString=&tab=PCTDescription

⁹ Available at <http://www.americasbestracing.net/en/the-latest/blogs/2013/07/8/instant-racing-gaining-popularity-with-tracks/>.

¹⁰ Available at <http://www.courierpress.com/gleaner/news/instant-racing-machines-gearys-dream-coming-to>.

¹¹ Available at <http://www.lasvegassun.com/news/2000/feb/14/arkansas-anti-gambling-leader-says-instant-racing-/>.

Chance, therefore, predominates in historical racing as evidenced by the design and the actual play of instant racing machines. Because chance predominates, historical racing machines are effectively slot machines, as noted by the Wyoming Supreme Court. *Wyo. Downs Rodeo Events, LLC*, 134 P.3d at 1230. Historical racing machines, therefore, constitute a prohibited lottery under the Texas Constitution and the Texas Penal Code.

2. Historical Racing machines are illegal gambling devices.

Historical racing machines are illegal gambling devices and would be even if chance did not predominate in the play of instant racing machines. The Texas Penal Code broadly prohibits gambling, stating that an offense is committed when a person "makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest." Tex. Penal Code § 47.02(a)(1). Certain exceptions are enumerated in the law, including action permitted under the Texas Racing Act. *Id.* § 47.02(c)(4). Historical racing, however, as set forth above, is not authorized by the TRA. Historical racing does not fit any of the exceptions in the Texas Penal Code either. Thus, historical racing falls squarely within Texas's broad prohibition on gambling.

Additionally, historical racing machines are gambling devices, and the Texas Penal Code prohibits both the use and possession of a gambling device. Tex. Penal Code §§ 47.02(a)(3), 47.06.

The Texas Penal Code defines "gambling device" as follows:

"Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is *determined solely or partially by chance, even though accompanied by some skill*, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that *operate by chance or partially so*, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

Tex. Penal Code § 47.01(4) (emphasis added). Historical racing machines do not fall within the exceptions enumerated in section 47.01(4)(B).

Chance predominates in historical racing as stated above. Yet, the Penal Code's definition of gambling device makes clear that a machine may be a prohibited gambling device even if chance does not predominate. The Texas Court of Appeals has stated, "[w]e do not read the definition [of gambling device] as requiring any quantitative comparison of the respective proportions of chance and skill involved in a particular contrivance." *State v. Gambling Device*, 859 S.W.2d 519, 523 (Tex. App. 1993). Rather, "[a] contrivance that is designed to incorporate the element of chance to influence whether an award is provided to a player is a contrivance whose outcome is determined by chance." *Id.* Thus, the court concluded that chance need not predominate over skill for a device to be considered an illegal gambling device. *See also* Tex. Att'y Gen. Op. GA-0130 (Sept. 23, 2003) (determining video lottery terminals are prohibited and referring to the prohibition on gambling devices).

Historical racing machines give players the opportunity to win money, the award of which is at least partially determined by chance. Players are not betting against others in the same race, are given minimal information, and encouraged to and given options to skip using skill at all. Chance predominates in historical racing and, at the least, indisputably, plays a role in determining the outcome of historical racing. Thus, historical racing machines fall within the Penal Code's definition of gambling device. Any element of skill that may exist is insufficient to remove instant racing machines from Texas's broad definition of prohibited gambling devices, which requires that the device "operate by chance or partially so." Tex. Penal Code § 47.01(4)(A). As the Wyoming Supreme Court determined, the patent documents and additional information concerning historical racing must form the "inescapable conclusion that the 'Instant Racing' terminals are 'gambling devices'" that were prohibited by law and that the state's racing commission lacked the authority to authorize. *Wyo. Downs Rodeo Events, LLC*, 134 P.3d at 1230.

Historical racing would violate the Texas Constitution as well as the Texas Penal Code's prohibitions on gambling and gambling devices. The Commission should, therefore, reject the Proposed Rules.

C. The Proposed Rules Contravene Texas Public Policy.

Public policy considerations weigh heavily against the adoption of the Commission's Proposed Rules. Although proponents of the Proposed Rules state that other states, such as Arkansas, have authorized historical racing, they fail to mention that of the 17 states that have taken up the matter, 9 have rejected historical racing.¹² These 9 states include California, Florida, Maryland, Michigan, Montana, New Hampshire, New Jersey, Ohio, and Virginia. Additionally, Colorado temporarily authorized historical racing and there is no indication that it has since reauthorized historical racing,¹³ and in Nebraska the legislature could not muster the votes to overcome a gubernatorial veto so voters will take up the issue in a November 2014 constitutional referendum.¹⁴

¹² Alabama, Arkansas, California, Colorado, Florida, Idaho, Kentucky, Maryland, Michigan, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oregon, Virginia, and Wyoming have considered instant racing.

¹³ *See* Chris Lehourites, *Colorado Racing Commission Approves Instant Racing Machines*, LAS VEGAS SUN, May 11, 2000, <http://www.lasvegassun.com/news/2000/may/11/colorado-racing-commission-approves-instant-racing/>.

¹⁴ *See* Nicholas Bergin, *Historical Racing Proponents, Foes Saddle Up for Campaigns*, COLUMBUS TELEGRAM, June 7, 2014, http://columbustelegram.com/news/local/state-and-regional/historical-racing-proponents-foes-saddle-up-for-campaigns/article_8f6725af-5d4c-5d40-8b74-bdf58fd8cac0.html.

In states that have authorized historical gaming, legislators have not necessarily been pleased with their decision. In Idaho, for instance, Vice Chairwoman Gayle Batt stated, "I think that there are some in this body that have felt duped. The machine that was characterized in committee last year is not the machine that we will be seeing coming into the racetrack." Cynthia Sewell, *Idaho House Committee Says it was "Duped" on Instant Racing*, IDAHO STATESMAN, Jan. 29, 2014.¹⁵ Likewise, Idaho House State Affairs Committee Chairman Tom Loertscher stated "[w]e probably have buyers' remorse from having passed the statute not knowing exactly what was involved. Shame on us for doing that." Betsy Z. Russell, *Some Idaho Lawmakers Feeling Gamed Over Greyhound Park 'Instant Racing'*, THE SPOKESMAN-REVIEW, Mar. 21, 2014.¹⁶

Significantly, most states have recognized that, at a minimum, any expansion of gaming must be left to either elected representatives or voters at the ballot box in a constitutional referendum. For instance, even in Arkansas, the Arkansas Racing Commission approved historical racing only after the legislature changed the Arkansas Code to permit wagering on races shown live "or in any other manner approved by the commission." Ark. Code § 23-110-405(b); H.B. 1162, 82nd General Assembly, Regular Session (1999). Of the 17 states that have considered historical racing, only Kentucky and Alabama have permanently authorized historical racing in the absence of legislative action. Kentucky is now facing challenges to its decision, *see Appalachian Racing, LLC v. Family Trust Found. of Ky., Inc.*, 423 S.W.3d 726 (Ky. 2014), and there is no indication that Alabama has actually implemented its racing commission's decision to allow instant races.

Finally, the Proposed Rules make no provision for a State share from historical racing machines. Although the Commission does not have the power to levy taxes, it is not clear that it has the authority to create new, tax-free forms of wagering in the State when the TRA has explicitly provided for taxes on live and simulcast pari-mutuel wagering. TRA §§ 6.091, 6.093. Even if the Commission were to have this authority, without a state share of the wagering, any public interest that may exist in authorizing such gaming expansion is significantly diminished. The correct approach is for the Commission to wait for legislative action, including levying a tax on instant racing, prior to the promulgation of any rules governing historical racing.

Ultimately, any expansion of gambling in Texas should be left, at a minimum to the Legislature. Given that historical racing constitutes a prohibited lottery, the Legislature would need to propose a constitutional amendment to authorize historical racing machines. In addition to being constitutionally required, this process importantly allows Texans to weigh in on gambling expansion. The Texas Constitution has been amended 483 times, demonstrating that Texans have effectively used the amendment process to reflect their wishes. We urge the Commission to reject the Proposed Rules and defer to the Legislature, the proper forum, to take any further action regarding historical racing.

¹⁵ Available at <http://www.idahostatesman.com/2014/01/29/2997244/instant-racing-committee-says.html>.

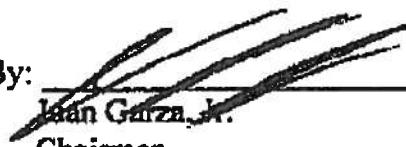
¹⁶ Available at <http://www.spokesman.com/stories/2014/mar/21/some-idaho-lawmakers-feeling-gamed-over-greyhound/>.

Conclusion

In sum, the Commission lacks the authority, under the Texas Racing Act and the Texas Constitution to authorize historical racing. The Commission may only regulate live or simulcast pari-mutuel wagering. Historical racing is not live or simulcast, nor does it involve pari-mutuel wagering under Texas law. Rather, historical racing is a game in which chance predominates, and is designed to increase the level of chance involved rather than incentivize the use of any skill that may be involved in the play of the game. Thus, historical racing constitutes a prohibited lottery. Even if chance did not predominate, it plays a role in the outcome of historical race wagering, and thus historical racing machines are illegal gambling devices that the Commission lacks the authority to authorize. Finally, any expansion of gambling in Texas should be determined by the people of Texas and their elected representatives and would require a constitutional amendment. We urge the Commission to follow the lead of the majority of states that have considered this issue and reject the Proposed Rules.

Sincerely,
Kickapoo Traditional Tribe of Texas
Tribal Council

By: _____


Juan Garza, Jr.

Chairman

Attachment A

Kickapoo Traditional Tribe of Texas's comments on the Texas Racing Commission's Proposed Rules on Historical Racing.

Legislators ask AG's office to intervene on legality of 'instant racing' machines

nelsoncountygazette.com

By **JIM BROOKS**
Nelson County Gazette

Wednesday, Oct. 19, 2011, 10 a.m. – Nine Republican state representatives – including 50th District Rep. David Floyd, Bardstown — are asking Attorney General Jack Conway and his office to investigate how the electronic “instant racing” machines installed at Kentucky Downs in Franklin are legal when they appear to be video slot machines and in conflict with the Kentucky constitution.



State legislators have asked Kentucky Attorney General Jack Conway's office to determine if the "instant racing" machines violate the state constitution.
Click to enlarge.

In their letter, the legislators state that the instant racing machine's display of a three-second, 2-inch by 2-inch video clip of a horse race does not constitute a horse race, nor does playing the machine qualify as pari-mutuel betting, which typically requires the pooling of the bets of multiple bettors on the same race.

In addition to Floyd, the letter was signed by state representatives Tim Moore (R-26); Jim DeCesare (R-21); Stan Lee (R-45); Kim King (R-55); Ben Waide (R-10); Thomas Kerr (R-64); Joseph Fischer (R-68); and Brent Housman (R-3).

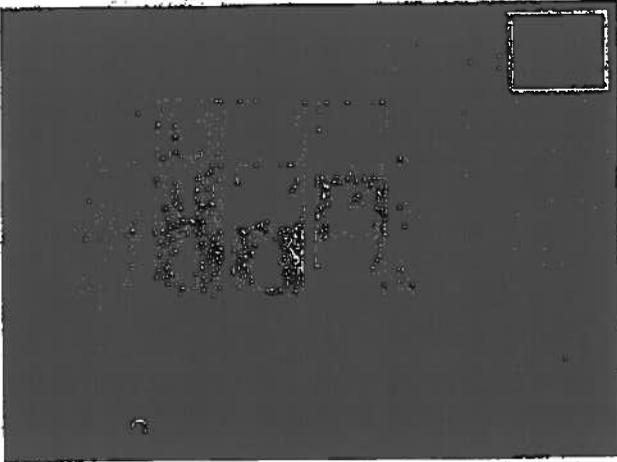
The letter adds that the Kentucky Racing Commission has no legal authority to establish regulations for the use of instant racing slot machines that are statutorily prohibited in Kentucky.

Noting Conway's earlier statements that he was not inclined to get involved in the instant racing litigation, the letter calls on his office to get involved. His failure to do so will be “declining to do what attorneys general are supposed to do.”

- Read the letter legislators sent to AG Jack Conway.
- See video of “instant racing” machines in operation.

“We understand that you may disagree with the General Assembly's expressed opposition to expanded gambling and video slot machines at the racetracks. However, we respectfully submit that the Office of the Attorney General is statutorily obligated to enforce the law as written – not to advance a material change in public policy by inaction.”

The attorney general's office is to be involved in all litigation in which the state or its agencies has an interest, and has the power to seek an injunction when necessary. The letter notes that in the AG's office ruled in January 2010 on the legality of instant racing, and the failure to get involved now “would render you so impotent to address clear statutory violations anytime



The horse race on this screen of a video "instant racing" machine is in the 2 x 2-inch yellow box at the top right of the screen. The "race" lasts three seconds. Click image to enlarge.

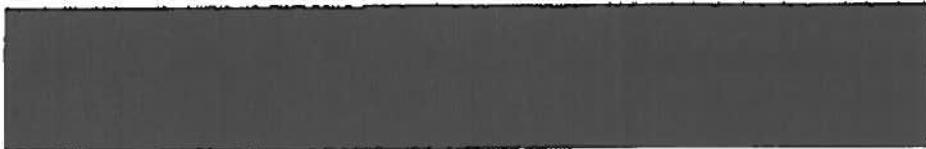
litigation is pending."

The matter of expanded gambling in Kentucky – including slot machines at horse tracks – "is a matter of public policy for the General Assembly to address, not the courts and certainly not an unelected Racing Commission," the letter states.

The legislators suggest if Conway is reluctant to act, or has a conflict of interest that he appoint a special prosecutor or investigator to investigate the legality of instant racing and enforce the open records requests by The Family Foundation to the racing commission,

The legislators said they were hoping for a response early this week on the letter, which was dated Friday, Oct. 14, 2011.

-30-



monopoly_jail_logs

NEWS

Instant Racing begins Sept. 1 at Kentucky Downs

Print Page

Published: Wednesday, August 24, 2011 3:41 PM CDT

Kentucky Downs will begin operating 200 Instant Racing electronic games on Thursday, Sept. 1.

The Simpson County operation will become the first race track in Kentucky to offer expanded gaming options under the terms of regulations adopted by the Kentucky Horse Racing Commission in July 2010. A brief opening ceremony will be held at Kentucky Downs at 10 a.m. on Sept. 1.

Instant Racing uses a pari-mutuel electronic system, which allows players to wager on previously run horse races. The 10-horse races are randomly selected from a pool of 21,000 races. The location and names of the races are withheld until all bets are in.

The game was developed in 2000 by Oaklawn Park in Arkansas in association with AmTote, Inc. and other investors.

A portion of the proceeds will be used to supplement purses during live race meets and to boost breeder awards. Oaklawn Park now has 400 terminals that generate approximately \$3.5 million per year in additional purses for its horse races.

Kentucky Downs President and Co-owner Corey Johnsen said Instant Racing could increase purse money at Kentucky Downs by two-thirds from an average of \$150,000 to \$250,000 per day during live race meets. The local track also shaved two days off its live race schedule that may be restored in the near future, Johnsen said.

The additional purse money will likely be offered at Kentucky Downs' 2012 fall race meet. This year's live races begin Sept. 10.

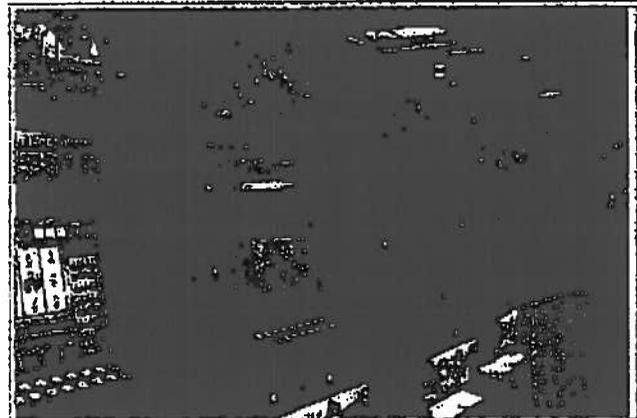
Kentucky Downs received unanimous approval of its application for an Instant Racing license from the state Horse Racing Commission in July. Renovations of the first floor of its clubhouse began immediately to create the venue for its Instant Racing gaming center.

The Sept. 1 opening is subject to final regulatory approval of Kentucky Downs' Instant Racing system by the state Racing Commission.

The question of whether Instant Racing constitutes pari-mutuel gaming, which is allowed under state law, has been challenged in court by gambling opponents. Franklin Circuit Judge Thomas Wingate ruled in December that Instant Racing is pari-mutuel gambling. His ruling has been appealed to the Kentucky Court of Appeals.

At opening next month, Kentucky Downs will operate 200 terminals that will feature six different Instant Racing games. The Instant Racing gaming center will be open Sunday through Thursday from 10 a.m. until 2 a.m. and Friday and Saturday from 10 a.m. to 4 a.m.

"We could not be more excited about taking the next steps in our plans to fully develop Kentucky Downs as a year-round entertainment destination," Johnsen said. "With the unanimous support of the Kentucky Horse Racing Commission, Kentucky Downs will lead the way in bringing expanded



Instant Racing Machine Technician Supervisor Tristan Yunker worked on an instant racing terminal Tuesday afternoon at Kentucky Downs Race Course in Franklin. Kentucky Downs will begin operating 200 Instant Racing electronic games on Sept. 1.

Buy this photo: [Click here!](#)

gaming options to Kentucky and to generate many positive benefits for both the local economy and for the Kentucky horse industry."

Since mid July, Kentucky Downs has hired more than 80 new employees to implement the new game. Its initial investment was estimated at \$3 million.

According to Steve Thurmond, executive director of the Franklin-Simpson County Chamber of Commerce, the introduction of Instant Racing at Kentucky Downs will have a multi-million dollar economic impact in the immediate area.

"Kentucky Downs has long been a significant employer in Franklin as well as a well-thought-of corporate citizen of our community," Thurmond said. "We are thrilled that the owners of Kentucky Downs are making the investment in its Instant Racing operation and are grateful for the creation of so many new jobs for residents of Franklin, Simpson County and the surrounding area."

Johnsen added that the introduction of Instant Racing will create new sources of funding for Kentucky's signature horse racing industry.

"As Instant Racing is rolled out at race tracks throughout the Commonwealth, it has the potential for generating millions of dollars each year for both live racing purses and the Kentucky Breeders' Incentive Fund," the track president said. "These new revenues will, over time, help the Kentucky horse industry compete with states that have taken race horses and breeding stock away from the state."

Johnsen estimated that Instant Racing has the potential to generate between \$20 and \$30 million annually statewide for higher purses and breeder awards once fully implemented. It is expected that Kentucky Downs will be one of the more popular gaming sites due to its proximity to the Metro Nashville market.

Three tracks in Kentucky - Churchill Downs in Louisville, Turfway Park in Florence and Ellis Park in Henderson - border neighboring states that have casino gambling.

"We're proud to be taking the lead on expanded gaming in Kentucky," Johnsen said. "We are convinced that Instant Racing can and will have a significant positive impact on the Commonwealth in terms of job creation, investment in the state and restoring the vibrancy to Kentucky's signature industry."

Kentucky Downs is located two miles south of Exit 2 off I-65 on U.S. 31-W south at the Kentucky-Tennessee state line. First opened as a steeplechase track in 1990, Kentucky Downs boasts the only European-style turf racing course in the U.S.

Copyright © 2014 - Franklin Favorite



EASTERN STANDARD
Exploring Kentucky's Great
Outdoors on Eastern Standard



BUSINESS AND THE ECONOMY
Big Tobacco Market, Cool
Temperatures on Minds of
Rusley Growers



ARCHIVES
Casper: Biggest Event in
College Football History,
Master Musicians, Lions Club

weku
88.9 | npr news
music &
so much more

part of the **npr** digital network

[Listen Now](#) | [Program Schedule](#) | [Home](#)



LATEST FROM WISOL:

[Climate 101:1](#) | [School Closings](#) | [Eastern Standard](#) | [Lithium Production](#) | [Focus on Business](#) | [Kentucky Tobacco](#)

BUSINESS AND THE ECONOMY

Instant Racing at KY Downs

By Robyn L. Minor, Bowling Green Daily News



[Instant racing machines at the Kentucky Downs track, Bowling Green, Ky. \(AP Photo/John P. Johnson\)](#)

Bryan Pepper of Franklin works on some of the 200 instant racing machines Wednesday at Kentucky Downs.

AP Photo/Bowling Green Daily News

Workers should have the state's first instant racing machines

[Instant racing machines at the Kentucky Downs track, Bowling Green, Ky. \(AP Photo/John P. Johnson\)](#) installed and working by the end of Friday at Kentucky Downs. And the 80 newly hired employees have been in training in preparation for instant racing's launch at 10 a.m. Thursday. But owners are hoping that instant racing builds revenue for the track and purses for horse races. Kentucky Horseman's Benevolent and Protective Association is confident enough that it will be a boon for the entire industry that it loaned Kentucky Downs \$300,000 to help improve marketing and for operations.

GREY2K USA WORLDWIDE



Directors

Christine A. Dorchak, Esq.
President

Eric Jackson
*Vice President
Greyhound Companions
of New Mexico*

Sherry Mangold
*Treasurer
Animal Protection of
New Mexico*

Kathy Pelton
Secretary

Tom Grey
Stop Predatory Gambling

James Flanagan

Charmaine Settle
*Galgo Rescue International
Network*

Jeroen van Kernebeek

Directors Emeritus

Dr. Jill Hopfenbeck, DVM

Kevin Neuman
*Kansas City REtired
Greyhounds as Pets*

Michael Trombley, CPA

Carey M. Theil
Executive Director

*Organization Listing is for
Identification Purposes Only*

July 27, 2014

Chuck Trout, Executive Director
Texas Racing Commission
P.O. Box 12080
Austin, TX 78711-2080

Dear Executive Director Trout,

I am writing on behalf of greyhound protection group, GREY2K USA to offer information about the nature and operation of "historical racing" machines and to urge you to withdraw any and all proposed rules for their installation at Texas racetracks. Based on a review of the patents for "instant racing" machines, the majority opinion of courts and attorneys general, and in light of the constitutional bar and legislative rejection of slot machines in Texas, it would be unwise to proceed at this time.

Historical or Instant Racing machine patents share the key components of slot machines

Race Tech, L.L.C. first filed a patent application for instant racing machines in October of 1998.¹ In the approved patent applications of October 1999 and May 2000, the new devices are described as "A gaming system which enables pari-mutuel wagering with instant payoffs on actual past events. The system, in one embodiment, includes a plurality of wager terminals coupled to a game server. ... The game server is a computer system configured to manage the entire game system." (emphasis added) The invention is referred to as a "game," "gaming system" or "gaming device" throughout the patent documents.³

Likewise, a typical slot machine patent describes "A centralized gaming system comprise[d of] a central server system and a plurality of display terminals from and linked to a central server system ... the master game server stores a plurality of games of chance." (emphasis added) Similarly an instant racing game server stores 21,200 old horse races that the bettor may or may not choose to play in using an instant racing machine.⁵ (The Wyoming Supreme Court also found that old dog races may also be available)."

In a section entitled "Background of the Invention," the 1999 and 2000 Race Tech applications explain the need for old-style racing operations to offer faster-paced alternatives. "At least some patrons prefer a more immediate reward and higher frequency wagering than customarily offered at racetracks. For example, a typical racetrack offers one race every half hour. A casino having slot machines, however, offers a patron the opportunity to place a wager that can be won or lost every few seconds."⁷ The solution that Race Tech offers, instant racing devices, are universally characterized as "games," or described as "generally related to gaming devices" but are never referred to as races.⁸

Additionally, in the application sections entitled "Brief Summary of the Invention," Race Tech identifies the invention as a "gaming system" and clarifies that "each player is presented with a unique event, so there is no pooling of other players' wagers on that event."⁹ Each wager forms a so-called "trivial pool of one," so that a bettor's winnings may not be paid from the actual "pool" but instead from a seed pool – a concept which is foreign to pari-mutuel wagering on horse and dog racing.¹⁰ Race tech explains in Appendix A of its applications that, "Each time one of the guaranteed minimum amounts is paid in excess of the actual amount available, the shortfall is deducted from the Bonus/Minimum QT Pool."¹¹ This pool, unlike the carry-over pool found in traditional racing activities, is created *via* an automatic split derived from each and every bet placed on the devices. Further, the patents also identify another aspect of the machines which is alien to Texas racing, that of the "Quick Pick." When a bettor chooses this option, the machine acts much like a lottery ticket machine and places a wager or wagers automatically for the buyer.¹²

Finally, as the attached schematics show, the patent diagrams for both instant racing machines and slot machines contain identical key components. Each consists of three main elements: a game server and video display connected to multiple terminals.¹³ It would seem that the instant racing device is nothing more than a hybrid slot machine.

A recent visit to Ellis Park in Henderson, Kentucky confirms how instant racing machines work. Two leaders of the group Gambling with the Good Life, found that in appearance and operation, instant racing machines may be used and are played just like slot machines.¹⁴ Ms. Blank and her colleague Pat Loontjer, who are both familiar with gambling operations, tested instant racing machines for two hours on July 4, 2014. In the affidavit provided, Ms. Blank reports that all the machines were pre-set to "slot machine mode" and that she had to purposefully choose to view information about a virtual horse race: otherwise the bet would be randomly chosen for her. She explains:

- When I clicked one particular button, a Daily Racing Form popped in the right hand column of the screen, taking about 20-25% of the screen. It listed the horses by color and number in three pie charts, with each pie chart representing the percentage of times each horse came in first, then second and then third. Unfortunately, the machine only gives about 15-20 seconds to do my homework before the Daily Racing Form left the screen, never to be found again!!!
- Nowhere on the machine does it provide the odds, age of horses or any other info one uses in determining what horse to bet in regular horse racing.
- Once I chose my #1 horse, it asked me for my 2nd place horse pick, then my third. All of which I dutifully chose from my "thorough" research.
- When I hit play, the game reverted to the slot machine front. While the horse race ran for about 2-3 seconds in the small 3 x 2 window displayed on the slot machine, I was watching the slot machine spin its columns.
- Any payout came based on the slot machine calculations. In other words, if I was playing the Black Hills Gold machine, I had to have 3-5 pots of gold in a row, or three barrels in a row, etc. to win. The machine did not let me know I had won or lost based on my horse pick, just based on the sequence of the gold, barrels, etc.
- Plus, the winning sequence had to be in a row or column that I had paid to play. Each machine had anywhere from 1 to 9 playing options I could pick, with each option costing more money.

It seems that even when winning horses were chosen, Ms. Blank still did not win:

- There were times when I actually picked the winning horse or the place or show horses in order, but still lost my money!!! Attendant said it was because my "winning" horse number was on a row I had not paid to play! However, most machines did not display numbers, only the theme items of the machine (like cherries, pigs, gold, etc).
- So, not only did I have to pick the right winning horse with almost no information, I also had to choose the correct rows or columns to play or just play them all. It appears, however, that even if I do all that, my "number" would have to come up on the screen in the right sequence to win!! I am not convinced I would have won with my horse pick, even if I had done all the right things.

- The “historic horseracing” option is very confusing and time consuming, requires no skill and, from my perspective, has nothing to do with winning or losing at the machine.
- The machines look exactly like slot machines, play nearly as fast as slot machines (every 3-4 seconds, by my count) and have options like slot machines (chose to play one or up to 9 lines).
- Most of the machines have no pictures, words or options on the screens that identify them with horse races at all, except the name “Instant Racing” at the top.

No court has found that instant racing machines are races

The May 2006 ruling of the Wyoming Supreme Court stands as the most definitive judicial evaluation of instant racing. The court described this invention as consisting of “a number of remote control terminals connected to a central server.”¹⁵ The Justices found that the State Pari-Mutuel Commission lacked the authority to regulate “gambling devices” and further, that such devices were prohibited under state law.¹⁶ It is notable that the Wyoming court also studied Race Tech’s patents and specifically found that instant racing did not qualify as a new form of racing, concluding: “We are not dealing with a new technology here, we are dealing with a slot machine that attempts to mimic traditional pari-mutuel wagering. Although it may be a good try, we are not so easily beguiled.”¹⁷

In December 2009, the Oregon Court of Appeals held that its Racing Commission lacked authority to approve wagering on previously run races through an instant racing terminal (IRT).¹⁸ It found that the authority of the Oregon Racing Commission (ORC) was limited to only real, live races, and not past races.¹⁹ Quoting the Commission, the court noted that while nothing in the pari-mutuel law explicitly prohibited wagering on past events, nothing in the statutes permitted such wagers either.²⁰ Emphasizing the lack of pari-mutuel pools derived from specific races, the court affirmed the ORC’s rejection of IRT machines at Oregon racetracks.²¹

The views expressed by attorneys general around the country also give pause to a facile finding that instant racing devices qualify as races and/or new forms of pari-mutuel wagering. Also in 2009, Maryland’s Douglas F. Gansler found that playing instant racing devices did not constitute pari-mutuel betting as contemplated in the state’s horse racing act.²² The Attorney General determined that while instant racing devices may offer pooled betting, pari-mutuel pools did not exist because no two players bet on the same event.²³ Additionally, the traditional creation of odds was disturbed and the methods used to determine pay-outs was “fundamentally different.”²⁴ The seed pool in particular was found to be “foreign to pari-mutuel betting.”²⁵

In Nebraska, wagering pools on live and simulcast races were distinguished from instant racing pools because they do not pertain to specific races and are “player-activated” events rather than real events.²⁶ In March 2010, the Attorney General wrote, “The “bells and whistles” associated with slot machines or video lottery devices are all present (except for the pull handle). The machines are the same height and design as a slot machine, and include flashing buttons, blinking lights, video display, and, in some cases, program numbers spin on the video display like cherries or other figures on a slot or video lottery machine. The machines also include a “Quick Pick” feature where bettors allow the machine to select at random three numbers to be bet on a [virtual] race.”²⁷ IRT proponents have now responded to this rejection by seeking a constitutional amendment to approve the new form of gambling.²⁸

In February 2014, the Supreme Court of Kentucky ruled that IRTs could be regulated by the state racing commission, but did so over a contrary attorney general opinion of 2010 and without actually reviewing the machines themselves.²⁹ It held that the question of whether historical horse race wagering is an authorized form of pari-mutuel wagering to be one of fact that cannot fairly be answered in the abstract.³⁰ While it did not grant an injunction against the continued operation of the devices, the court affirmed the right of the Family Trust Foundation of Kentucky to engage in discovery and to offer proof that instant racing was not an exempted activity under the state’s anti-gambling laws.³¹

Finally, IRTs have been operating in Arkansas for several years, but were never legally challenged.³² They have also recently been placed at Idaho racetracks, but lawmakers there have publicly admitted that they did not knowingly approve them.³³ As reported in the Spokesman-Review, “[G]ambling on slot machine-like devices is coming to Greyhound Park, prompting some lawmakers to complain they were “duped” into approving the new form of betting last year.”³⁴ House State Affairs Committee Chairman Tom Loertscher admitted, “At this point, I am not sure how much we can do. We probably have some buyers’ remorse for having passed the statute not knowing what exactly was involved. Shame on us.”³⁵

Texas law prohibits slot machine gambling and games of chance

Few will dispute that authorizing IRTs at Texas racetracks would be a “shot in the arm” for struggling industries.³⁶ However, questions have been raised as to whether the Commission has the authority under the Texas Racing Act to regulate IRTs and whether these devices run afoul of the Texas Constitution.³⁷

Texas law prohibits the use and possession of gambling devices, defined as “any electronic, electromechanical, or mechanical contrivance” that “affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill.”³⁸ The single exception for *bona fide* amusement machines would not apply to instant racing devices as currently designed, since the pay-outs are in currency, not “noncash merchandise.”³⁹ Moreover, authorization of IRTs would likely violate Article III, § 47(A) of the Texas Constitution, which prohibits lotteries.⁴⁰

As the Baptist General Convention of Texas cautioned in March of this year, the approval of any electronic facsimile of a game of chance will trigger Class III gaming, something which multiple Texas legislatures have always rejected.⁴¹ In 2003, Attorney General Abbot found that the Texas Constitution does not permit the legislature alone to approve the operation of slot machines, something which require an affirmative vote of the people.⁴² Moreover, the Attorney General clarified that Article III requires the legislature to pass laws prohibiting lotteries, concluding that any new game must be carefully scrutinized to determine the necessity for a constitutional amendment.⁴³ The elements that constitute a lottery are those of prize, chance, and consideration.⁴⁴ An inquiry into the game itself, not the mere name of the proposed game, is required.⁴⁵

As described in the first section of this submission, the proposed instant racing machines are largely games of chance, operate similarly to slot machines and have the same key components, namely a game server with video displays linked to playing terminals. The Texas Racing Act certainly charges the Commission with the regulation of greyhound and horse racing in the state, but the TRC has no explicit authority over gambling devices in general nor slot machines branded as instant racing or historical racing machines in specific.⁴⁶ In a word, instant racing machines are not “races.”

Thank you for your attention to my concerns.

Sincerely,



Christine A. Dorchak, Esq.
President

- 1 U.S. Provisional Application no. 60/106,161 (filed October 29, 1998)
- 2 U.S. Patent Nos. 6,450,887 (issued September 17, 2002) and 6,358,150 (issued March 19, 2002).
- 3 *Id.*
- 4 U.S. Patent No. 6,749, 510 9 (issued June 15, 2004).
- 5 Wyoming Pari-Mutuel Comm'n, *Enriching Tradition through Technology*, at <http://parimutuel.state.wy.us/PDF/Documents/HistoricRacingGUIDEFINAL.pdf> (information provided by Race Tech) (n.d.).
- 6 Wyoming Downs Rodeo Events, LLC v. State, 134 P. 3d 1223,1224 (Wyo 2006).
- 7 *Supra* note ii.
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*
- 13 *Id.* (images attached)
- 14 Blank Aff., 07/14/14 (attached).
- 15 Wyoming Downs Rodeo, 134 P. 3d at 1224.
- 16 *Id.* at 1230.
- 17 *Id.*
- 18 MEC Oregon Racing, Inc. v. Oregon Racing Comm'n, 223 Or. pp.9, 225 P. 3d 61, 66 (2009)
- 19 *Id.*
- 20 *Id.*
- 21 *Id.* at 68
- 22 94 Op. Md. Att'y Gen 32, 39 (2009).
- 23 *Id.* at 41.
- 24 *Id.*
- 25 *Id.*
- 26 Neb. Att'y Gen. No. 9 at 8 (2010).
- 27 *Id.* at 3.
- 28 Scottsbluff Star Herald Editorial, *Amendment would open the door to casinos – and social problems – in Nebraska*, July 15, 2014.
- 29 Appalachian Racing, LLC, et al. v. The Family Trust Foundation of Kentucky, Inc., 423 S.W.3d 726 (Ky. 2014)
- 30 *Id.* at 28.
- 31 *Id.*
- 32 Janet Patton, *On Eve of instant racing's debut, Ky. Downs hopes for big pay-off*, *Lexington Herald-Leader*, September 1, 2011.
- 33 Betsy Z. Russell, *Some Idaho lawmakers feeling gamed over Greyhound Park 'Instant Racing'*, March 21, 2014.
- 34 *Id.*
- 35 *Id.*
- 36 Tim Eaton, *New way of betting could boost Texas horse racing, but is it legal?*, *Austin American-Statesman*, June 8, 2014.
- 37 Anna M. Tinsley, *Texas lawmaker asks attorney general to decide whether commission can OK historical racing*, *Fort Worth Star Telegram*, July 24, 2014.
- 38 Tex. Penal Code § 47.01(4).
- 39 *Id.*
- 40 Letter from Rep. Dan Flynn to Tex. Att'y Gen. Greg Abbot requesting opinion on instant racing (July 22, 2014) (on file with author).
- 41 Letter from Gus Reyes, Dir. Christian Life Coalition, to James Pierson, assistant general counsel Tex. Lottery Comm'n describing expanded gambling bills proposed, debated and rejected by the 78th, 79th, 80th and 82nd Legislatures of 2003-7 and 2011 (March 28, 2014) (on file with author)
- 42 Tex. Att'y Gen Op. No. GA-0103 (2003) at 8.
- 43 *Id.* at 4.
- 44 *Id.* at 3, quoting *City of Wink v. Griffith Amusement Co.*, 100 S.W.2d 695 (Tex. 1936)
- 45 *Id.* quoting *Randle v. State*, 42 Tex. 580 (Tex. 1874).
- 46 Tex. CV. Code Ann. § 179e.



US001645088711

(12) **United States Patent**
Mir et al.

(10) **Patent No.:** **US 6,450,887 B1**
(45) **Date of Patent:** ***Sep. 17, 2002**

(54) **METHODS AND APPARATUS FOR
PARIMUTUEL HISTORICAL GAMING**

(75) **Inventors:** **Vernon B. Mir**, Lutherville, MD (US);
Robert Eric Jackson, Hot Springs, AR
(US)

(73) **Assignee:** **RaceTech I.L.C.**, Wilmington, DE
(US)

(*) **Notice:** Subject to any disclaimer, the term of this
patent is extended or adjusted under 35
U.S.C. 154(b) by 0 days.

This patent is subject to a terminal dis-
claimer.

(21) **Appl. No.:** **09/411,609**

(22) **Filed:** **Oct. 1, 1999**

Related U.S. Application Data

(60) **Provisional application No.** 60/106,161, filed on Oct. 29,
1998, now abandoned.

(51) **Int. Cl.**⁷ **A63F 13/00**

(52) **U.S. Cl.** **463/42; 463/25, 463/26,**
463/28; 463/40, 463/6, 463/43, 463/27,
273/138 A; 273/86 B

(58) **Field of Search** **463/25, 26, 27,**
463/28, 40, 42

(56) **References Cited**

U.S. PATENT DOCUMENTS

5,645,531 A * 2/1972 Wright 273/138 A
5,275,300 A 1/1994 Weingardt et al.
5,411,258 A * 5/1995 Wilson et al. 273/86

5,476,259 A * 12/1995 Weingardt 463/28
5,779,547 A * 7/1998 Sorelle et al. 463/28
5,530,068 A 11/1998 Biener et al.
5,830,069 A 11/1998 Seltesz et al.
5,846,132 A 12/1998 Junkin
5,888,136 A 3/1999 Herbert
5,984,779 A 11/1999 Bridgeman et al.
6,152,822 A 11/2000 Herbert

* cited by examiner

Primary Examiner—Jessica Harrison

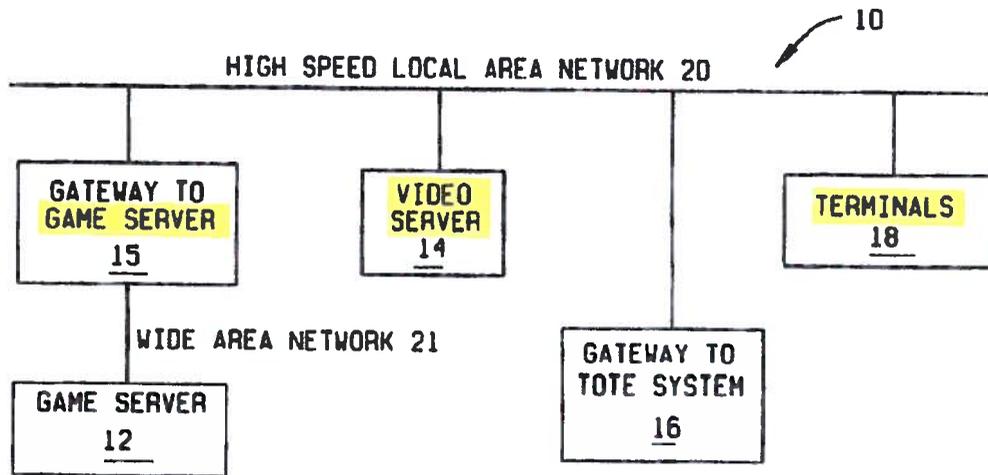
Assistant Examiner—Yveste G Cherubin

(74) *Attorney, Agent, or Firm*—Armstrong Teasdale LLP

(57) **ABSTRACT**

A gaming system is described which enables parimutuel
wagering with instant payouts on actual past events. The
system, in one embodiment, includes a plurality of wager
terminals coupled to a game server. The wagering terminals
are multi-function terminals which enable a patron to enter
a wager, provide high quality video/audio play-back, and
can issue payments for winners. The game server is a
computer system configured to manage the entire game
system. For example, the server maintains databases, con-
trols and accounts for the transactions with the wagering
terminals, controls the flow of data from the video server to
the terminals, collates pools from all sources and computes
winnings, and provides detailed statistics for the disburse-
ment of funds. The gaming system also includes a video
server interface for providing high speed delivery of selected
video clips from a historical database, and a tote system
interface which is coupled to a standard racetrack totalisator
system to allow the multi-function wagering terminal to
operate as a standard self-service racetrack wagering termi-
nal.

71 Claims, 7 Drawing Sheets





US006358150B1

(12) **United States Patent**
Mir et al.

(10) **Patent No.:** **US 6,358,150 B1**
(45) **Date of Patent:** **Mar. 19, 2002**

(54) **METHODS AND APPARATUS FOR
PARIMUTUEL HISTORICAL GAMING**

(75) **Inventors:** **Vernon B. Mir**, Lutherville, MD (US);
Robert Eric Jackson, Hot Springs, AR (US)

(73) **Assignee:** **RaceTech I.I.C.**, Wilmington, DE (US)

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** **09/584,409**

(22) **Filed:** **May 30, 2000**

Related U.S. Application Data

(63) Continuation-in-part of application No. 09/411,609, filed on Oct. 1, 1999.

(60) Provisional application No. 60/106,161, filed on Oct. 29, 1998.

(51) **Int. Cl.?** **A63F 9/14**

(52) **U.S. Cl.** **463/28; 463/6; 463/25; 463/42; 463/43**

(58) **Field of Search** **463/25-28, 42, 463/43, 6; 273/138 A, 86 B**

(56) **References Cited**

U.S. PATENT DOCUMENTS

3,645,531	A	*	2/1972	Wright	273/138 A
5,275,400	A		1/1994	Weingardt et al.	
5,411,258	A	*	5/1995	Wilson et al.	273/8, B
5,830,068	A		11/1998	Brenner et al.	
5,830,069	A		11/1998	Soltész et al.	
5,846,132	A		12/1998	Junkin	
5,888,136	A		3/1999	Herbert	

5,917,725 A * 6/1999 Thatcher et al. 364/410.1

5,984,779 A 11/1999 Bridgeman et al.

* cited by examiner

Primary Examiner—Jessica J. Harrison

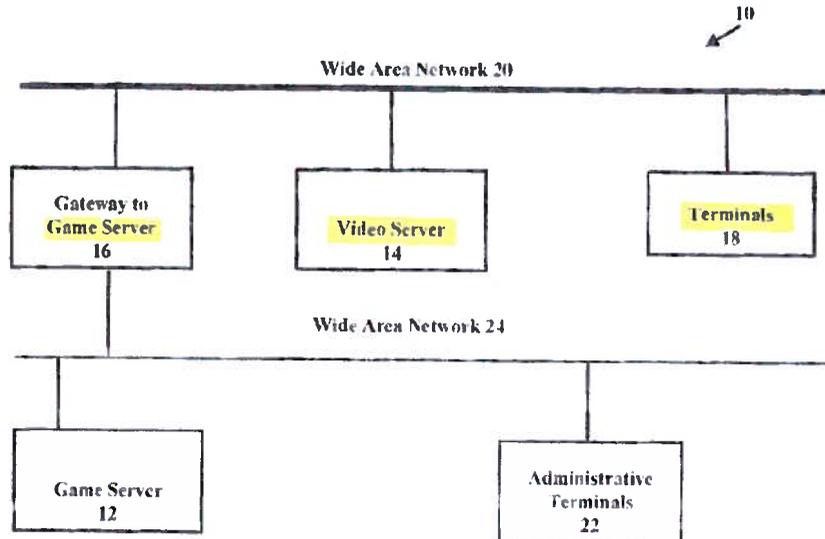
Assistant Examiner—Yveste Cherubin

(74) *Attorney, Agent, or Firm*—Armstrong Teasdale LLP

(57) **ABSTRACT**

A gaming system is described which enables parimutuel wagering with instant payoffs on actual past events. The system, in one embodiment, includes a plurality of wager terminals coupled to a game server through a wide area network, such as the internet. The game server is a computer system configured to manage the entire game system. For example, the server maintains databases, controls and accounts for the transactions with the wagering terminals, controls the flow of data from the video server to the terminals, collates pools from all sources and computes winnings, and provides detailed statistics for the disbursement of funds. The gaming system also includes a video server for providing delivery of selected video images from a historical database. Generally, and in operation, a player attempts to choose the winners of an unknown past event. Although the player does not know which event will be presented, some skill data may be shown on the video display, such as the relative past performance of competitors. After the player makes a selection of winners, the identity of the event is revealed, a video segment of the event is displayed, and the actual winners are presented. If the player correctly picked the winners, the player qualifies for an instant payoff determined in accordance with parimutuel methods. Winning multiple games in a session or selecting the maximum wager amount may qualify the player to win a larger payoff as well.

41 Claims, 6 Drawing Sheets



(Slot Machine Patent)

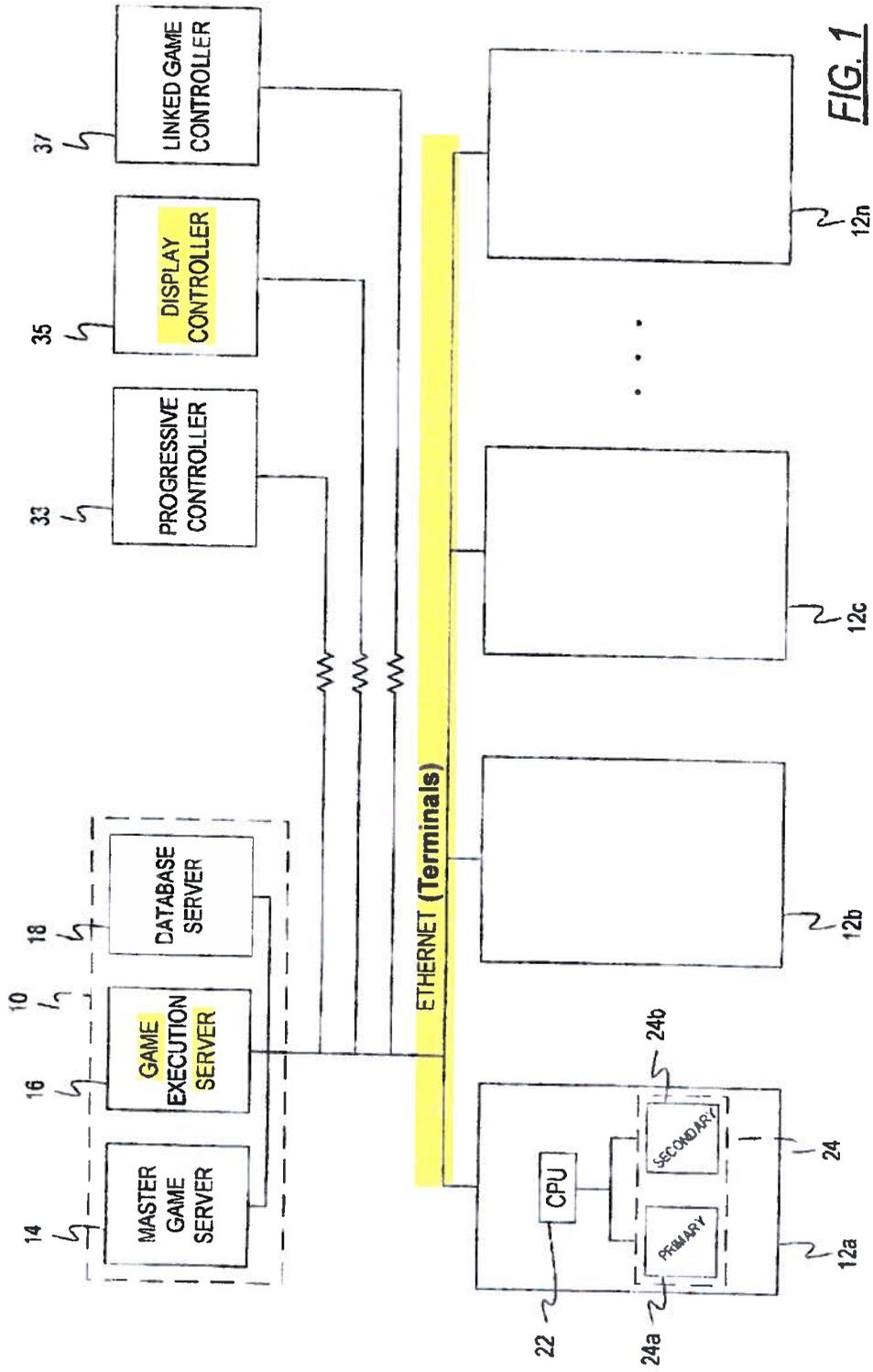


FIG. 1

AFFIDAVIT DEBBIE L. BLANK

To Whom It May Concern,

My name is Deborah L. Blank. I am the Financial Manager for Gambling with the Good Life in Omaha, NE as well as the Financial Manager for Stop Predatory Gambling. The mission of both organizations is to oppose expanded gambling on the state and national levels.

Numerous times in my past I visited the Ak-Sai-Ben race track in Omaha NE, studied the Racing Form, watched the horses, determined the odds and bet on live horse races. In addition, in the past and as recently as Thanksgiving week, 2012, I have visited Las Vegas and played slot machines. So, I am familiar with the dynamics of betting on live horse racing and watching and playing slot machines.

On July 4, 2014, I visited Ellis Park in Henderson, Kentucky, with Pat Loontjer, Executive Director of Gambling with the Good Life, from 6:30 – 8:45 p.m. on a fact finding mission regarding "historic horse racing" machines. I spoke at length with the machine technician and an attendant in the gaming room, both of whom openly answered my questions and shared their perspectives of the machines. In addition, I played several of the different types of machines in both "historic horse racing" mode and in the regular "slot machine" mode. Below are my personal observations regarding the experience.

My experience and observations

- We did not see one person choose the historic horse racing option on the machines. Instead, every single person in the gaming rooms that we observed, for the over two hours we were there, was playing the slot machines.
- There were maybe 200 machines in the two rooms of the facility with about 25 people playing the machines (place had cleared out since live racing was over for the day and it was dinnertime before the 4th of July fireworks).
- The machines look exactly like slot machines, play nearly as fast as slot machines (every 3-4 seconds, by my count) and have options like slot machines (chase to play one or up to 9 lines).
- They are set up in rows with chairs, just like casino slot machines.
- Most of the machines have no pictures, words or options on the screens that identify them with horse races at all, except the name "Instant Racing" at the top.
- The only thing that sets these machines apart from normal slot machines is an approximately 3 x2 inch screen at the top right or bottom middle of the machine. These screens usually remain white until the bet is made. When I hit my button to play the machine, a 2-3 second horse race played in that box.
- All the machines were set on slot machine mode; none were set at the horse racing option. The machines are computers (mechanic unlocked one to show me the screen which gave options like my computer does).
- There were at least a dozen different types of machines with different themes (pigs, cherries, Egyptian, mining, fish, etc) accepting bets from 10c to \$5, which one could increase to 50c to \$45 per play if one chose more lines.

- Each type of machine (Black Hills Gold, Treasures of Egypt, Pigs and Mud, etc.) is connected by computer with the same type of machine throughout all the parks in Kentucky.
- Many machines say they are 1¢ with a minimum of 10¢ (or 25¢ or 50¢, etc.) It makes it sound like they are penny machines. But, what it means is that the payout is in pennies. For example, I won 2000 once, which amounted to \$20.00. VERY deceptive marketing.
- When I said to the attendant that these machines are just like slot machines, he told us these machines are "loopholes" because Kentucky does not allow slot machines.
- The attendant said the payout is 93% for the \$5 machines, reducing incrementally down to 87% for the 10¢ machines, he thought. Though someone wins that amount of time, that percentage does not mean that people walk away with the money. Most people, like us, continued playing until we lost all the money we played.

How to play the historic horseracing machines

- Each machine had a small "i" in the lower area that needed to be touched to bring up the machines information and instructions, including the horse racing option. Once I touched the "i," there were several very confusing explanations of what one needed to do to play the horse slots.
- When I clicked one particular button, a Daily Racing Form popped in the right hand column of the screen, taking about 20-25% of the screen. It listed the horses by color and number in three pie charts, with each pie chart representing the percentage of times each horse came in first, then second and then third. Unfortunately, the machine only gives about 15-20 seconds to do my homework before the Daily Racing Form left the screen, never to be found again!!!
- Nowhere on the machine does it provide the odds, age of horses or any other info one uses in determining what horse to bet in regular horse racing.
- Once I chose my #1 horse, it asked me for my 2nd place horse pick, then my third. All of which I dutifully chose from my "thorough" research.
- When I hit play, the game reverted to the slot machine front. While the horse race ran for about 2-3 seconds in the small 3 x 2 window displayed on the slot machine, I was watching the slot machine spin its columns.
- Any payout came based on the slot machine calculations. In other words, if I was playing the Black Hills Gold machine, I had to have 3-5 pots of gold in a row, or three barrels in a row, etc. to win. The machine did not let me know I had won or lost based on my horse pick, just based on the sequence of the gold, barrels, etc.
- Plus, the winning sequence had to be in a row or column that I had paid to play. Each machine had anywhere from 1 to 9 playing options I could pick, with each option costing more money.
- There were times when I actually picked the winning horse or the place or show horses in order, but still lost my money!!! Attendant said it was because my "winning" horse number was on a row I had not paid to play! However, most machines did not display numbers, only the theme items of the machine (like cherries, pigs, gold, etc.)

- So, not only did I have to pick the right winning horse with almost no information, I also had to choose the correct rows or columns to play or just play them all. It appears, however, that even if I do all that, my "number" would have to come up on the screen in the right sequence to win! I am not convinced I would have won with my horse pick, even if I had done all the right things.
- The "historic horseracing" option is very confusing and time consuming, requires no skill and, from my perspective, has nothing to do with winning or losing at the machine.

Conclusions

- These historic horseracing machines look and play exactly like slot machines.
- While they have added the "loophole" of using an historic horse race video, the schematics, computerization and play are the same as slot machines.
- Those who like to study and play the horses will do so live or via simulcast, NEVER by these machines because there isn't enough info and you don't necessarily win if you choose the winner.

Attachments

- Four pictures are attached below of three different games I played while in Henderson, KY.
- In addition, we have available, though not attached here, two short videos showing the speed of the machine and the quick horserace at the bottom of the slot machine.

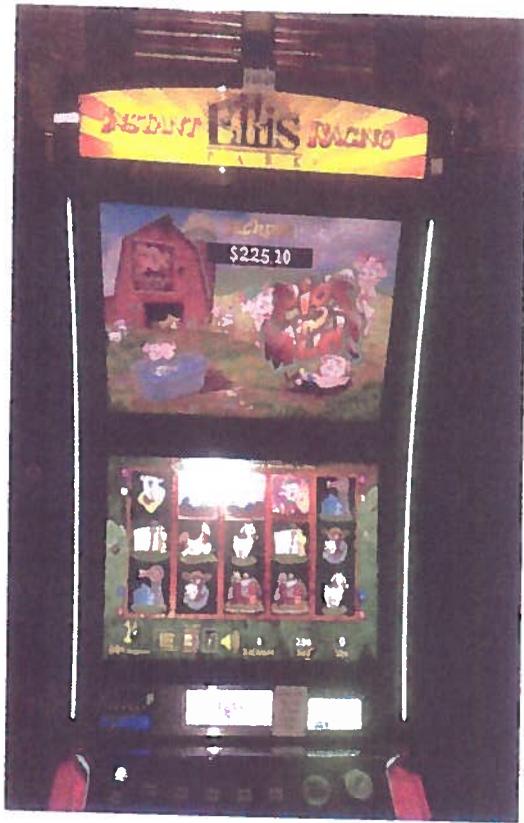
Debbie L. Blank
Debbie L. Blank

7/14/14
Date



Ellis Park, Henderson KY





Page 0 of 0

Description of Document: _____

Acknowledgement

State of Nebraska

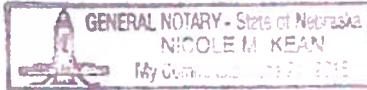
S.S.

County of Dodge

The foregoing instrument was acknowledged before me this

27th day of July, 2014

by Doreen L. Brink
(printed name of person acknowledged)



Nicole M. Kean
Notary Public

(Affix Official Notary seal here)

July 27, 2014

Mr. Mark Fenner
General Counsel
Texas Racing Commission
P.O. Box 12080
Austin, Texas 78711-2080

Dear Mr. Fenner,

I am against the following proposed rule changes initiated by the Texas Racing Commission at your June 10, 2014 meeting:

- 16 TAC 301.1 Definitions;
- 16 TAC 303.31 Regulation of Racing
- 16 TAC 303.42 Approval of Charity Race Days
- 16 TAC 309.8 Racetrack License Fees
- 16 TAC 309.13 Temporary License to Conduct Racing
- 16 TAC 309.297 Purse Accounts
- 16 TAC 309.299 Horseman's Representative
- 16 TAC 309.361 Greyhound Purse Account and Kennel Account
- 16 TAC 321.5 Pari-Mutuel Auditor
- 16 TAC 321.12 Time Synchronization
- 16 TAC 321.13 Pari-Mutuel Track Report
- 16 TAC 321.23 Wagering Explanations
- 16 TAC 321.25 Wagering Information
- 16 TAC 321.27 Posting of Race Results
- 16 TAC 321.701 Purpose
- 16 TAC 321.703 Historical Racing
- 16 TAC 321.705 Request to Conduct Historical Racing
- 16 TAC 321.707 Requirements for Operating a Historical Racing Totalisator System
- 16 TAC 321.709 Types of Pari-Mutuel Wager for Historical Racing
- 16 TAC 321.711 Historical Racing Pools, Seed Pools
- 16 TAC 321.713 Deductions from Pari-Mutuel Pools

- 16 TAC 321.715 Contract Retention, Pari-Mutuel Wagering Record Retention
- 16 TAC 321.717 Effect of Conflict
- 16 TAC 321.719 Severability

In accordance to 2001.030 of the Administrative Procedures Act, I request statements of responses for or against adoption be provided by the Texas Racing Commission. I strongly urge the Texas Racing Commission to not adopt the proposed rules.

Over the past 20 years, the citizens of Texas have consistently elected members of the Texas Legislature who have rejected attempts like this one to introduce slot-like instant electronic gambling. The failed legislative attempts have been presented as “simple extensions” of the gambling already legal in the State of Texas: Lottery and Bingo. The “simple extension” arguments also include a premise that the advancement of technology somehow or another creates a need, and in some instances an “authority” to migrate the existing gambling activity to an electronic version and or facsimile. The elected members of the Texas Legislature have considered and rejected the “simple extension” argument. The Texas Racing Commission should do the same.

Beginning in early 2000, there were several legislative attempts to allow video lottery terminals in Texas. The Texas Legislature rejected the lottery “simple extension” arguments. The legislature’s rejection was buttressed by Attorney General Opinion No. GA-103 (attachment A) where he opined: “Article III, section 47 (e) of the Texas Constitution does not permit the legislature to authorize the state to operate video lottery terminals”.

Shortly after the video lottery initiatives fizzled, there were several legislative attempts to allow an electronic version of bingo in Texas. The Texas Legislature also rejected the bingo “simple extension” arguments. In 2007, the Attorney General of Texas released Attorney General Opinion No. GA-0541 (attachment B), where he opined: “Texas Constitution article III, section 47 (b) authorizes the Legislature to enact legislation permitting charitable entities to conduct bingo games for charitable purposes. The constitutional authorization for charitable bingo does not include electronic pull-tab, which an unenacted bill of the Seventy-ninth Regular Legislative Session would have authorized. The proposed legislation would be unconstitutional under article III, section 47 (a). “Like the Texas Lottery Commission, the authority of the Texas Racing Commission does not evolve with the advancement of technology and innovations. The Texas Racing Commission is governed by the Texas Racing Act. The citizens of the State of

TEXAS ★ BAPTISTS

BAPTIST GENERAL CONVENTION OF TEXAS

Texas elect representatives to the Texas Legislature to administer the Texas Racing Act. The Texas Racing Commission should reject the proposed rules because of the clear history of the Texas Legislature's rejection of the "simple extension" argument of legal forms of gambling, and out of respect to the citizens of the State of Texas.

In closing, please consider all arguments, information, and questions presented in this letter to serve as my consideration to the Texas Racing Commission not to adopt the proposed rules.

Sincerely,



Director | Texas Baptist Christian Life Commission
Baptist General Convention of Texas

Attachment A



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2003

The Honorable Frank J. Corte, Jr.
Chair, Committee on Defense Affairs &
State-Federal Relations
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Opinion No. GA-0103

Re: Whether the legislature may
authorize the state to operate video
lottery terminals ([RQ-0039-GA](#))

Dear Representative Corte:

You ask whether the legislature may authorize the state to operate video lottery terminals in the absence of a constitutional amendment permitting their operation.

Background

Article III, section 47 of the Texas Constitution requires the legislature to "pass laws prohibiting lotteries and gift enterprises in this State other than those authorized by Subsections (b), (d), and (e) of this section." Tex. Const. art. III, § 47(a). Subsection (b) permits the legislature to "authorize and regulate bingo games" conducted by religious, fraternal and other nonprofit organizations. *Id.* § 47(b). Subsection (d) declares that the legislature "may permit charitable raffles conducted by a qualified religious society, qualified volunteer fire department, qualified volunteer emergency medical service, or qualified nonprofit organizations." *Id.* § 47(d). Subsection (e) states that "[t]he Legislature by general law may authorize the State to operate lotteries and may authorize the State to enter into a contract with one or more legal entities that will operate lotteries on behalf of the State." *Id.* § 47(e).

Pursuant to the constitutional directive to "pass laws prohibiting lotteries," except as specifically authorized by other provisions of article III, section 47, the legislature has adopted numerous penal statutes that prohibit various aspects of gambling. See *generally* Tex. Pen. Code Ann. ch. 47 (Vernon 2003). Specifically, section 47.06(a) provides that "[a] person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device." *Id.* § 47.06(a). "Gambling device" is defined as:

any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance,

even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits

Id. § 47.01(4).

You state that "[c]urrent legislation in the House and Senate, in essence, repeals this prohibition, and either uses this definition or a very similar definition to authorize VLT's [video lottery terminals]." ⁽¹⁾ In addition, the Comptroller of Public Accounts has recently "issued an e-Texas recommendation . . . calling for Texas to implement a video lottery system." Request Letter, *supra* note 1, at 1. The Comptroller's proposal states, in relevant part:

Video lottery terminals (VLTs) are centrally monitored game machines that can offer a variety of games of chance. VLTs typically pay out a much larger percentage of the "take" in the form of prizes - about 90 percent - than other forms of lottery games. State lottery agencies control these machines via a central computer system, just as the Texas Lottery Commission does with its lotto terminals.

Carole Keeton Strayhorn, Texas Comptroller of Public Accounts, Special Report to the Legislature, Additional e-Texas Recommendations, ED 18 (2003), *available at* www.cpa.state.tx.us/specialrpt/etxaddnl/ed18.html. You ask "whether the Texas Legislature may authorize the operation of video lottery terminals without an amendment to the Texas Constitution." Request Letter, *supra* note 1, at 2. Given your reference to the Comptroller's proposal, it appears that your request is limited to the legislature's authority to permit the state to operate video lottery terminals under article III, section 47(e) of the Texas Constitution.

The Issue

As we have noted, article III, section 47(a) of the Texas Constitution requires the legislature to "pass laws prohibiting lotteries and gift enterprises." Tex. Const. art. III, § 47(a). As we will demonstrate, *infra*, this constitutional prohibition has existed for more than a century. In 1991, Texas voters added an exception to article III, section 47, that permits the legislature to "authorize the State to operate lotteries." *Id.* § 47(e). The fundamental issue before us is what the voters intended in adopting that 1991 amendment.

Analysis

A. Meaning of "Lottery" under Article III, Section 47(a)

Texas courts have consistently held that the term "lottery" includes a wide range of activities involving the distribution of something of value by chance in exchange for valuable consideration. This construction of the term "lottery" predates our current constitution. The constitution of 1845 and every subsequent constitution have included a prohibition against lotteries. The constitutions of 1845, 1861, 1866, and 1869 stated that "[n]o lottery shall be authorized by this State; and the buying [or/and] selling of lottery tickets within this State is prohibited." Tex. Const. of 1869, art. XII, § 36; Tex. Const. of 1866, art. VII, § 17; Tex. Const. of 1861, art. VII, § 17; Tex. Const. of 1845, art. VII, § 17. The constitutional convention of 1875 expanded this language in response to activities authorized by the 1873 legislature to state that "[t]he Legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries, gift enterprises or other evasions of the lottery principle, established or existing in other States." Tex. Const. of 1876, art. III, § 47(a). But even prior to the 1876 constitution, the Texas Supreme Court had found

[that] it makes not the slightest difference whether it be styled a "Gift Enterprise," "Book Sale," "Land Distribution, or "Art Association," each and all are lotteries when the element of chance is connected with, or enters into the distribution of its prizes. . . . "Courts will inquire *not* into the name, but the game, to determine whether it is a prohibited game."

Randle v. State, 42 Tex. 580 (Tex. 1874).

As early as 1899, the Court of Criminal Appeals held that operation of a "slot machine," as described therein, constituted a "lottery." *Prendergast v. State*, 57 S.W. 850, 851 (Tex. Crim. App. 1899). Then, in 1936, the Texas Supreme Court considered whether a "bank night" held at a local theater was a "lottery" under the constitution. *City of Wink v. Griffith Amusement Co.*, 100 S.W.2d 695 (Tex. 1936). The court articulated the three elements necessary to constitute a lottery: (1) the offering of a prize, (2) by chance, and (3) the giving of consideration for an opportunity to win the prize. Of the three, the court declared that "chance" is the element that constitutes the very basis of a lottery, and without which a game would not be a lottery. *Id.* at 701. For our purposes, it is sufficient that the Supreme Court had by 1936 laid out the definitive elements that constitute a "lottery" in the State of Texas: prize, chance, and consideration.

In 1971, the legislature amended article 654 of the Penal Code, the criminal statute that at that time implemented article III, section 47, to permit certain "charitable organizations to conduct lotteries for their benefit on property owned by the conducting agency" and allowing the "sale or drawing of a prize at a fair held in this State for the benefit of a church, religious society, veteran's organization," or similar entity. Act of May 30, 1971, 62d Leg., R.S., ch. 922, 1971 Tex. Gen. Laws 2823. As enacted, the amendment was intended to permit activities held under the aegis of a particular class of charitable or quasi-charitable institution, such as churches and veterans' organizations, that were otherwise proscribed by the Penal Code. In *Tussey v. State*, 494 S.W.2d 866 (Tex. Crim. App. 1973), the court held that the language of article III, section 47, prohibited the legislature from granting this exemption. The court found that "any effort by the Legislature to authorize, license or legalize lotteries is

unconstitutional in light of the constitutional provision in question. . . . Further, the Legislature is likewise prohibited from indirectly doing so by way of exemption from criminal prosecution." *Id.* at 869. It is thus clear that, for purposes of subsection (a) of article III, section 47 of the Texas Constitution, the term "lottery" will be broadly construed by the courts, and that any game newly sanctioned by the legislature must be carefully scrutinized to determine whether it is a "lottery." If it is, it cannot lawfully be operated without a constitutional amendment.

Meaning of "Lottery" under Article III, Section 47(e)

Subsequent to the court's decision in *Tussey*, the legislature proposed, and the electorate approved, a series of amendments to article III, section 47. A 1980 amendment - the present subsections (b) and (c) of article III, section 47 - excepted "bingo games conducted by a church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs." Tex. Const. art. III, § 47(b)-(c) (*added by* Tex. S.J. Res. 18, 66th Leg., R.S. (1979)). Subsection (d) was added in 1989 to permit "charitable raffles" held by those entities that were already authorized to conduct bingo games. Tex. Const. art. III, § 47(d) (*added by* Tex. H.R.J. Res. 32, 71st Leg., R.S. (1989)). The most recent amendment, subsection (e), permits the legislature to "authorize the State to operate lotteries and [to] authorize the State to enter into a contract with one or more legal entities that will operate lotteries on behalf of the State." Tex. Const. art. III, § 47(e) (*added by* Tex. H.R.J. Res. 8, 72d Leg., 1st C.S. (1991)). Each of these amendments is an exception to the historical prohibition against "lotteries" set forth in subsection (a).

Courts "rely heavily on the literal text" of a constitutional amendment and will "give effect to its plain language." *Doody v. Ameriquest Mortgage Co.*, 49 S.W.3d 342, 344 (Tex. 2001). Article III, section 47(a) requires the legislature to "pass laws prohibiting lotteries and gift enterprises in this State other than those authorized by Subsections (b), (d), and (e) of this section." Tex. Const. art. III, § 47(a). Subsection (e) declares that the legislature may "authorize the State to operate lotteries and may authorize the State to enter into a contract with one or more legal entities that will operate lotteries on behalf of the State." *Id.* § 47(e). If the term "lotteries" as used in subsection (e) has the same meaning as the use of the term in subsection (a), *i.e.*, the expansive meaning promulgated by Texas courts from 1874 to 1973, then the legislature may, under the former provision, authorize the state to operate *any* game included within the ambit of subsection (a), *i.e.*, any "game of chance." Under that construction, the legislature could permit the state, or an entity with which it contracts, to establish casino gambling within the State of Texas. But the two sections are not identical. Subsection (a) broadly requires the prohibition of "lotteries and gift enterprises" whereas subsection (e) permits the legislature to authorize the state to operate lotteries. The language of subsections (a) and (e) is sufficiently different that it is not plain from the face of section 47 whether subsection (e) permits everything that subsection (a) prohibits.

In addition to considering constitutional provisions' plain language, courts also construe the words of an amendment "as they are generally understood." *Spradlin v. Jim Walters Homes, Inc.*, 34 S.W.3d 578, 790 (Tex. 2000). The fundamental rule that

courts follow when interpreting a constitutional amendment is to give effect to the intent of the legislators who proposed it and the people who adopted it. See *Gragg v. Cayuga Indep. Sch. Dist.*, 539 S.W.2d 861, 866 (Tex. 1976); see also *Stringer v. Cendant Mortgage Corp.*, 23 S.W.3d 353, 355 (Tex. 2000) ("We strive to give constitutional provisions the effect their makers and adopters intended."); *City of El Paso v. El Paso Cmty. Coll. Dist.*, 729 S.W.2d 296, 298 (Tex. 1986) ("In construing a constitutional amendment, we look to the intent of the framers and the voters who adopted the amendment."). Furthermore, in determining that intent, "[c]onstitutional provisions, like statutes, are properly to be interpreted in the light of conditions existing at the time of their adoption, the general spirit of the times, and the prevailing sentiments of the people." *Mumme v. Marrs*, 40 S.W.2d 31, 35 (Tex. 1931). Moreover, "in determining the meaning, intent and purpose of a constitutional provision, the history of the time out of which it grew and to which it may be rationally supposed to have direct relationship, the evils intended to be remedied and the good to be accomplished, are proper subjects of inquiry." *Markowsky v. Newman*, 136 S.W.2d 808, 813 (Tex. 1940). See also *Dir. of Dep't of Agric. & Env't v. Printing Indus. Ass'n of Tex.*, 600 S.W.2d 264, 267 (Tex. 1980). Finally, courts will give weight to a contemporaneous construction given by the legislative or executive branches of government. See *Walker v. Baker*, 196 S.W.2d 324, 327 (Tex. 1946).

A number of factors indicate that the voters who adopted subsection (e) did not intend to authorize the state to operate video lottery terminals.

The Common Understanding of "Lottery" in 1991

In *Armbrister v. Morales*, 943 S.W.2d 202 (Tex. App.-Austin 1997, no writ), the court considered the meaning of the term "apportionment" as used in article III, section 3 of the Texas Constitution. The court observed that, "[i]n interpreting the constitution, we give words their natural, obvious, and ordinary meanings as they are understood by the citizens who adopted them." *Id.* at 205. Then the court proceeded to define the term by reference to two dictionaries, *Webster's Third New International Dictionary* and *Black's Law Dictionary*. *Id.* Because the intent of the electorate that adopts a constitutional amendment is more likely to agree with the meaning of a term as defined in a recent dictionary than with its technical meaning as construed by courts of old, it is instructive to consider the modern common meaning of the term "lottery."

Dictionary definitions of the term "lottery" indicate that the "natural, obvious, and ordinary," see *id.*, meaning of the term, as understood by the voters who adopted subsection (e), does not accord with the broadly expansive legal meaning of the term as used in subsection (a) and construed by Texas courts from the late nineteenth century through the *Tussey* case in 1973. *Webster's Third New International Dictionary* defines "lottery" as "[a] scheme for the distribution of prizes by lot or chance; esp., a scheme by which prizes are distributed to the winners among those persons who have paid for a chance to win them, usually as determined by the numbers on tickets as drawn at random from a lottery wheel." *Webster's Third New International Dictionary* 1338 (1969). Other recent popular dictionaries accord with this definition. See, e.g., *American Heritage Dictionary* 1034 (4th ed. 2000) ("lottery" is "[a]

contest in which tokens are distributed or sold, the winning token or tokens being secretly predetermined or ultimately selected in a random drawing"); New Oxford American Dictionary 1010 (1st ed. 2001) ("lottery" is "a means of raising money by selling numbered tickets and giving prizes to the holders of numbers drawn at random"). *Black's Law Dictionary* defines "lottery" as "a method of raising revenues, especially state-government revenues, by selling tickets and giving prizes (usu. large cash prizes) to those who hold tickets with winning numbers that are drawn at random." *Black's Law Dictionary* 959 (7th ed. 1999). These definitions reflect the common public understanding of the term "lottery" as it was considered by the voters in 1991. The expansive legal definition espoused in judicial decisions from 1874 to 1973 does not. The legal definition may encompass any kind of game of chance, including slot machines and a variety of casino games. The popular definition, on the other hand, is restricted to a narrow and particular form of state-operated game sanctioned by the legislature and the voters in 1991. The ballot proposition presented to the voters fully supports this more restrictive construction.

The Ballot Proposition

Although article III, section 47(e) authorizes "the State to operate lotteries," the language of the ballot proposition was worded somewhat differently. The joint resolution that placed the lottery amendment on the ballot read as follows:

Section 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 5, 1991. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing *a state lottery*."

Tex. H.R.J. Res. 8, 72d Leg., 1st C.S. (1991) (emphasis added). The *Analysis of Proposed Constitutional Amendments* prepared in October 1991 by the Texas Legislative Council states, in relevant part: "If the constitutional amendment is approved, the legislature may, but is not required to, adopt a law authorizing *a state lottery*." Texas Legislative Council, *Analysis of Proposed Constitutional Amendments*, November 5, 1991, Election (Oct. 1991) (emphasis added). The analysis continues:

The amendment specifically provides that all or part of the operation of *the lottery* may be delegated to private firms. House Bill 54, passed by the 72nd Legislature, 1st Called Session, establishes *a lottery* to be administered by a division of the office of the comptroller of public accounts. Under H.B. 54, proceeds from the sale of *lottery tickets* will be used to pay prizes, administrative costs, and ticket sales agent commissions, with the balance going into the state's general revenue fund. H.B. 54 will take effect only if the constitutional amendment authorizing *a lottery* is approved.

Id. at 39 (emphasis added). The wording of the ballot proposition provides further evidence that the legislators who proposed subsection (e) intended to authorize only a "state lottery" and that the voters who adopted subsection (e) were approving a "state lottery" rather than the extensive variety of games of chance prohibited under subsection (a). Near-contemporaneous construction of subsection (e) by the attorney general also supports this conclusion.

Contemporaneous Administrative Construction

Shortly after its adoption, the Attorney General considered whether subsection (e) of article III, section 47 could be read to permit the state itself to operate slot machines, and concluded that it could not be so construed. "No evidence has been presented that any portion of the electorate believed that, in approving the amendment for a 'state lottery,' it was thereby sanctioning slot machines. And . . . a great deal of evidence suggests that the voters who adopted the lottery amendment intended thereby to authorize only the traditional form of 'state lottery.'" Tex. Att'y Gen. Op. No. DM-302 (1994) at 10. On the basis of the "plain and definite" language of the constitutional amendment, including the omission of the term "slot machines" from the amendment or the ballot proposition, as well as extrinsic evidence, the opinion concluded that "[w]e should construe the language of the exception [to article III, section 47] in light of our contemporary situation, by limiting the meaning of the term 'lottery' as approved by the voters in 1991 to its plain meaning. . . . If the proposition passed by the legislature and presented to the voters had been intended and understood to authorize state-operated casinos, it would have been a simple matter for the language to reflect that intention." *Id.* at 9. In summary, "it is self-evident that voters presumed from the ballot language that they were voting for or against the common *perception* of a 'state lottery,' as denoted by the clear language of the ballot proposition, rather than a broad spectrum of games which embody the 'lottery principle,' as articulated by *City of Wink, Tussey*, and numerous other judicial decisions." *Id.* at 7. Thus, the meaning of the term "lottery" in the constitutional provision adopted as subsection (e) in 1991 differs significantly from the historical meaning it has been accorded in subsection (a). See Tex. Const. art. III, § 47(a), (e).

Attorney General Opinion DM-302 was issued less than three years after the adoption of the constitutional amendment authorizing a state lottery. As we recently noted in Attorney General Opinion GA-0054 (2003), "[t]he construction placed upon statutes and constitutional amendments soon after their enactment or adoption is entitled to substantial weight." Tex. Att'y Gen. Op. No. GA-0054 (2003) at 4; *see also id.* ("contemporaneous exposition of a constitutional provision is of substantial value in constitutional interpretation," *citing Am. Indem. Co. v. City of Austin*, 246 S.W. 1019, 1023 (Tex. 1922)). Because Attorney General Opinion DM-302 (1994) was issued so soon after the adoption of subsection (e) of article III, section 47, it may be accorded the status of a contemporary administrative construction.

Summary and Conclusion

To summarize, in approving the addition of subsection (e) to article III, section 47 of the Texas Constitution, Texas voters in 1991 did not intend to authorize the state to operate, or to contract for the operation of, "lotteries" in the broad sense that it has been construed by the courts since the adoption of the 1876 constitution. "Lotteries" under subsection (a) means any game that contains the elements of prize, chance, and consideration. In 1991, voters approved a "state lottery" based on the common understanding of the term at that time, as evidenced by popular dictionaries and the ballot proposition presented to Texas voters. Moreover, Attorney General Opinion DM-302 (1994), issued less than three years after the adoption of article III, section 47(e),

is a contemporaneous administrative construction of that amendment which concludes that voters in 1991 approved a narrow construction of the term "lottery" that cannot be read to authorize the state to operate slot machines. On the basis of all these factors, we conclude that article III, section 47(e) of the Texas Constitution does not permit the legislature to authorize the state to operate video lottery terminals.

SUMMARY

Article III, section 47(e) of the Texas Constitution does not permit the legislature to authorize the state to operate video lottery terminals.

Very truly yours,



GREG ABBOTT
Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney General

DON R. WILLETT
Deputy Attorney General - General Counsel

NANCY S. FULLER
Chair, Opinion Committee

Rick Gilpin
Assistant Attorney General, Opinion Committee

Footnotes

1. Letter from Honorable Frank J. Corte, Jr., Chair, House Committee on Defense Affairs & State-Federal Relations, to Honorable Greg Abbott, Texas Attorney General at 1 (Apr. 14, 2003) (on file with Opinion Committee) [hereinafter Request Letter].

[Home](#) | [Opinions](#)

Attachment B



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2007

The Honorable Jane Nelson
Chair, Committee on Health
and Human Services
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. GA-0541

Re: Whether the Legislature may authorize electronic
pull-tab bingo by statute without amending the Texas
Constitution (RQ-0547-GA)

Dear Senator Nelson:

You request an opinion about the constitutionality of proposed legislation that would legalize the use of “electronic pull-tab bingo” by nonprofit organizations that are authorized by law to conduct charitable bingo.¹ Your question relates specifically to Senate Floor Amendment 24 to House Bill 3 of the Seventy-ninth Regular Legislative Session (the “Floor Amendment”). See Request Letter, *supra* note 1, at 1; see also Tex. H.B. 3, 79th Leg., R.S. (2005), S.J. OF TEX., 79th Leg., R.S. 1807–13 (2005) (Senate Floor Amendment No. 24).² Although House Bill 3 was not adopted and the Floor Amendment did not become law, you are concerned that similar legislation may be considered in the future. See Request Letter, *supra* note 1, at 3. You ask whether electronic pull-tab bingo as described by the Floor Amendment would be constitutional under Texas Constitution article III, section 47(b), which authorizes the Legislature to adopt laws authorizing and regulating bingo games conducted by various charitable entities. See *id.* at 1–2.

I. Legal Background

Article III, section 47(a) of the Texas Constitution provides that “[t]he Legislature shall pass laws prohibiting lotteries and gift enterprises in this State,” subject to specific exceptions. TEX. CONST. art. III, § 47(a). A lottery is composed of three elements: (1) a prize or prizes; (2) the award or distribution of the prize or prizes by chance; and (3) the payment either directly or indirectly by the participants of a consideration for the right or privilege of participating. See *Brice v. State*, 242 S.W.2d 433, 434 (Tex. Crim. App. 1951); see also *State v. Socony Mobil Oil Co.*, 386 S.W.2d 169,

¹See Letter from Honorable Jane Nelson, Chair, Committee on Health and Human Services, Texas State Senate, to Honorable Greg Abbott, Attorney General of Texas, at 1 (Oct. 24, 2006) (on file with the Opinion Committee, also available at <http://www.oag.state.tx.us>) [hereinafter Request Letter].

²Available at <http://www.legis.state.tx.us>.

172 (Tex. Civ. App.—San Antonio 1964, writ ref'd n.r.e.). This definition has been incorporated by the Penal Code, which provides that a “lottery” is

any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.

TEX. PENAL CODE ANN. § 47.01(7) (Vernon 2003).

Applying legislation that implemented the constitutional prohibition against lotteries, a 1976 judicial decision, *State v. Amvets Post No. 80*, held that a bingo game operated by a veterans organization was illegal. See *State v. Amvets Post No. 80*, 541 S.W.2d 481, 482 (Tex. Civ. App.—Dallas 1976, no writ). The participants purchased cards showing numbered spaces, numbers were selected at random and called out, and cash prizes were awarded to the first person to cover numbers in a designated pattern. Based on these facts, the court found the game to be a “scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value.” *Id.* at 482 (quoting and interpreting definition of “lottery” in Penal Code, formerly section 47.01(6), renumbered as section 47.01(7)).³ The court held that the bingo game came squarely within the statutory definition of “lottery.” See *id.* The bingo game was a lottery even though part of the revenue was contributed to charity and no one realized any gain from it aside from personal winnings. See *id.* at 483.

In 1979, shortly after the *Amvets* opinion, the Legislature proposed an amendment to article III, section 47 (the “bingo amendment”) allowing the Legislature to authorize and regulate bingo games subject to specific constitutional requirements, and the voters adopted it in 1980. See Tex. S.J. Res. 18, 66th Leg., R.S., 1979 Tex. Gen. Laws 3221 (proposed constitutional amendment); Texas Constitution, Amendments Adopted in 1979 and 1980, 1981 Tex. Gen. Laws 4227 (adoption of amendment). The bingo amendment adopted subsections 47(b) and (c), which provide in part:

(b) The Legislature by law may authorize and regulate bingo games conducted by a church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs. . . .

(c) The law enacted by the Legislature authorizing bingo games must include [a requirement that organizations conducting

³See Act of May 24, 1973, 63d Leg., R.S., ch. 399, § 1, 1973 Tex. Gen. Laws 883, 965 (adopting Penal Code section 47.01(6)), amended by Act of May 29, 1993, 73d Leg., R.S., ch. 900, § 1.01, 1993 Tex. Gen. Laws 3586, 3690–91 (renumbering Penal Code section 47.01(6) as section 47.01(7)).

bingo make reports to the comptroller about amount and use of proceeds collected from bingo games].

TEX. CONST. art. III, § 47(b)–(c). Bingo games authorized by a law adopted pursuant to article III, section 47(b) are excepted from the prohibition against lotteries in section 47(a). *See id.* § 47(a).

In 1981, the Legislature adopted the Bingo Enabling Act (the “Act”) pursuant to the authorization in the bingo amendment. *See* Act of Aug. 11, 1981, 67th Leg., 1st C.S., ch. 11, 1981 Tex. Gen. Laws 85. The Act is now found at Occupations Code chapter 2001 and is administered by the Texas Lottery Commission. *See* TEX. OCC. CODE ANN. §§ 2001.001, .051, .054 (Vernon 2004). It provides for licensing certain charitable and fraternal organizations to conduct bingo games. *See id.* § 2001.101. The Act also governs fiscal matters such as permissible expenses, accounting for bingo proceeds, charitable distributions, and taxes. *See id.* §§ 2001.451–.459 (bingo accounts and use of proceeds), §§ 2001.501–.515 (taxes and prize fees).

II. Proposed Legislation

The Floor Amendment would have amended the Act to authorize “electronic pull-tab bingo,” a game it defined as “an electronic version of pull-tab bingo that is played on a card-minding device or electronic monitoring terminal using electronic pull-tab bingo tickets.” Tex. H.B. 3, 79th Leg., R.S. (2005); S.J. of TEX., 79th Leg., R.S. 1807 (2005) (proposing adoption of Occupations Code section 2001.002(9-b)). A “card minding device” as defined by commission rule is:

[a]ny mechanical, electronic, electromechanical or computerized device, and including related hardware and software, that is interfaced with or connected to equipment used to conduct a game of bingo and which allows a player to store, display, and mark a bingo card A card-minding device shall not be a video lottery machine

16 TEX. ADMIN. CODE § 402.100(5) (2006) (Tex. Lottery Comm’n, Definitions); *see also id.* § 402.302(a)(2)(A) (Tex. Lottery Comm’n, Card-Minding Systems) (defining “card-minding device” as a component of a card-minding system).

Pull-tab tickets are at present defined by the Act as “tickets with perforated break-open tabs, made of paper or paper products, the face of which is covered or otherwise hidden from view to conceal numbers, letters, or symbols, some of which have been designated in advance as prize winners.” TEX. OCC. CODE ANN. § 2001.002(24) (Vernon 2004) (defining “pull-tab bingo”). An “[e]lectronic pull-tab bingo ticket” as defined by the Floor Amendment would be “an electronic ticket used in electronic pull-tab bingo that is issued from a finite deal of tickets in which some of the tickets have been designated in advance as winning tickets.”⁴ Tex. H.B. 3, 79th Leg., R.S. (2005);

⁴While the Texas courts have not addressed any kind of pull-tab game, a federal court has described electronic pull-tab games as follows:

(continued...)

S.J. of TEX., 79th Leg., R.S. 1807 (2005) (proposing adoption of Occupations Code section 2001.002(9-c)). The Floor Amendment would also have permitted the use of a computer program or electronic equipment to create, shuffle, store, and configure electronic pull-tab bingo tickets, to distribute these to the screens where the game is played, and to account for electronic credits purchased, played, or won. See Tex. H.B. 3, 79th Leg., R.S. (2005); S.J. of TEX., 79th Leg., R.S. 1807-09 (2005) (proposing adoption of Occupations Code sections 2001.002(26-a) and 2001.4091 to define and authorize use of a "site controller"). A "player account card," dispensed by a cashier or terminal, could be used to enable or track the play of such electronic games, track electronic credits purchased, played, or won, and redeem such credits through a cashier or a terminal. See S.J. of TEX., 79th Leg., R.S. 1807-09 (2005) (proposing adoption of Occupations Code sections 2001.002(20-a) (defining "[p]layer account card") and 2001.002(20-b) (cashier or terminal)).

III. Legal Analysis

With this background in mind, we consider whether Texas Constitution article III, section 47(b) authorizes the Legislature to provide for "electronic pull-tab bingo" as set out in the Floor Amendment. The constitutional provision refers to "bingo games" but does not define this term. See TEX. CONST. art. III, § 47(b)-(c). In interpreting a constitutional provision, the courts begin with the text of the constitution, but if there is doubt as to the meaning of the literal text, they will consider the intent of the people who adopted the provision. See *Wentworth v. Meyer*, 839 S.W.2d 766, 767 (Tex. 1992); *Aerospace Optimist Club v. Tex. Alcoholic Beverage Comm'n*, 886 S.W.2d 556, 558 (Tex. App.—Austin 1994, no writ); Tex. Att'y Gen. Op. No. GA-0103 (2003) at 5. Moreover, "[w]hen determining the purpose of a [constitutional] provision, we will consider the evil to be remedied and the good to be accomplished by that provision." *Aerospace Optimist Club*, 886 S.W.2d at 559-60 (quoting *Brown v. Meyer*, 787 S.W.2d 42, 45 (Tex. 1990)).

We first consider the purpose of the bingo amendment. The court in *Aerospace Optimist Club*, considering whether article III, section 47(b) barred the state from taxing bingo proceeds, stated that the "evil to be remedied" by the constitutional amendment legalizing bingo "was selective enforcement of laws prohibiting gambling and lotteries." *Id.* at 560. See HOUSE STUDY GROUP, SPECIAL LEGISLATIVE REPORT, CONSTITUTIONAL AMENDMENT ANALYSIS (Apr. 30, 1980) at 21 (law against bingo is selectively enforced to permit bingo games held by religious and non-profit organizations); TEXAS LEGISLATIVE COUNCIL, ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS, FOR ELECTION NOVEMBER 4, 1980, at 9-10 (law enforcement authorities in some communities do not enforce the prohibition against bingo games). The "good to be accomplished," or the overall purpose of the amendment, was thus the legalization of bingo operations to create uniformity in law enforcement and to prevent otherwise law-abiding citizens from committing

⁴(...continued)

There is now a computerized version of pull-tabs. The computer randomly selects a card for the gambler, pulls the tab at the gambler's direction, and displays the result on the screen. The computer version . . . has a fixed number of winning cards in each deal.

Cabazon Band of Mission Indians v. Nat'l Indian Gaming Comm'n, 14 F.3d 633, 635 (D.C. Cir. 1994).

criminal acts by participating in bingo games.” *Aerospace Optimist Club*, 886 S.W.2d at 560. The purpose of the bingo amendment was to legalize and regulate the kind of bingo game conducted by a veterans organization in *Amvets*. See *Amvets*, 541 S.W.2d at 482–83.

To ascertain the intent of the people who adopted the constitutional provision, we may look to other sources for the meaning of “bingo” as used in the bingo amendment. See *Aerospace Optimist Club*, 886 S.W.2d at 560 (citing *Wentworth*, 839 S.W.2d. at 767). Legislative construction and contemporaneous exposition of a constitutional term can be a valuable aid in determining the meaning and intention of a term used in the constitution. See *id.* (citing *Am. Indem. Co. v. City of Austin*, 246 S.W. 1019, 1023 (Tex. 1922)); see also *Hill County v. Sheppard*, 178 S.W.2d 261, 263 (Tex. 1944) (legislative definition of a term adopted near in time to a constitutional provision that includes the same term will be given great weight in determining meaning of constitutional term).

The Bingo Enabling Act was adopted in 1981, soon after the voters’ ratification of the bingo amendment, and it thus provides a contemporaneous legislative understanding of the meaning of “bingo games” in article III, section 47(b). The 1981 Act defined “[b]ingo” as “a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random.” Act of Aug. 11, 1981, 67th Leg., 1st C.S., ch. 11, § 2, 1981 Tex. Gen. Laws 85, 85; see also *id.* § 39, at 100 (similar definition of “bingo” in a section on unlawful bingo). The term “card” in the definition indicates that the Legislature had in mind traditional bingo played on cards when it implemented the bingo amendment. Although a 1995 enactment deleted “card” from the statutory definition of bingo, the same bill declared that “[n]othing in this Act shall be construed as authorizing any game using a video lottery machine or machines,” describing such a machine as an electronic video game machine, that upon the insertion of cash enables the player to play a game from which he may receive free games or credits that can be redeemed for cash. See Act of May 29, 1995, 74th Leg., R.S., ch. 1057, §§ 1, 10, 1995 Tex. Gen. Laws 5222, 5225. The deletion of the word “card” from the definition of “bingo” does not mean that the Legislature thought that bingo as authorized by article III, section 47(b) could be played on an electronic machine or device.

In addition, the legislative history of article III, section 47(b) supports the view that this provision relates to the *Amvets* type of bingo game. A 1980 report by the House Study Group on the proposed bingo amendment describes bingo as involving social interaction. “Bingo is a social function. It brings people together who want to be together. Its social nature is one of the ways it differs from games like roulette or slot machines.” HOUSE STUDY GROUP, SPECIAL LEGISLATIVE REPORT, CONSTITUTIONAL AMENDMENT ANALYSIS (Apr. 30, 1980) at 22; see TEXAS LEGISLATIVE COUNCIL, ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS, FOR ELECTION NOVEMBER 4, 1980, at 10 (stating that bingo games provide an opportunity for entertainment, social gathering, and relaxation for a significant part of a community, in particular, elderly persons). This aspect of bingo indicates that when the bingo amendment was adopted, the game of bingo was understood to be the bingo game described in *Amvets*, and not a game played electronically. The social interaction present in traditional bingo is diminished, if not eliminated, in a game played by an individual on a computer monitor. The Supreme Court of Wyoming, in an exhaustive opinion determining that electronic bingo was not “bingo” within a 1971 statute, noted that “[b]ingo-type games contemplate a group activity, often social.” *Fraternal Order of Eagles Sheridan Aerie No. 186, Inc. v. State ex rel. Forwood*, 126 P.3d 847, 859–60 (Wyo. 2006).

IV. Conclusion

For these reasons, we believe that a Texas court would find that “bingo” within article III, section 47(b) does not include “electronic pull-tab bingo” as described by Senate Floor Amendment No. 24 to House Bill 3 of the Seventy-ninth Regular Legislative Session. The electronic pull-tab bingo game would not be excepted by section 47(b) from the prohibition against lotteries in section 47(a) and accordingly would be unconstitutional under article III, section 47(a).

S U M M A R Y

Texas Constitution article III, section 47(b) authorizes the Legislature to enact legislation permitting charitable entities to conduct bingo games for charitable purposes. The constitutional authorization for charitable bingo does not include "electronic pull-tab bingo," which an unenacted bill of the Seventy-ninth Regular Legislative Session would have authorized. The proposed legislation would be unconstitutional under article III, section 47(a).

Very truly yours,



GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

ELLEN L. WITT
Deputy Attorney General for Legal Counsel

NANCY S. FULLER
Chair, Opinion Committee

Susan L. Garrison
Assistant Attorney General, Opinion Committee

**ECONOMIC DEVELOPMENT
ORGANIZATIONS /
MUNICIPALITIES**



PRO-BUSINESS • PRO-TEXAS
FOR OVER 75 YEARS

July 9, 2014

Robert Schmidt, M. D.
Chair, Texas Racing Commission
8505 Cross Park Dr. #110
Austin, Texas 78754

Re: Request Proposing the Following Rule Amendments and New Rules Authorizing Historical Racing

Dear Chairman Schmidt:

The Texas racing industry urgently needs help to prevent its imminent collapse and to ensure its survival. As the Chief Executive Officer of the Texas Association of Business, I have heard from industry leaders that other states are providing more competitive and lucrative purses at race tracks. This is forcing Texans to pursue racing in neighboring states and move their horse operations (owners, breeders and trainers) to these more competitive environments.

In 2004, almost 19,000 Texans were employed in the Texas horse racing industry. Since that time, significant numbers of owners, breeders, and trainers have left Texas for other states in which higher purses are offered. This decline is causing a ripple effect in jobs across the state of Texas. This pattern will only cause the Texas horse racing industry to continue its rapid decline, while neighboring states flourish.

On December 10, 2013, the Chair of the Texas Racing Commission appointed an Advisory Committee to explore ways of helping the Texas racing industry to survive. The Committee believes that allowing licensed Texas racetracks to offer pari-mutuel wagering on historical races is the best achievable means of providing such help and is working on rules to license and regulate such wagering.

A growing number of states, notably Kentucky and neighboring Arkansas, are allowing licensed racetracks to offer pari-mutuel wagering on horse races previously run at licensed tracks. In those states, wagering on historical races has increased the fan base for live races, the size of purses, and revenues for the states and their racetracks. Because other states are permitting their tracks to offer wagering on historical races, the Texas industry is at a growing competitive disadvantage. Horsemen are leaving Texas for states where higher purses are being offered as the result of wagering on historical races.

As the voice for Texas business and economic development, the Texas Association of Business strongly supports the efforts of the Texas Racing Commission to use its licensing, regulatory and rule-making powers to help the struggling Texas racing industry keep pace with new technological developments and with the new innovative pari-mutuel wagering opportunities those developments have made possible. The additional purse money, increased fan base and increased competitiveness in the racing industry will be felt throughout the horse racing and agriculture industries.

Please support this effort to save the desperate Texas horse industry and protect the jobs it provides.

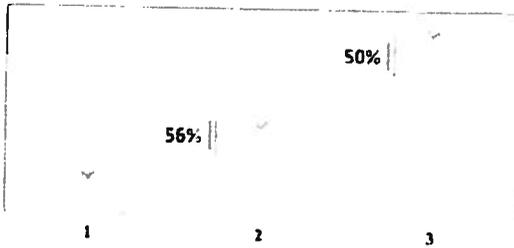
Sincerely,

Bill Hammond

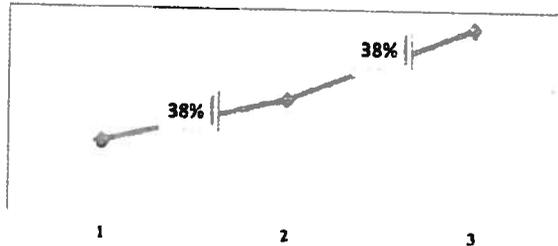
cc Chuck Trout, Executive Director, Texas Racing Commission

Estimated Economic Impact of HRT's in Texas

Kentucky Purse Increase Since Inception of HRT's

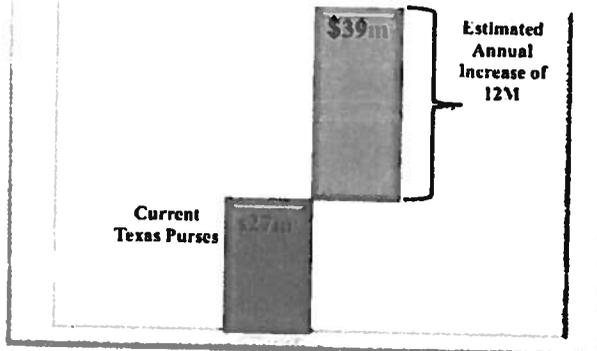


Arkansas Purse Increase Since Inception of HRT's



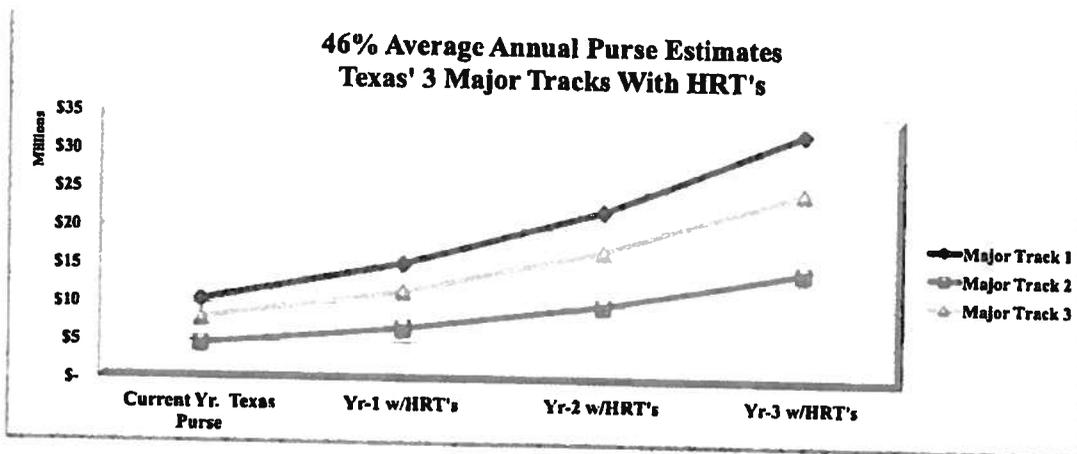
Arkansas and Kentucky have a short history to compare upon but results have been positive. With the introduction of Historical Racing at Oaklawn in Arkansas in 2001 and Kentucky Downs in 2011, both tracks showed a steady increase in their Daily Average Purse Distribution. Kentucky averaged a 53 % purse increase over the first 3 years while Arkansas showed an average increase of 38% in their first 3 years.

Estimated Purse Increase w/HRT's

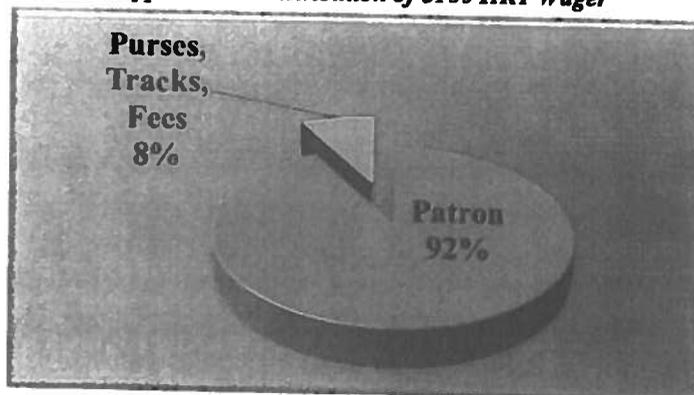


Alternatively, Kentucky Downs HRT's contributed over 9.6M to purses over 30 months since its inception. Therefore, it is reasonable to assume the 3 major operating tracks in Texas could contribute similarly, resulting in a purse increase of 46% over current Texas purses of 27M in 2013 of 12M a year.

46% Average Annual Purse Estimates Texas' 3 Major Tracks With HRT's



Approximate Distribution of \$100 HRT Wager





FRANKLIN-SIMPSON CHAMBER OF COMMERCE

July 25, 2014

Mr. Chuck Trout
Executive Director
Texas Racing Commission
P. O. Box 12080
Austin, Texas 78711-2080

As Executive Director of the Franklin-Simpson Chamber of Commerce I must be acutely aware of the economic aspects of this community of 18,000. Whether it be local retail, industrial manufacturing or charitable gaming, all are extremely important.

Since Charitable Bingo came to our community millions of dollars have been invested in our schools, various arts programs and other worthwhile causes. Simply put, Charitable bingo is the lifeblood of many non-profits in this community.

Kentucky Downs is home to three major charities who operate six successful sessions during the week. A review of those charities and their operations shows complete satisfaction not only with the environment but also with the degree of success each charity is enjoying. Kentucky Downs houses one of the largest bingo halls in the community.

Our community is home to five bingo halls with each hall showing a high rate of success. Because of the increased demand in the past two years two new halls have opened within one mile of the Kentucky Downs location. This alone shows that bingo successfully coexists with historic horse racing in our community, with both activities working very harmoniously with each other to the benefit of our citizens and our local businesses.

The increase in patrons for the bingo games which prompted the new halls has also been a boost to our community's economic well-being in other areas. Many who play come from outside our community and frequent our service stations, restaurants and shops, providing jobs and additional tax revenue which allows our community to continue a phenomenal rate of growth. We have been recently cited as the 6th fastest growing community in the Commonwealth.

Bingo thrives in this community and the continued growth of this form of entertainment continues to be an important aspect to the educational and cultural life of Franklin and Simpson County.


Michael S. Thurmond
Executive Director
Franklin-Simpson Chamber of Commerce



CITY OF
FRANKLIN



FRANKLIN BANK & Trust Company



SIMPSON COUNTY
FISCAL COURT

Grand Prairie — T E X A S —

July 3, 2014

Ms. Mary Welch
Assistant to Executive Director
Texas Racing Commission
8505 Cross Park Dr., #110
Austin, TX 78764

Re: The City of Grand Prairie, Texas, Supports Horse Racing in Texas

The city of Grand Prairie supports the Texas Racing Commission's proposed rules that permit historical racing terminals in Texas.

Lone Star Park at Grand Prairie, Class I thoroughbred horse racetrack, is an integral part of the Grand Prairie economic engine. The proposed rules are good for Lone Star Park, good for Grand Prairie and good for the Dallas-Fort Worth Metroplex.

We all know the horse racing industry in Texas has suffered tremendous declines in the last ten (10) years due to the lack of incentives for racing in Texas that surrounding states have provided to their racing industry. This has resulted in the surrounding states having higher purses, and the migration of horses and jobs out of Texas to these other states.

The Texas Racing Commission has proposed new rules to provide for pari-mutuel wagering on historical racing at Texas racetracks. Historical racing terminals allow wagering on horse races conducted in the past. Historical racing, if approved, will provide substantial increases in purses for live racing conducted in Texas. This will bring horses and jobs back to Texas and promote economic development in Texas agricultural, horse breeding, horse training, greyhound breeds, and greyhound training industries as well as other racing related industries.

Respectfully,



Ron Jensen
Mayor

6.12.14

Dear Commission:

As a Mayor in a small town, it is hard to believe how many people in our County own horses. I know of several that own just one, yet they could not work harder at their trade if they had horses running in the Kentucky Derby.

This is Texas. We expect our representatives to see the big picture.

Pari-mutuel betting will keep money in Texas.

If not, it leaves.

Thank you for your consideration,

Michael J. Judd

Mayor, City of Wood

2014 JUN 13 PM 1:54

MISCELLANEOUS



GLI®

World Headquarters

600 Airport Road
Lakewood, NJ 08701

Phone (732) 942-3999
Fax (732) 942-0043
www.gaminglabs.com

Worldwide Locations

World Headquarters
Lakewood, New Jersey

U.S. Regional Offices
Colorado
Nevada

International Offices
GLI Africa
GLI Asia
GLI Australia Pty Ltd
GLI Austria GmbH
GLI Europe BV
GLI Italy
GLI South America

2014 JUL 26 AM 11:01

July 25, 2014

Via Fax (512-833-6907)
Texas Racing Commission
Attn. Mary Welch
P. O. Box 12080
Austin, Texas 78711-2080

Re: Comment on Proposed Rules Regarding Historical Racing published on June 27, 2014 in the *Texas Register*.

Dear Ms. Welch:

I am Vice-President of Governmental Relations and General Counsel of Gaming Laboratories International, LLC (“GLI”). GLI provides the gaming and wagering industries with independent compliance evaluation, inspection, and testing of all types of gaming technology (both hardware and software), including the technology used to make pari-mutuel wagers on historical racing. Since its founding in 1989, GLI has consulted on and/or tested gaming and wagering equipment for more than 455 jurisdictions all over the world. GLI’s Totalisator System Division provides testing and auditing services to pari-mutuel regulators and has tested totalisator systems operating in Texas and other states.

Historical racing terminals allow pari-mutuel wagers to be made on historical races using self-service terminals. Existing technology allows the pari-mutuel nature of such wagers to be independently tested and verified, and the wagering information and pool totals to be independently audited.

I have reviewed the proposed rules of the Texas Racing Commission, which, if adopted, would authorize pari-mutuel wagering on historical races at licensed Texas racetracks. Those rules provide the Commission with all the regulatory powers and oversight necessary to ensure and verify that each wager offered on a self-service historical racing terminal at a Texas racetrack is a pari-mutuel wager within the meaning of the Texas Racing Act and that the wagering information and pools associated with that wager are audited.

Very truly yours,

Kevin P. Mullally
Vice-President of Governmental Relations
and General Counsel



first baptist | arlington

Glorifying GOD by
Following The JESUS Way

Charles R. Wade
Pastor Emeritus, First Baptist Church Arlington
Executive Director, BGCT (Retired)

Texas Racing Commission

PO Box 12080

Austin, Tx. 78711-2080

RE: PROPOSED RULEMAKING OF RACING MACHINES

Dear Friends:

When pari-mutuel gambling was legalized in Texas several years ago, we noted that horse racing was, in fact, in decline across the United States. We suggested that it was highly unlikely that the proposal to start major horse racing venues in Texas would be as valuable as a source of tax revenue as promised.

That has been the case. Year after year the proponents of more gambling in Texas have sought ways to insert their schemes into the lives of Texas people. We have never opposed horse racing as a sport...just the legalization of gambling as a part of it. Clearly, the advocates of gambling with horse racing feel their sport cannot survive on its own merits, but requires more and more opportunities to involve people in gambling games to support the horses. I am not sure if the horses would approve!

Please note that I oppose strongly the legalization of "historical racing" machines since they are merely slot machines with a racing theme.

The state of Texas does not need to prey on its own people to support the worthwhile goals of our state.

Sincerely,

Charles R. Wade



Ann Church
 Vice President, State Affairs

600 Pennsylvania Avenue SE, Suite 450
 Washington, D.C. 20003

ann.church@aspca.org
 202.621.9226

www.aspca.org

July 2, 2014

Texas Racing Commission
 P.O. Box 12080
 Austin, TX 78711-2080

Re: Proposed Rules to Authorize "Historic Racing" Machines – *Oppose*

Dear Commissioners:

On behalf of the American Society for the Prevention of Cruelty to Animals (ASPCA) and our more than 150,000 members and constituents in Texas, I respectfully ask that you reject the proposed rules to legalize "Historic Racing." Historic racing will prop up the intolerably cruel "sport" of greyhound racing by providing millions in subsidies to this dying industry.

Greyhound racing is losing profits rapidly as the public becomes increasingly outraged at the cruelty that is so rampant at Texas' last remaining operating racetrack. Greyhounds at Gulf Greyhound Park spend their racing lives confined, suffer terrible injuries, and often are killed once they are no longer profitable. Since 2008, more than 2,000 greyhound injuries have been reported, including 86 greyhounds who died or were euthanized.

Subsidizing greyhound racing is poor public policy. At the very least, the decision to subsidize this industry by expanding gambling machines should not be made without a full legislative debate.

The ASPCA and our members thank you for your consideration of our comments. Please do not hesitate to reach out if you have any questions regarding our position.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ann Church', is written over a horizontal line.

Ann Church
 Vice President, State Affairs
 American Society for the Prevention of Cruelty to Animals

2014 JUN -2 PM 1:54
 ASPCA



Racing Commission Should Abandon Effort to Legalize “Historical Racing” Slot Machines

Comments of the Texas Public Policy Foundation to the Texas Racing Commission on proposed changes to 16 TAC §301.1

The Texas Racing Commission has proposed changes to 16 TAC §301.1 to allow gambling on “historical racing, ... a previously run horse or greyhound race.” While on the surface “historical racing” may sound like something akin to horse racing and pari-mutuel wagering, a quick glance at the picture below of the type of “instant-racing” machine that could be allowed under this proposed rule change paints a very different picture:



“Yukon Willie’s Gold Rush!” looks very much like a slot machine, despite the small window in the upper right-hand corner that shows a three second clip of the end of a “historical” horse race. When seen in action, the resemblance to a slot machine is even more apparent.

When voters went to the polls in 1987, they were asked to vote for or against “the legalization of pari-mutuel wagering under the Texas Racing Act.” Voters approved the proposition, and Texas has allowed betting on horse and greyhound racing since about that time.

It is highly doubtful, however, that Texas voters in 1987 or today would recognize the form of gambling the Commission is now trying to make legal as a type of pari-mutuel wagering on horse races. The same goes for members of the Texas Legislature who voted to send the question of legalizing pari-mutuel wagering to the voters.

Others will no doubt submit a complete legal analysis of the problems with the Commission approving

historical racing under current Texas law. In our comments, the Foundation will simply note the problem with state agencies acting without clear statutory authority on issues that are clearly the prerogative of the Texas Legislature—or the Texas people.

A recent example of this was the Public Utility Commission’s attempt to reverse 20 years of movement toward competition in the electricity market by imposing a \$3 billion electricity tax on consumers in the form of a capacity market. The PUC stopped its capacity market campaign after hearing from numerous members of the Legislature that the PUC was exceeding its authority.

Similarly, 15 members of the Texas Senate have sent a letter to the Commission noting the problems that the current rule poses:

These rules appear to be an attempt by the Racing Commission to circumvent the Legislature’s authority to decide what types of gambling are and are not legal. In the rule proposal, the Commission essentially admits that it is expanding the definition of pari-mutuel wagering, as it says the “mode and manner of pari-mutuel wagering...continues to evolve”, and that historical racing “is distinct from live or simulcast racing”. The proposed rules note the “primary advantage of historical racing is the additional revenue it provides” for horse and greyhound racing. While adopting new rules to reflect new or changing technologies is a good thing for the state, adopting rules that fundamentally change the types of activities regulated, or allowed, is not an activity state agencies should undertake.

Along with the admonition from the senators, the long and contentious history of the legislative debate over the legalization of gambling in Texas should be sufficient to stop the Commission’s efforts to allow “historical racing” by administrative fiat.

Beyond the problem of the Commission encroaching into legislative policy decisions, the Foundation does not believe that historical racing should be approved at all in Texas. The Foundation’s position is based on three reasons:

- Texas does not need more revenue. One of the main reasons given by proponents of expanding legalized gambling is the increased revenue that would come to the state. However, the Foundation believes that raising revenue to keep up with spending is not the way to operate government. Instead, Texas should keep government spending at the level necessary to match available revenue. This approach of “living within one’s means” is simple and commonsense, and is in fact the same one that each Texas family puts into practice every day. Though Texas has accomplished this better than most other states, we still have plenty of room for improvement. For instance, since 2004 spending in Texas has increased 8.8 percent faster than population growth plus inflation, at a cost to Texans this year of more than \$8 billion. Whether this increased revenue comes from expanding an existing tax like the margin tax or from instituting a new tax like a tax on gambling, the result is the same: more government. In addition, the revenue gains alleged in connection with gambling are almost always overstated. When voters approved pari-mutuel wagering in 1987, Texas’ Legislative Budget Office estimated that “pari-mutuel wagering could produce more than \$110 million a year for the General Revenue Fund,” much more than is being generated today.
- The cost of gambling exceeds its benefits. There is ample data from other states that the hidden costs of gambling may largely offset any predicted gains. While there is general agreement that gambling can provide increased state revenues and that there are socioeconomic costs attached to these revenues, researchers disagree about the dollar value assigned to these costs and whether the net fiscal impact is positive or negative. Costs associated with gambling include: (1) a reduction of approximately 10 percent in state lottery revenues; (2) an investment of approximately 10 percent of revenues in regulatory costs for gambling; (3) criminal justice costs underwriting an 8 to 13

percent increase in crime; (4) lost state and local revenue resulting from diversion of spending from goods and services to gambling; and (5) lost jobs resulting from decreased spending on non-gambling goods and services.

- Gambling laws in Texas are anti-market. Gambling as currently exists in Texas and as proposed under this rule is conducted by cartels authorized by law or administrative procedure. This type of arrangement has nothing to do with free markets or individual liberty. In fact, it has more in common with the Stamp Act and other acts of the English Parliament that made certain forms of commerce illegal in the American colonies except when conducted by those approved by the English government.

For all these reasons, the Foundation opposes the Commission's proposed changes to 16 TAC §301.1.

Mailing Address - Office
5350 North IH 35
New Braunfels, TX 78130
(830) 625-8256
(830) 620-4328 - Fax

RC Running Horses



Alfred & Melba Jo Riedel
OWNERS

Mailing Address - Ranch
1450 FM 2438
Seguin, TX 78155
(830) 303-8056
Fax - (830) 620-4328

July 1, 2014

Texas Racing Commission
Chuck Trout, Executive Director
PO Box 12080
Austin, Texas 78711

Dear Commissioners,

Thank you for considering adopting rules on Historical Racing and following in the footsteps of our Racing neighbors Arkansas and Kentucky to embrace a technology that will create jobs and generate additional purse money in Texas Racing!! It will literally be the first step in saving the Race Horse Industry in Texas!! It will allow Texas tracks to remain competitive and keep our horses at "HOME"!

Historical Racing allows patrons to wager on previously run races and operate just like current betting terminals used to wager on races at other racetracks- like Kentucky Derby at Churchill Downs!! We've watched as Kentucky and Arkansas purses have grown substantially as a result of allowing Historical Racing! Recently, Kenneland has gained approval to conduct historical racing. They are building a MULTI-MILLION dollar facility that will create jobs and add significant purse money to their live meet!!

PLEASE LET US HAVE THE SAME OPPORTUNITY!

Since 2004 the number of live races in Texas has Declined 50%, live wagering in this is down 66% and most importantly Commissioners, the number of foals bred in TEXAS is also Down 66%! That's unacceptable to Texas Breeders who will be forced to move from our Home state or quit our businesses!
We believe that permitting pari-mutual wagering on Historical races in Texas would halt and reverse those declines in jobs, purses, live races, and wagering!

Page 2

As a Texas Horseman, I am grateful for your careful consideration of this matter. You have our very continued existence in your hands and I trust that you will handle it with care and understanding of what this step means to us and TEXAS!

Thank You,




RC Running Horses
Alfred and Melba Jo Riedel
1450 FM 2438
Seguin, TEXAS 78155

CC: Texas Quarter Horse Association

John Roe Horse Racing

42006 Mill Creek Rd.
Magnolia, TX 77354-1846
832-693-0560
Johnroe1@peoplepc.com

July 2, 2014

Dear Commissioners,

Thank you for considering adopting rules on Historical Racing and following in the footsteps of Arkansas and Kentucky to embrace a technology that will create jobs and generate additional purse money. Historical race wagering, besides bringing expanded gaming options to Texans, will generate many positive benefits for both local economies and for the horse industry.

The addition of pari-mutual wagering through the use of HRT's has resulted in major private investment. No public funds or government supported tax breaks are needed to be used to create these jobs. Case in point is my hometown and home of Kentucky Downs, Franklin, Ky. It has transformed itself from what was twenty years ago a "predominately agriculture area to one of the largest manufacturing areas in Kentucky". Today some three thousand people are employed in manufacturing throughout the county in which Kentucky Downs lies. It is Kentucky Downs, (which our own former Lone Star Park president Corey Johnson helped to expand with an eye toward the future and HRT's) that has become the heart of this prospering region.

As a owner-breeder of both Thoroughbred and Quarter Horses, of significance to me is the fact that HRT's bring with them the promise to add significant purse money to live meets. Without this increase in purse sizes from their current levels, small owner-breeders such as myself find it just not economically feasible to compete. I have a long standing relationship with the majority of the people I do business with and we often worry what the future holds for us in our industry. Many of these men and women have been employed in these jobs and trades for decades and these changes to the rules mean the preservation of their jobs for decades to come.

Steps must be taken to adopt the proposed rule amendments ASAP. Without them, the race is over for us as Texas horsemen before we've even left the starting gate. We'd like just like the same opportunity as the horseman have in our surrounding states.

As a Texas Horseman, I am grateful for your careful consideration of this matter.

Thank you,



John H. Roe
TX Owner License #131019



Mr. & Mrs. Michael C. Danapas
Beyond Words Farm & Ranch
15072 CR 343
Kings Lane
Tyler, TX.75708



2014 Jul -7 PM 2:23
Thoroughbred Racing Horses
Beefmaster Cattle
All Natural Grass-Fed/Finished Beef
Registered Nigerian Dwarf Goats
Chance@Beyondwordsranch.com

July 3, 2014

To Executive Director Chuck Trout.

To Commissioners: Robert Schmidt, Ronald F. Ederer, Mike Martin, Gloria Hicks, Gary P. Aber, Vicki Weinberg, John T. Steen III, Ann O'Connell, Cynthia Leon, and Susan Combs.

I urge you to act, approve and immediately adopt the rules concerning Historical Race Machines as detailed in the Texas Register. Your action in favor of this issue will give some well-deserved relief to Texans. This opportunity will especially help those in the Equine and related Agricultural sectors who have struggled for years to do business in our beloved State at a disadvantage in the marketplace. You know the benefits are great from this new dimension of pari-mutuel wagering as it has been demonstrated in other States.

You have our support in taking action in this matter and helping us to have a fighting chance in the future.

Respectfully,

Michael C. Danapas

2014 Jul -7 PM 2:23

Let the TRC Know What You Think

07/07/2014 17:43:29

It is past time for the Texas Legislature to stop trying to legislate morality. Those who wish to wager on historical races should be allowed to do so on their own free will. The government needs to stop trampling on individual liberty and this is a prime example of government intrusion onto an individual's freedom. The fear mongers who suggest that moral decline will result from historical race wagering are the same people who lecture us about global warming and that entire charade – not to mention that opponents of this issue are hypocritical and assert their moral relativism into the fray. People should be allowed to exercise their free will in matters such as this – the government should not inhibit the exercise of man's free will – especially when very vocal special interests groups are leading the charge.

Am I saying that "everything ought to be legal?" If that is not what I am saying then where does one draw the line? The line is already drawn in laws on the books regarding criminal statutes. Murder, rape, drug dealing, etc. are in-fact criminal behaviors, and laws have been enacted to deal with these offenses. Arguing that there is moral equivalency of historical wagering on racetracks to criminal behavior may be fodder for the drive-by-low-information citizen – but not for me. Government needs to get out of the way of free-enterprise and allow historical wagering to proceed. Any moral decay associated with this can be dealt with by laws already on the books.

Besides, there is probably a way to tax this enterprise and grow the state revenues. That money is already supposed to be used to fund projects such as women's shelters, drug-dependency programs and programs designed to combat the ills of society. Do the right thing to support all forms of agriculture in Texas and allow historical race wagering to occur. To not do so would be a slap in the face to Texas agricultural enterprise in many forms.

Max Dow, DVM, MPH

2717 S. Main

Lindale, Texas 75771

903-316-3579

Louis A. "Trey" Malechek, III
3850 Corporate Center Drive
Bryan, Texas 77802
(979) 776-9800

2:37

July 8, 2014

Texas Racing Commission
Chuck Trout, Executive Director
P. O. Box 12080
Austin, Texas 78711

Dear Commissioners:

As an American Quarter Horse and Thoroughbred Horse breeder, a race horse owner, a partner in Granada Farms and the 2013 President of the Texas Quarter Horse Association, I strongly urge you to adopt the rules for Historical Racing Terminals, as proposed.

The adoption of the rules will aid the Texas Quarter Horse Association and the Texas Thoroughbred Association to increase breeders awards. Increased purses could help bring back some of the mares and stallions that breeders have moved to surrounding states in order to take advantage of the other states large breeder programs and large purses.

As a horseman, I am grateful for your careful consideration of this matter. You have our very continued existence in your hands and I trust that you will handle with care.

Respectfully,



Trey Malechek

TM:ls

July 14,2014

Texas Racing Commission

Chuck Trout, Executive Director

Dear Commissioners,

I am urging you to support the pari-mutuel wagering now being considered. This can be a very important step to rebuild the breeding and racing industry in Texas. We cannot provide the good horses our tracks need with the purse money now being awarded. Texans love to bet on competitive races, but most of our breeders are leaving the business or going out of state. We need good athletes just like any sport. Pretty soon there won't be enough Texas bred horses. We will not even need a racing commission.

I speak from twenty years of racing and breeding , and I know the great traditions, great horses, the fantastic people who love this sport. We don't want it to die. We want to rebuild the equine industry back to the economic level it once had.

Respectfully, I submit my opinion as an owner,breeder, and farm owner.



Sue Cook ,Cook Racing

Richland Ranch

Corsicana,Tx

CRISP  FREEZE
ATTORNEYS AT LAW

1921 MOORES LANE • TEXARKANA, TX 75503 • PH 903-831-4004 • FAX 903-831-4006

J. DAVID CRISP

BOARD CERTIFIED • CIVIL TRIAL ADVOCACY
NATIONAL BOARD OF TRIAL ADVOCACY
BOARD CERTIFIED • PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

DAVID FREEZE

CERTIFIED MEDIATOR

JOHN D. CRISP, JR.

CAMMIE AUTREY-MOODY

OFFICE ADMINISTRATOR

MANDY CATER

LEGAL ASSISTANT

July 15, 2014

Texas Racing Commission
Attn: Executive Director, Chuck Trout
P.O. Box 12080
Austin, Texas 78711

Re: Please Help Us Save the Texas Thoroughbred Horse Industry

Dear Director Trout:

I am writing on behalf of many friends that are involved with the Texas horseracing industry. These individuals have made a substantial investment in terms of their investment in land, in horses, in payroll, and in countless other service industries including veterinarians, farriers, livestock feed suppliers, fencing contractors and many, many others. However, Texas is not presently allowed to compete on an equal basis with all of the states that surround us. Not just Louisiana and Arkansas, but also Oklahoma and New Mexico and just about all other jurisdictions that have an active and healthy thoroughbred horse industry. We desperately need the stimulus that will come from the adoption of Historical Racing to save the Texas thoroughbred horse industry. We must remember that it was not that many years ago that Alysheba, a great Texas bred thoroughbred, was horse of the year. Now, our tracks struggle just to remain open, much less pay the kind of purses that are supplemented by expanded gambling in all of the surrounding states.

Just from my own small farm in Northeast Texas, I find that I now have to board my mares in adjacent states and obtain their accreditation to have any opportunity of breaking even on the costs of continuing in the horse industry. Without adoption of supplemental expanded gambling, I fear that Texas racing will simply be a part of the great former history of Texas within the next several years.

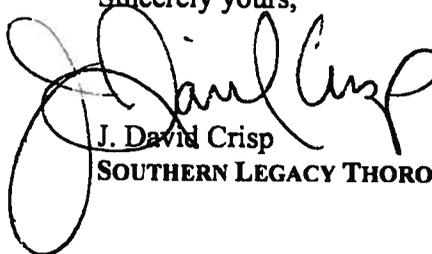
We cannot afford to lose this vital industry that is so identified with the State of Texas. We cannot afford to lose the jobs associated with this vital industry. But we need people like you to step up and make a decision to support the Texas thoroughbred horse industry by adopting rules which will allow and permit historical racing at the pari-mutuel tracks in Texas.

Texas Racing Commission
July 15, 2014
Page 2

I hope that this plea does not fall on deaf ears and that you will take a stand and do what is right for Texas and for the Texas racing industry.

Kindest regards.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. David Crisp". The signature is fluid and cursive, with the first name "J." and last name "Crisp" clearly visible. It is positioned above the printed name and title.

J. David Crisp

SOUTHERN LEGACY THOROUGHBREDS, LLC

JDC:cam

July 16, 2014

Texas Racing Commission
Chuck Tout, Executive Director
P O Box 12080
Austin Texas, 78711

Dear Commissioners,

I am writing in support of you approving the rules regulating pari-mutuel wagering on historical racing.

Our family has been in the horse and cattle business since the mid 1800's. My brother and I love horses and horse racing. We have been racing since about 1980. It has been very difficult to stay in the business of horse racing in Texas.

Texas doesn't compete with our neighboring states. The difference on purse money is miles apart. A day race in Texas pays \$3,500 to \$4,500 split up. If you win 1st place, you take \$1,600. In LA or OK, the day purse is \$17,500; 1st place takes home \$10,000 more or less. This has forced us to race out of state.

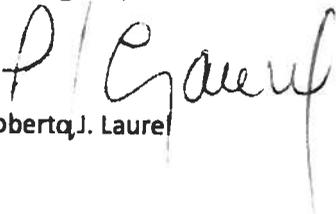
All the money that leaves Texas because it's not feasible to run here is only benefiting other states.

If you go to the tracks that are just a few minutes from Texas, you will see 70% to 80% of the vehicles in their parking lots are from Texas.

The spirit of Texas has always been to lead!! Why is our state forcing horse people to leave our home state??

Please vote to improve the horse industry in TEXAS for TEXANS.

Best regards,


Robert J. Laurel

PETITIONS

Summary of Public Comments on Proposed Rules Related to Historical Racing

Multiple proposed rule changes related to historical racing at licensed Texas horse and greyhound racetracks were published in the Texas Register for a 30-day public comment period on June 27, 2014. Though the public comment period officially ran from June 27 through July 27, TxRC staff actually began accepting comments on June 10 and, since July 27 fell on a Sunday, staff continued to accept comments through July 28. A total of nearly 13,000 comments were received during this period in the form of letters, emails, faxes and petition signatures. Approximately 9,900 comments (76 percent) were in favor of the proposed rules with around 3,100 (24 percent) opposed. This total does not include the comments compiled by TxRC General Counsel Mark Fenner in the "Comments on Proposed Historical Racing Rules." The comments in that document are primarily from legislators, industry organizations, racetracks, economic development organizations and municipalities. The vast majority of the comments summarized in this document (about 95 percent) were form letters and emails, and petition signatures. Please see below for examples and totals, followed by a summary of comments received at the Public Comment Hearing held July 17.

Lone Star Park Petition (hard copy): 3,407 signatures (for)

Support Horse Racing in Texas

Petition Background

The horse racing industry in Texas has suffered tremendous declines in the last ten (10) years due to the lack of incentives for racing in Texas that surrounding states have provided to their racing industry. This has resulted in the surrounding states having higher purses, which has resulted in the migration of horses and jobs out of Texas to these other states. The Texas Racing Commission has proposed new rules to provide for historical racing to be conducted at Texas race tracks. Historical racing is pari-mutuel wagering on live horse races conducted in the past. Historical racing, if approved, will provide substantial increases in purses for live racing conducted in Texas. This will bring horses and jobs back to Texas and promote economic development in Texas agricultural, horse breeding, horse training, greyhound breeds, and greyhound training industries as well as other racing related industries.

What can you do to support horse racing in Texas?

Please sign the petition!

Petition:

The Texas Racing Commission has proposed rules to provide for pari-mutuel wagering on historical racing at Texas race tracks in order to provide higher purses for live racing conducted in Texas. This will promote economic development and jobs in the Texas agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industries, as well as other racing related industries. I support the Texas Racing Commission proposed rules that permit historical racing in Texas.

Sign the Petition



SUBJECT: "Please Oppose..." emails: 2,373 (opposed)

Please oppose the proposal to legalize "Historical Racing" at Texas racetracks.

To info

 We removed extra line breaks from this message.

Dear Texas Racing Commission:

As a Texas resident, I am writing to express my strong opposition to the proposal to legalize "Historical Racing" slot machines at Texas racetracks. If this proposal is adopted, the cruelty of Greyhound racing will be subsidized with millions in slot machine gambling profits.

Greyhound racing is dying in Texas. Largely because the public recognizes Greyhound racing as intolerably cruel, proponents of this inhumane "sport" are desperate to remove it from the free market and subsidize it with profits from other forms of gambling.

Greyhounds at Gulf Greyhound Park, Texas's only currently operating track, spend their racing lives confined, suffer terrible injuries and often are killed once they are no longer profitable. Since 2008, more than 2,000 Greyhound injuries have been reported, including 86 Greyhounds who died or were euthanized.

Subsidizing this nonviable and inhumane industry is bad public policy.
Please reject the proposal to legalize "Historical Racing."

Thank you for your consideration of my position.

Sincerely,

Nicole Parks

TQHA Petition (hard copy): 1,785 signatures (for)

Support Horse Racing in Texas

Petition Background

The horse racing industry in Texas has suffered tremendous declines in the last ten (10) years due to the lack of incentives for racing in Texas that surrounding states have provided to their racing industry. This has resulted in the surrounding states having higher purses, which has resulted in the migration of horses and jobs out of Texas to these other states. The Texas Racing Commission has proposed new rules to provide for historical racing to be conducted at Texas race tracks. Historical racing is pari-mutuel wagering on live horse races conducted in the past. Historical racing, if approved, will provide substantial increases in purses for live racing conducted in Texas. This will bring horses and jobs back to Texas and promote economic development in Texas agricultural, horse breeding, horse training, greyhound breeds, and greyhound training industries as well as other racing related industries.

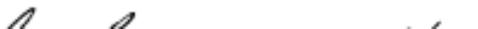
What can you do to support horse racing in Texas?

Please sign the petition!

Petition:

The Texas Racing Commission has proposed rules to provide for pari-mutuel wagering on historical racing at Texas race tracks in order to provide higher purses for live racing conducted in Texas. This will promote economic development and jobs in the Texas agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industries, as well as other racing related industries. I support the Texas Racing Commission proposed rules that permit historical racing in Texas.

Sign the Petition



Texas Thoroughbred Assoc. Online Petition: 888 signatures (for)

Growing Thoroughbred Racing in Texas

About this petition

The Texas Racing Commission has proposed rules to provide for pari-mutuel wagering on historical racing at Texas race tracks in order to provide higher purses for live racing conducted in Texas. This will promote economic development and jobs in the Texas agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industries, as well as other racing related industries. I support the Texas Racing Commission proposed rules that permit historical racing in Texas.

SUBJECT: "Save Texas Horses" emails: 829 (for)

 Save Texas Horses

To info

Dear Main Office Racing Commission,

Thank you for considering adopting rules on Historical Racing and following in the footsteps of Arkansas and Kentucky to embrace a technology that will create jobs and generate additional purse money. It will allow Texas tracks to remain competitive and in-step with the latest advancements in the industry.

As you are keenly aware, the Texas horse industry is in sharp decline. Historical Racing can potentially generate millions of dollars in economic activity and create thousands of new permanent jobs. We need our Commission to promote the Texas racing and agricultural industries. These are powerful economic engines that benefit all Texans.

Historical Racing allows patrons to wager on previously run races and operate just like current betting terminals used to wager on races at other racetracks - like the Kentucky Derby at Churchill Downs. We've watched as Kentucky and Arkansas purses have grown substantially as a result of allowing historical racing. And just recently, Keeneland, the 2015 Breeders Cup host, has gained approval to conduct historical racing. Keeneland is building a multi-million dollar facility that will create jobs and add significant purse money to their live meet.

The Texas racing industry deserves the same opportunity.

As a Texas racing fan and supporter, I am grateful for your careful consideration of this matter. The opportunity to revive a significant Texas industry is in your hands, and I trust that you will handle it with care.

Sincerely,

SUBJECT: "Vote "NO" ..." emails: 548 (opposed)



Sat 7/26/2014 10:48 AM

The Humane Society of the United States <humanesociety@hsus.org>

Vote "No" on Instant Racing Machines

To info

 We removed extra line breaks from this message.

Jul 26, 2014

Texas Racing Commission

Please vote "No" on the proposal to legalize "Instant Racing" slot machines at Texas racetracks. Greyhound racing is cruel and inhumane and should not be subsidized with slot machine profits. Despite what racetrack owners claim, these machines are not a form of pari-mutuel betting.

Hundreds of greyhounds endure lives of confinement. They are kept in warehouse-style kennels in small cages that are barely large enough for them to stand up or turn around. More than 2,000 greyhound injuries have been reported at Gulf Greyhound Park since 2008, including 86 greyhounds that died or were euthanized. Between 2007 and 2012, gambling on live dog racing in the state declined by 61 percent. Please do not vote to prop up this dying industry in Texas.

Thank you for your consideration and compassion.

Sincerely,

LSP Petition (online): 526 signatures (for)

The screenshot shows a web browser window with the URL <http://www.change.org/petitions/texas-racing-commission>. The page title is "Approve Rules for Historical Racing" and it is a petition by Lone Star Park. The main text of the petition reads: "The horse racing industry in Texas has suffered tremendous declines in the last ten (10) years due to the lack of incentives for racing in Texas that surrounding states have provided to their racing industry. This has resulted in the surrounding states having purses, which has resulted in the migration of horses and jobs out of Texas to these other states. The Texas Racing Commission has proposed new rules to provide for historical racing to be conducted at Texas race tracks. Historical racing is pari-mutuel wagering on live horse races conducted in the past. Historical racing, if approved, will provide substantial increases in purses for live racing conducted in Texas. This will bring horses and jobs back to Texas and promote economic development in Texas agricultural, horse breeding, horse training, greyhound breeds and greyhound training industries as well as other racing related industries." On the right side, there is a "Sign this petition" button with 526 supporters and a progress bar. Below the button are fields for "Street Address", "City", "State", "Zip Code", and "Why is this important to you? (Optional)". There are also checkboxes for "Display my signature on Change.org" and "Keep me updated on this campaign and others from Lone Star Park".

Licensee Letters: 515 (for)

June 18, 2017

Mr. Chuck Trout, Executive Director
Texas Racing Commission
8505 Cross Park Dr, #110
Austin, Tx 78754

Commissioners,
Thank you for allowing public comment on rules to allow pari-mutuel wagering on historic races at our Texas tracks. As a TX licensee, I urge you to please finally adopt those rules as published in the Texas Register. I believe you have the regulatory authority to do that and I sincerely appreciate your efforts to help the racing, agricultural and entertainment industries in Texas.

Respectfully,

Signature

Printed Name

License Number

Greyhound Racing Fan Letters: 483 (for)

June 28, 2014

Mr. Chuck Trout, Executive Director
Texas Racing Commission
P. O. Box 12080
Austin, TX 78711

Commissioners:

Thank you for allowing public comment on rules to allow pari-mutuel wagering on historic races at our Texas tracks. As a greyhound racing fan, I urge you to please finally adopt those rules as published in the Texas Register. I believe you have the regulatory authority to do that and I sincerely appreciate your efforts to help the racing and entertainment industries in Texas.

Respectfully,

[Redacted Signature]

Signature

[Redacted Signature]

Printed Name

[Redacted Name]

Address

Horsemen Letters: 467 (for)

Texas Racing Commission
Chuck Trout, Executive Director
PO Box 12080
Austin, TX 78711

JUN 28 14 10 2:10

Dear Commissioners,

I'm a Texas Horseman writing in support of the rules the Commission is considering to allow pari-mutuel wagering on historical races. Historical Racing will save the jobs and livelihoods of thousands of Texans and small businesses across the state, such as veterinarians, farriers, feed suppliers, farmers, and many more.

Oaklawn Park in Arkansas has increased its purses every year since the installation of Historical Racing terminals, and Kentucky Downs more than doubled purses last year after Historical Racing's first full year of operation at the track.

The Texas horse industry is relying on your belief that ours is an industry worth preserving. We thank you in advance for your positive consideration of these rules.

Please feel free to contact me if you have any questions.

Horse Racing Fan Letters: 274 (for)

June 18, 2014

Mr. Chuck Trout, Executive Director
Texas Racing Commission
8505 Cross Park Dr, #110
Austin, Tx 78754

Commissioners,

Thank you for allowing public comment on rules to allow pari-mutuel wagering on historic races at our Texas tracks. As a horse racing fan, I urge you to please finally adopt those rules as published in the Texas Register. I believe you have the regulatory authority to do that and I sincerely appreciate your efforts to help the racing, agricultural and entertainment industries in Texas.

Respectfully,

[Redacted Signature]

Signature

[Redacted Name]

Printed Name

[Redacted Address]

Address

Texas Arabian Breeders Assoc. Online Petition: 165 signatures (for)

Growing Horse Racing in Texas

About this petition

The Texas Racing Commission has proposed rules to provide for pari-mutuel wagering on historical racing at Texas race tracks in order to provide higher purses for live racing conducted in Texas. This will promote economic development and jobs in the Texas agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industries, as well as other racing related industries. I support the Texas Racing Commission proposed rules that permit historical racing in Texas.

Concerned Texan Letters: 77 (for)

July 2014

2014 JUL 20 AM 9:55

Dear Commissioners,

I have learned that the Texas Racing Commission is in the process of considering rules that would allow pari-mutuel wagering on historical racing. I would like to go on the record as being supportive of the proposed rules! I understand that Historical Racing allows patrons to wager on previously run races and operate just like current betting terminals used to wager on races at other racetracks - like the Kentucky Derby at Churchill Downs. This is sort of thing that I believe our state needs.

I have learned that Arkansas, Kentucky and other states have adopted this type of wagering and it has added much needed money to their racing industries. I know that if we had strong a racing industry Texas would be a leader in the production of race horses. It only seems logical that you give the Texas racing industry a fighting chance to compete. A healthy racing industry would mean more jobs in my community and more dollars spent in the local economy.

I want to thank you for your efforts to embrace this technology. As a concerned Texan, I urge you to vote in favor of adopting the rules to allow Historical Racing.

Thank you



TQHA Petition (online): 48 signatures (for)

Approve Rules for Historical Racing

Petition by
Texas Quarter Horse Association

The Texas Racing Commission has proposed rules to provide for pari-mutuel wagering on historical racing at Texas race tracks in order to provide higher purses for live racing conducted in Texas. This will promote economic development and jobs in the Texas agricultural, horse racing, horse breeding, horse training, and other related industries. I support the Texas Racing Commission proposed rules that permit historical racing in Texas.

To:
Robert Elrod, Texas Racing Commission

I support the proposed rules for historical racing in Texas and urge the Texas Racing Commission to adopt these rules. I believe these rules will have a positive impact on Texas racing and related industries.

Sincerely,
[Your name]

Miscellaneous Comments in Favor: 410

Miscellaneous Comments Opposed: 161

June 17, 2014 Public Comment Hearing: 63 comments received (58 in favor, 5 opposed)

Testifying Witnesses in Order of Appearance		
Name	Organization	Position
Andrea Young	Sam Houston Race Park	For
Dr. Tommy Hayes	Texas Horsemen's Partnership	For
Jan Haynes	Texas Horsemen's Partnership	For
Mary Ruyle	Texas Thoroughbred Association	For
Val Clark	AQHA/TQHA	For
Ed Wilson	Texas Arabian Breeders Association	For
Nick James	Texas Greyhound Association	For
James Deatherage	Producers Cooperative	For
Jacquelyn Rich, DVM	Texas HORSE	For
Bob A. Gaston	Texas Quarter Horse Association	For
Sally Briggs	Gulf Greyhound Park	For
Stephen Fenoglio	Texas Charity Advocates	Against
Lisa Stevens	Texas Humane Legislative Network	Against
Jim Helzer	Self	For
Dallas Keen	Horsemen	For
Michael S. Marke	Horse racing fans	For
C. Michael Bingaman	Race Track Chaplaincy	For
Steve Bresnen	Bingo Interest Group	Against

Non-testifying Witnesses		
Name	Organization	Position
Kris Fullerton	Thoroughbred Racing	For
Katie Jarl	Humane Society	Against
Margaret Hoffman	Self	Against
Virginia Bonney	Self	For
Chris Corrado	Retama Park	For
Dave Petrich	Sam Houston Race Park	For
Rick Pomposelli	Self	For
Matthew Stahlbaum	Sam Houston Race Park	For
Joe Kerby	Self	For
R.G. Johnson	Sam Houston Race Park	For
Scott Sherwood	Self	For
Charles Graham, DVM	Self	For
Tyler Graham	Texas Quarter Horse Association	For
Bruce Bennett	Lone Star Park	For
John Cardwell	Lone Star Park	For
Denis Blake	Self	For
Howard Phillips	Manor Downs	For
Brandon Barentine	Sam Houston Race Park	For
Alana Morse	Sam Houston Race Park	For
Trey Malachek	Texas Quarter Horse Association	For
Kim Chandler	Belau Oaks Ranch	For
Dr. R.D. Weilburg	Texas Thoroughbred HBPA	For

Charles Wright	Thoroughbreds	For
Jennifer C. Gibbs	Texas Thoroughbred Association	For
William J. Tracy	Eureka Thoroughbred Farm	For
Jean S. Tracy	Eureka Thoroughbred Farm	For
Rob Werstler	Texas Quarter Horse Association	For
Jaime Hill	Save Texas Horses	For
Jamie Nielson	Save Texas Horses	For
Cindy Johnson	Save Texas Horses	For
Mike Steindler	Sam Houston Race Park	For
Tim Conley	Sam Houston Race Park	For
Frank Hopf	Sam Houston Race Park	For
Deborah Schmidt	Sam Houston Race Park	For
Rae Kolajajak	Sam Houston Race Park	For
Donald W. Ahrens	Self	For
Paul L. Watt	Texas Greyhound Association	For
Joe Frey	Texas Greyhound Association	For
David Peck	Texas Greyhound Association	For
Lane Hutchins	Horsemen	For
Tom Hutchins	Self	For
Kay Helzer	Texas Quarter Horse Association	For
Marilyn Helzer	TQHA, TTA, AQHA	For
Edward F. Gardner	Texas Greyhound Association	For
Lewis Jordan	Self	For

**TRANSCRIPT OF
PUBLIC COMMENT HEARING**

	INDEX	
		Page
1		
2		
3		
4	COMMENTS BY ANDREA YOUNG	6
5	COMMENTS BY TOMMY HAYS	11
6	COMMENTS BY JAN HAYNES	12
7	COMMENTS BY MARY RUYLE	13
8	COMMENTS BY VAL CLARK	14
9	COMMENTS BY ED WILSON	17
10	COMMENTS BY NICK JAMES	17
11	COMMENTS BY JAMES DEATHERAGE	21
12	COMMENTS BY JACQUELYN RICH	22
13	COMMENTS BY BOB GASTON	23
14	COMMENTS BY SALLY BRIGGS	24
15	COMMENTS BY STEPHEN FENOGLIO	25
16	COMMENTS BY LISA STEVENS	34
17	COMMENTS BY JIM HELZER	37
18	COMMENTS BY DALLAS KEEN	42
19	COMMENTS BY MICHAEL MARKE	43
20	COMMENTS BY MICHAEL BINGAMAN	44
21	COMMENTS BY STEVE BRESNEN	47
22	Reporter's Certificate	52
23		
24		
25		

1 MR. TROUT: The time is 10:30. Good
2 morning. I'm Chuck Trout. I'm the executive director
3 of the Texas Racing Commission. And with me today is
4 Mark Fenner, the general counsel. Here to assist us
5 and you this morning are Devon Bijansky, our deputy
6 general counsel; Robert Elrod, our public information
7 officer; Cathy Cantrell, our director of licensing; and
8 Jim Blodgett, our director of investigations. Sherri
9 Fisher is the court reporter and she will be preparing
10 a transcript for the Commissioners of everything that's
11 said today at this meeting.

12 Before we begin, I'd like to describe the
13 purpose and procedures for today's hearing. The
14 purpose is to accept public comments on the proposed
15 rule amendments and new rules that the Commission
16 published in the June 27th edition of the Texas
17 Register. These proposals fall into three categories.

18 First, we have a number of proposals
19 related to the authorization of historical racing.
20 While these are listed in the agenda as Items A through
21 X, you are welcome to address these proposals as a
22 group or to identify specific rule proposals and
23 discuss them individually.

24 Second, we have Agenda Item Y which is a
25 proposal that sets out criteria and processes for the

1 issuance and possible extension of a temporary license
2 to conduct racing at a location other than a
3 racetrack's designated location.

4 And finally, we have Agenda Item Z which
5 is a proposal to amend the anabolic steroids rule to
6 more closely follow the national standards established
7 by the Association of Racing Commissioners
8 International.

9 Now I'd like to lay out some of the
10 procedures we're going to follow today. First,
11 everyone must complete and sign a testimony card in
12 order to speak. It's important that you complete the
13 form fully, including the address fields and the
14 sections relating to whether you represent anyone. If
15 you are to speak about the proposals on historical
16 racing, we have some cards in the back that have the
17 specific agenda items premarked for you.

18 Second, you don't have to speak in order
19 to show your position on any of these issues. Each
20 form allows you to indicate whether or not you wish to
21 speak and to indicate whether you are for or against
22 the proposal. If you just want to indicate your
23 position, you can complete the card and turn it in to
24 Ms. Bijansky.

25 Where are you, Devon?

1 MR. FENNER: She's in the hallway
2 outside.

3 MR. TROUT: She's outside? Okay. You
4 are then free to leave if you'd like. Otherwise, you
5 can stay and listen to what's being said. We will
6 report all comments to the Commissioners.

7 If you want to speak, complete a card and
8 bring it up to Mr. Fenner. He's going to manage the
9 cards for me today and so that we can move from speaker
10 to speaker as quickly as possible. To the extent
11 possible, we will take those who are officers or
12 directors of organizations before those who are
13 speaking as individuals. If you have any written
14 materials, you may turn them in to Mr. Fenner.

15 Third, in the interest of allowing as
16 many people to speak as possible, we are going to limit
17 speakers to three minutes. We're going to try to allow
18 everyone to speak who wants to.

19 Fourth, Ms. Fisher, the court reporter,
20 needs to hear you clearly. When you approach the dais,
21 please identify yourself and state for the record
22 whether you represent anyone or any organization.
23 Ms. Fisher is an important member of this team and we
24 may interrupt -- and she may interrupt you if she
25 doesn't hear something that you say. She may want you

1 to repeat, possibly spell your name; but if she doesn't
2 hear something, she may interrupt you and have you
3 repeat.

4 And finally, this is a listening
5 opportunity for us and the Commissioners. We may ask a
6 clarifying question or two so that we are sure we
7 understand your position. But this is not -- the
8 purpose of this hearing is not to have a discussion or
9 a debate. We especially appreciate comments that are
10 insightful and that help inform the Commission about
11 the policy issues or about changes that should be made
12 to these proposals. I appreciate your patience. I'm
13 not sure how long this will take today. But just bear
14 with us.

15 And I'm going to begin by calling Andrea
16 Young, president of the Sam Houston Race Park.

17 Ms. Young, are you prepared?

18 MS. YOUNG: Thank you, Mr. Trout,
19 Mr. Fenner, Commission staff. Good morning. My name
20 is Andrea Young. I serve as the president of Sam
21 Houston Race Park, Valley Race Park, and Laredo Race
22 Park. I'm here today to speak on behalf of those
23 tracks as well as the broader interests of the Class 1
24 horse tracks in Texas, including Lone Star Park and
25 Retama Park, along with the people we employ.

1 I would like to start with a few
2 troubling statistics that I believe provide a lot of
3 context for this rule. In 2005, total handle on Texas
4 live horse races was more than 360 million. By last
5 year, 2013, this number had dropped by nearly
6 two-thirds, to 130 million.

7 Thoroughbred purses have seen similar
8 declines over the last nine years. In 2005,
9 Thoroughbred earned purses were 25 million. Last year
10 they fell to about 14 and a half million.

11 The number of live race dates in the
12 state has also significantly declined. In 2005, there
13 were 192 Thoroughbred race dates between the three
14 Class 1 tracks. In 2013, all three tracks combined
15 held 109 race dates, a nearly 50 percent decline. This
16 number at Sam Houston Race Park fell to just 32 days
17 this year.

18 Quarter Horses have seen similar
19 declines. In 2005, Quarter Horse earned purses were
20 6.8 million; last year, 4.1 million, a 40 percent
21 decline.

22 Jobs related to the racing industry are
23 also declining. We've seen this firsthand at the Class
24 1 tracks and it is best illustrated by the Commission's
25 issuing of occupational licenses. There were over

1 12,000 occupational licenses granted at horse and
2 greyhound tracks in 2005. Last year this number dipped
3 below 6,000.

4 The decline in the racing industry is
5 because Texas purses simply are not competitive with
6 purses in our neighboring states like Louisiana,
7 Oklahoma, and New Mexico. Tracks in these adjacent
8 states have lured away our customers and most of our
9 good horses as well as the breeders and other key
10 players in our industry.

11 As you can see, our tracks have gone
12 downhill while racetracks in surrounding states have
13 prospered. The reason is the large amount of cash
14 generated by expanded gaming options giving those
15 tracks the ability to create big purses, which are the
16 lifeblood of our industry.

17 In adjacent states purses are often two
18 to three times greater on an average daily basis than
19 those offered in Texas tracks. In 2013, purses in our
20 neighbor states with less than half of our state's
21 population generated more than 200 million dollars in
22 purse money, a far cry from the numbers I just
23 described to you. The results of this disparity are
24 startling. Until this problem is addressed, the
25 industry will continue to suffer.

1 We are excited about the prospect of
2 historical racing here in Texas, which we expect to
3 significantly increase our purses. Higher purses will
4 bring better animals back to our tracks and will
5 increase attendance and handle on our live races.

6 With the legal restrictions we have here,
7 we believe that historical racing technology provides
8 the best opportunity to give the Texas racing industry
9 a fighting chance to survive in the near term.

10 Historical racing is a natural technological extension
11 of the existing pari-mutuel wagering on horse and
12 greyhound races. It will not expand the gambling
13 footprint here in Texas, but it will give Texas tracks
14 a better opportunity to compete with the neighboring
15 states than we currently have.

16 I'd like to point to some of the
17 experiences in other states that have adopted
18 historical racing. For example, in Kentucky, Kentucky
19 Downs doubled its purses in 2013 compared to 2012. The
20 historic Red Mile racetrack located in Lexington,
21 Kentucky, announced plans just a few months ago that it
22 intends to develop a new 25-million-dollar facility for
23 historical racing and create 150 new and permanent
24 jobs. Keeneland, which will host the 2015 Breeders'
25 Cup, is also now building a multi-million-dollar

1 facility to house its historic racing operation and is
2 expected to create 60 to 75 new permanent jobs. And
3 these are just the jobs at the racetracks.

4 We expect similar results in Texas, but
5 on a larger scale. We have done some preliminary
6 calculations based on these initial results in Kentucky
7 and we expect purses in Texas to increase by about 40
8 percent if historical racing is permitted. That's
9 nearly 12 million dollars annually to horsemen and
10 breeders.

11 There will be significant economic
12 development benefits for the state as well. Internally
13 we have used standard economic input and output
14 analysis to estimate some of these impacts. We
15 estimate that the total economic activity in the state
16 will increase by 500 to 600 million dollars. Increased
17 economic activity is the demand change immediately
18 associated with a new activity, for example, the amount
19 generated for purses at the racetracks, but also the
20 meal purchased on the way to a racetrack made by a
21 visitor or a cab fare by a visitor paid to be
22 transported to the racetrack. We also estimate that
23 historical racing will add somewhere between 3800 and
24 5,000 permanent jobs in Texas.

25 Please note these estimates represent

1 long-term impacts and do not include the short-term
2 initial benefits to be expected from things like new
3 capital expenditures.

4 We also expect historical racing to
5 reinvigorate the Texas breeding industry. The horsemen
6 can speak better to this than I, but we know with
7 certainty that breeding will increase as a result of
8 racing -- better racing purses for Texas horsemen.

9 In conclusion, I do want to emphasize
10 that historical racing is not any sort of home run for
11 the racetracks. Authorizing historical racing alone
12 will not resolve the struggles this industry has faced
13 and will continue to face due to competition from our
14 neighbor states. But on behalf of the track interests
15 in this room, we strongly support adopting the proposed
16 rules to help our industry and to help the Texas
17 economy.

18 With that, I'd be happy to answer any
19 questions you might have.

20 MR. TROUT: Thank you.

21 MS. YOUNG: Thank you.

22 MR. TROUT: Ms. Jan Haynes and Dr. Hays,
23 Dr. Tommy Hays?

24 MR. HAYS: Good morning. My name is
25 Dr. Tommy Hays and I'm president of the Texas

1 Horsemen's Benevolent and Protective Association.

2 And --

3 MS. HAYNES: And I'm Jan Haynes,
4 president of the Texas Thoroughbred HBPA.

5 MR. HAYS: And as you know, together we
6 make up the Texas Horsemen's Partnership, which we are
7 the organization that the Commission recognizes as the
8 official organization representing the horsemen.

9 And on behalf of the 4300 members that we
10 have, horsemen and horsewomen, we urge the Commission
11 to adopt the rules as presented earlier. And we
12 really -- we both -- we have already had testimony in
13 the record of letters, but we just wanted to say we're
14 thoroughly in this together, the horsemen are, and
15 we're committed to helping the Commission any way we
16 can.

17 So if you have any questions, we'd be
18 happy to answer them.

19 MR. TROUT: Ms. Haynes?

20 MS. HAYNES: We both feel the same way on
21 behalf of our membership. We're speaking for them.

22 MR. TROUT: Thank you.

23 MS. HAYNES: Thank you.

24 MR. TROUT: Mary Ruyle?

25 MS. RUYLE: Good morning.

1 MR. TROUT: Good morning.

2 MS. RUYLE: My name is Mary Ruyle and I'm
3 the executive director of the Texas Thoroughbred
4 Association. We currently have over 1100 members and
5 I'm here to speak on their behalf.

6 It is well-known that the Texas horse
7 racing and breeding industry is at a serious
8 competitive disadvantage with our neighbor states,
9 threatening its viability as reflected in serious
10 declines across the board from wagering handle to the
11 number of race days and purse levels to the number of
12 horses and people involved.

13 In many of the surrounding states,
14 additional forms of gaming supplement purses and breed
15 programs. As a result, many participants in the Texas
16 horse industry have relocated to these surrounding
17 states in order to grow their business, while those who
18 remain here are struggling simply to stay in business.
19 These hard working men and women face the real
20 possibility that the Texas horse industry will continue
21 to decline if new sources of revenue are not generated
22 and will eventually be driven out of state or out of
23 the industry altogether.

24 We've seen the benefits that pari-mutuel
25 wagering on historical races has provided in Arkansas

1 and Kentucky and believe that it will provide
2 substantial growth in revenue to the Texas horse
3 industry and subsequently to the state through
4 peripheral businesses, such as feed producers,
5 equipment suppliers, farriers, tack stores,
6 veterinarians, and so on.

7 Your support of historical racing is
8 essential to resurrecting the Texas breeding and racing
9 industries and bringing them back from the brink of
10 imploding to assuming a prominent position on the
11 national horse racing scene. We've not had many
12 opportunities such as this and we urge the Commission
13 to adopt the proposed rules and provide us with a tool
14 to stop this decline and rebuild our industry.

15 Thank you. And I'd be happy to answer
16 any questions.

17 MR. TROUT: Thank you, Ms. Ruyle.

18 MS. RUYLE: Thank you.

19 MR. TROUT: Val Clark?

20 MS. CLARK: Thank you. And good
21 morning.

22 MR. TROUT: Good morning.

23 MS. CLARK: My name is Val Clark and
24 today I'm representing the American Quarter Horse
25 Association as a director and I'm representing the

1 Texas Quarter Horse Association as the executive
2 director.

3 The American Quarter Horse Association,
4 as you know, is located in Amarillo and they have
5 executive meetings going on this week, so no one was
6 able to attend. So they have written a letter which I
7 have just put into the record and they have asked me to
8 read that to put this on record. So pardon my reading
9 skills.

10 Dear Mr. Trout and Members of the Texas
11 Racing Commission: The American Quarter Horse
12 Association located in Amarillo, Texas, is the world's
13 largest equine breed registry and membership
14 organization with nearly 300,000 members and some six
15 million horses on the roster. In Texas alone, AQHA's
16 largest state, there are more than 425,000 American
17 Quarter Horses owned by nearly 105,000 Texans.

18 It is AQHA's mission to support
19 initiatives that will promote and enhance the growth of
20 this already popular breed. As it relates to the
21 racing American Quarter Horse, AQHA is committed to
22 increasing opportunities for the breed and to grow
23 purses for owners of racing American Quarter Horses.
24 To that end, AQHA is a strong supporter of the efforts
25 to introduce historical racing terminals at racetracks

1 and other approved facilities in the Lone Star state.

2 As president of AQHA, a Texan, and owner
3 of horses that race in Texas and a breeder of hundreds
4 of American Quarter Horses, I am writing to encourage
5 the Texas Racing Commission to place this matter on an
6 upcoming agenda and to pass this for the benefit of the
7 racing industry in Texas.

8 It is conservatively estimated that Texas
9 racing influences nearly 18,000 jobs directly and
10 indirectly and makes nearly a one-billion-dollar impact
11 on the state's economy. Bringing historical racing
12 terminals to racetracks in selected locations will
13 substantially increase these numbers, make it more
14 attractive to race in Texas, and put Texas back into a
15 competitive situation with the states it borders.

16 Please give the Texas racing industry the
17 resources it needs to be competitive and vote to allow
18 historical racing terminals at Texas racetracks.

19 Sincerely, Johnny Trotter, president of the American
20 Quarter Horse Association.

21 And now as Texas Quarter Horse
22 Association, as Mr. Trotter mentioned, we are the
23 largest affiliate also, not just the largest state, of
24 the American Quarter Horse Association. And Texas
25 Quarter Horse echoes the statement that I just read.

1 Please give the Texas racing industry the resources it
2 needs to be competitive and vote to allow historical
3 racing terminals at Texas racetracks. The Texas
4 Quarter Horse board of directors has voted in support
5 of supporting the rules as submitted and urges the
6 Commission to adopt these rules.

7 Thank you.

8 MR. TROUT: Thank you, Ms. Clark.

9 Ed Wilson?

10 MR. WILSON: I'm president of the --

11 MR. TROUT: Welcome, Mr. Wilson.

12 MR. WILSON: Thank you, Mr. Trout. Ed
13 Wilson, president of the Texas Arabian Breeders
14 Association.

15 We have filed a letter indicating our
16 support for it. And we and the other breeds have seen
17 quite a decline in the last few years in our breeding
18 program and our opportunities to race at the track, and
19 we see this as a way to help us get our economy moving
20 and get our breed going better. We appreciate all the
21 support you will give us.

22 Thank you very much.

23 MR. TROUT: Thank you, Mr. Wilson.

24 Nick James?

25 MR. JAMES: I'm Nick James, executive

1 director of the Texas Greyhound Association. I
2 appreciate the opportunity to get up today.

3 The TGA represents greyhound breeders in
4 Texas as well as kennel owners, workers, and other
5 interested parties in greyhound racing and breeding.
6 When pari-mutuel greyhound racing started, the tracks
7 were full of patrons and each track had a full
8 allotment of kennels. However, once other states
9 permitted new forms of gaming at tracks and casinos,
10 patronage reduced substantially.

11 The TGA board fully endorses the rule
12 changes to include instant racing terminals in
13 anticipation of increased purses, more breeding in
14 Texas, and year-round racing at the two tracks where it
15 doesn't presently occur.

16 TGA members work under rules and policies
17 designed by the National Greyhound Association, which
18 has commendably established high standards for racing
19 greyhounds. These cover every aspect of greyhound
20 care, including housing, nutrition, exercise,
21 sanitation, and management, and are based on sound
22 veterinary science. Anyone found in violation of NGA
23 standards is banned from racing activities for life and
24 members of the TGA and NGA are prohibited from doing
25 any business with such person.

1 The TGA is proud to work with eight
2 adoption groups to find homes for retired racers. We
3 also plan to make sure, by inspections, that these
4 groups adhere to the same standards breeders and others
5 in the greyhound industry must abide by. To my
6 knowledge, no outside group purportedly concerned with
7 greyhound welfare has ever contacted the TGA to offer
8 any assistance in any capacity.

9 The TGA employs two NGA-approved
10 inspectors who assess farms and provide reports to the
11 Commission and the NGA. The Commission vet and your
12 head of inspections have accompanied our inspectors to
13 verify that appropriate inspections are always taking
14 place.

15 As greyhound health and safety is
16 paramount to the TGA, we work closely with track
17 officials to be sure racing conditions are safe. We
18 maintain weekly contact with them and hold monthly
19 meetings at the track. Track safety has improved and
20 injuries have been reduced since we began this intense
21 inspection program three years ago. Now less than one
22 percent of all racing starts result in injuries, and
23 most of those dogs returned quickly. For those dogs
24 unable to return, we work with the previously mentioned
25 adoption groups and kennel owners and breeders to find

1 comfortable and permanent homes for them. Therefore,
2 we strongly support the allocation of revenue proposed
3 under the rule change to be used for treatment and
4 rehabilitation of injured greyhounds.

5 In contrast to this, the ASPCA seeks to
6 end greyhound racing despite the positives that it
7 creates for Texas. The ASPCA has had significant
8 issues that raise serious questions about its motives
9 and effectiveness. As an example, in 2009 the ASPCA
10 raised 116.5 million in California alone, only to spend
11 a paltry .3 percent, or \$352,000, on its activities in
12 California in 2010. In addition, the ASPCA recently
13 settled a racketeering lawsuit for nearly 10 million
14 dollars.

15 It is difficult to understand why the
16 Racing Commission, an organization dedicated to the
17 care of the greyhound racing industry, would listen to
18 such a troubled group that doesn't care about the
19 health and welfare of either greyhounds or the industry
20 that supports them.

21 Thank you.

22 MR. TROUT: Thank you.

23 I might need some help with the next
24 name. Mr. James D-e-a-t-h --

25 MR. DEATHERAGE: I'll help you out with

1 it.

2 MR. TROUT: I'm sorry.

3 MR. DEATHERAGE: I'll help you out with
4 it. I'm James Deatherage.

5 MR. TROUT: Thank you very much.

6 Good morning, sir.

7 MR. DEATHERAGE: Thank you. I am James
8 Deatherage and I'm here as a supporter of the horse
9 industry. I appreciate the opportunity to make a few
10 comments this morning.

11 I am an employee of an agricultural
12 cooperative that supplies inputs to farmers and
13 ranchers that, in turn, sources those crops from Texas
14 farmers and manufactures those crops into value-added
15 products, i.e., horse feeds. Our cooperative is also a
16 provider of many product lines that are essential to
17 the needs of the horse industry.

18 This issue is more than a horse issue.
19 It is also an agricultural issue. Many individuals are
20 oblivious of the journey that Texas-raised grains take
21 from the field to the feed troughs. Many are unaware
22 of the amounts of inputs that high-end hay producers
23 must purchase to grow the amount of hay needed from
24 horse owners and trainers.

25 The horse industry is a high maintenance

1 industry. The horse industry is a high input
2 industry. The horse industry is not only the greatest
3 example of trickle-down economics, but for horse owners
4 it is the Niagara Falls of economic redistribution.

5 As I understand it, this proposal is not
6 expanding the footprint, but enhancing the product
7 already offered at pari-mutuel tracks. If the end
8 result is more horses are bred, raised, and raced in
9 the State of Texas, then I believe it is our job and
10 duty as horse lovers, horse enthusiasts, and horse
11 owners to work towards that goal. If the end result is
12 that more horses are bred, raised, and raced in Texas,
13 then I believe it is our job as Texans to work towards
14 that goal.

15 Texas has always been an agricultural
16 leader, whether that be cattle, cotton, corn, or
17 horses. And horses are a powerful economic engine. So
18 why now should we take a back seat to our neighboring
19 states?

20 Thank you for the opportunity.

21 MR. TROUT: Thank you, sir.

22 Jacquelyn Rich? Dr. Rich?

23 MS. RICH: Good morning. My name is
24 Jacquelyn Rich and I serve as the president of Texas
25 Horse this year. You have a letter in your file

1 already. We are in support of this.

2 You have heard from many of our
3 organizations already this morning. I will not
4 reiterate that. I just wanted you to know we have
5 other organizations not represented today, the National
6 Cutting Horse Association, the American Paint Horse
7 Association, that are also -- we have all met and
8 agreed to write this letter in support of promulgating
9 these rules for historical racing. We think it's very
10 important that that be done in this next Commission
11 meeting.

12 We have approximately -- and my figures
13 are not exact -- about a 350,000-dollar membership --
14 350,000 membership, not dollars. So that's how many
15 people we are representing today asking for you to move
16 this forward.

17 Questions?

18 MR. TROUT: No, ma'am. Thank you,
19 Dr. Rich.

20 Bob Gaston?

21 MR. GASTON: My name is Bob Gaston. I'm
22 here -- I'm on the executive board of the Texas Quarter
23 Horse Association. I'm also a breeder and racer of
24 Quarter Horses in Texas.

25 I won't repeat everything that everybody

1 said because they pretty well covered the bases, except
2 that as a -- in competition with the other states, I
3 have one horse that's a Cal-bred and the breeder awards
4 for that horse were \$32,000 last year. I have two
5 horses in Louisiana that are Louisiana-bred and I
6 received \$31,000 in breeder awards. I have six or
7 seven Texas-bred horses and I got about \$3,000 last
8 year.

9 So I know this is not a cure for that,
10 but any little thing, we need every patch we can get.
11 And this would be something that would enhance it
12 enough to encourage more people to breed in Texas.

13 Thank you very much.

14 MR. TROUT: Thank you, sir.

15 Sally Briggs?

16 MS. BRIGGS: Good morning. And thank you
17 for this opportunity. I am Sally Briggs and I'm
18 general manager at Gulf Greyhound Park and operations
19 manager for Gulf Coast Racing and Gillespie County Fair
20 & Festival Association.

21 We have reviewed the proposed rules and
22 regulations for historical racing and we appreciate the
23 time that the Commissioners, the Commission staff, the
24 tracks, and breed organizations put in to develop
25 them. We strongly support these rules. We look

1 forward to being able to add another venue that will
2 benefit not only our racetracks but also the greyhound
3 and horse owners and breeders. We urge the
4 Commissioners to adopt these rules.

5 Thank you.

6 MR. TROUT: Thank you.

7 Stephen Fenoglio, is it? Did I pronounce
8 that right?

9 MR. FENOGLIO: It's Fenoglio. The G is
10 silent. And if I may, I have a couple of handouts for
11 you, Mr. Executive Director.

12 So if I may.

13 MR. TROUT: Yes, sir.

14 MR. FENOGLIO: For the record, my name is
15 Stephen Fenoglio. I'm an attorney in Austin. I'm a
16 board member of the Texas Charity Advocates. I'm here
17 representing the Texas Charity Advocates, which is a
18 group of primarily nonprofits, over 300, who conduct
19 charitable bingo in Texas. I'm also representing a
20 number of those individual charities. I also represent
21 the Bingo Interest Group, which is a group of
22 commercial lessors that lease the charitable bingo
23 halls out.

24 We recognize the dire straits of the
25 racing industry. Charitable bingo has suffered as

1 well. So it is with reluctance that we're here today
2 to oppose the rules -- and I say "the rules". Every
3 rule with the exception of the drug testing rule. We
4 take no position on that one -- because we know that --
5 in our opposition, we know that the racing industry is
6 suffering and has suffered, no question about it.

7 But what we have determined is, without
8 question, if this -- if these series of rules are
9 adopted as drafted, it will devastate charitable
10 bingo. It will put many halls out of business. We
11 estimate that within five years, 90 percent of the
12 halls in the state will either close their doors or be
13 a small fraction of what they were.

14 And the reason is that these machines,
15 the historical racing, operate and appear to be a slot
16 machine and our customers will leave those halls to go
17 to those locations that have these machines, without
18 question.

19 So I want to start, though, first with we
20 don't believe there's any statutory authority to do
21 what the Commission proposes to do. We believe it's
22 the Texas Racing Act for a reason; and obviously the
23 races that are featured, most of the races that are
24 featured -- we've looked at some of the machines in
25 Kentucky and Arkansas -- are featuring races that

1 weren't run in Texas and we think you don't have the
2 authority to do what you're proposing to do.

3 It's kind of ironic that only in Austin,
4 Texas, would we talk about live racing with dead horses
5 and dead jockeys. And the reason I say that is if it's
6 a historical race and you go back 15 years, there's not
7 going to be many three-year-old horses alive 15 years
8 after the fact. We believe if you go back 25 or 30
9 years, there are going to be a lot of jockeys that are
10 running the race that's depicted on the historic racing
11 machines that are not living. So it's really not some
12 sort of live racing, if you will.

13 As I said, TCA is represented by
14 charities -- or is comprised of charities all over
15 the state, from veterans organizations to volunteer
16 fire departments, to organizations in Austin, Texas.
17 Family Elder Care, Arc of the Capital Area, nonprofits
18 that have been in longstanding for over 45, 50 years,
19 are publicly funded in part by state, local, county
20 governments, sometimes Federal governments, advocacy
21 groups and the like. And so this rule will devastate
22 charitable bingo. And the two handouts I had highlight
23 that.

24 The first handout is a three-page
25 document and it's the bingo locations near licensed

1 racetracks. And it doesn't include licensed tracks
2 that have not been operated in the last five years.
3 And what you see is we've identified the charitable
4 bingo halls that are within that area of influence,
5 within 10 to 12 miles.

6 The bottom line is -- and we believe all
7 of those halls will close within 60 to 180 days of when
8 these locations start operating these machines. The
9 economic impact of that is easily 42.1 million in those
10 markets. That's the direct impact. We don't know what
11 the long-term impact will be. And the impact that
12 we've identified is comprised of the net proceeds,
13 which is the profit charitable bingo halls operate,
14 their employee salaries, their professional services,
15 CPA's, security companies, lawyers, janitorial
16 services, and the like, prize fees that are paid to the
17 State that in turn are shared with cities and
18 counties.

19 And the second handout is charitable
20 bingo statewide totals, and those same numbers are
21 reflected statewide. And you can see in calendar year
22 2013 that total was 102 million dollars, of which the
23 State and counties got 27.4 million dollars, direct
24 numbers to the State and/or county and city governments
25 where charitable bingo is conducted.

1 And they don't do anything to, quote,
2 "earn" that because all of the license fees that
3 charitable bingo pays more than cover all of the
4 salaries of all the employees at the Texas Lottery
5 Commission that regulates bingo. So this is pure
6 profit to the State and county and city governments.

7 We believe you have a statutory duty to
8 do an economic impact statement and a regulatory
9 flexibility analysis. And the language in the proposed
10 rules is the agency believes there will be no impact.
11 Well, these two charts show clearly there is an impact
12 and it's a devastating impact.

13 Some charities earn over a hundred
14 thousand a year from charitable bingo. Those locations
15 are solely within a 15-mile radius of a licensed
16 racetrack. Those locations will go away and that money
17 will no longer be available to those charitable
18 organizations, which, again, highlights the reason
19 we're here reluctantly.

20 So under Chapter 2006.002 of the
21 Government Code, you have to do those analyses. You
22 have not done so. The local employment impact under
23 Section 2001.022 has not been done. And we know there
24 were people -- those people -- by the way, there are
25 about 11,700 people employed directly by the charities

1 in charitable bingo. Those jobs are gone.

2 And I say if this rule -- this series of
3 rules are adopted and rolled out, 90 percent of the
4 bingo halls are within a 50-mile radius of where we
5 think the tracks either are or can be located because,
6 as you know, there are several licenses that are on the
7 shelf, with no tracks built.

8 One of your rules allows them to open a
9 facility for two years, up to two years, at a new
10 location. And no big surprise, we believe those
11 facilities won't be located in Monahans, Texas. They
12 will be located in Midland or Lubbock or Dallas or Fort
13 Worth or Houston, where the people are. That's where a
14 reasonable person would locate those on-the-shelf
15 licenses where there's no racetrack.

16 So the bottom line on the second table,
17 which is the statewide totals, is we believe 90 percent
18 of those numbers will go away. There will still be
19 charitable bingo if your rule were adopted. It will be
20 a small position from where it is today. In small
21 towns there will still be charitable bingo. There may
22 be in the Dallas-Fort Worth area, where Lone Star Park
23 is. There may still be some very small bingo halls,
24 but they won't be doing anything near. Austin is the
25 same way.

1 And the reason we took the 50-mile radius
2 is pretty simple. We know today that the Indian nation
3 tribe at Exit 1 in Oklahoma regularly sends buses to
4 Dallas, Fort Worth. They even send buses to pick up
5 customers in Austin and San Antonio. So a 50-mile
6 radius, it's easy to identify that the charitable bingo
7 footprint will be absolutely devastated if this rule is
8 adopted.

9 And the reason that's so is because of
10 the following: Let's say you've got a hundred
11 customers today. The rule is adopted. There are 500,
12 5,000 machines. There's no limit on the number of
13 machines that a facility can have under the proposed
14 rule. So those hundred customers become 70 because
15 some of those customers will automatically flock only
16 to the racetrack. They'll still be wanting -- some of
17 those customers will still be wanting to play bingo;
18 but instead of spending 30 to 50 dollars a session,
19 they'll spend half of that. So you've got 30 percent
20 fewer customers and they're spending half of what they
21 were.

22 Ask any business with the inventory and
23 the costs involved to open a bingo hall, an
24 8,000-square-foot facility. Ask any business, "Are you
25 going to survive if your revenues are cut in half?"

1 Not many people will. The margins aren't there for
2 charitable bingo. So that's why we take a 50-mile
3 radius.

4 Initially, the halls within 10 to 15
5 miles will go out of business within 30 to 180 days,
6 without question, once the machines are placed. The
7 halls that are located a further distance will be a
8 slower death, but they'll die, no question about it.

9 So when we look at the statewide
10 totals -- and I did four years so you have an idea.
11 And you can see under Column B is the net proceeds.
12 That's statewide for all charitable organizations.
13 That's their profit that they put to their bottom line
14 and are used for additional operations. The salaries
15 are Table -- or Item C; professional services, D; and
16 then the prize fees are E.

17 And then Column F is a subset of Column E
18 because, again, about half of that number is shared
19 with -- that's a five percent prize fee for every
20 dollar of bingo prize is paid to the State, half of
21 which is generally shared with the city and county
22 where that hall is located.

23 So then I took -- in Column G, I totaled
24 E through F. And so you can see -- I'm sorry. Column
25 H is Columns B through E. And you can see what those

1 numbers are. So for a four-year period, it's 381
2 dollars -- 381 million dollars. If you figure 90
3 percent goes away, then you've got 10 percent of that,
4 so all of a sudden it's 38 million. All of a sudden
5 the prize fees paid to the State goes from, in that
6 four-year period, 106 million to 10 million.

7 So that's why we think the staff has to
8 do a better job of looking at the impact. I'm sure the
9 staff didn't think about impact of other industries.
10 They were only looking at their racing. But this will,
11 without question, adversely impact and devastate
12 charitable bingo. And we know that because we've
13 looked at other states where they've opened up either
14 this type of gaming or something similar and charitable
15 bingo goes away.

16 So the bottom line, there's a number of
17 analyses that have to be done under Texas law. There
18 are adverse fiscal impact on State and local
19 government. There is a negative adverse impact on
20 small and microbusinesses. And there are negative
21 impacts on employment conditions.

22 As I started out, we're reluctantly
23 here. We recognize the racing industry has serious
24 problems. We do, too. We would like to join hands
25 with the industry in the 2015 session and jointly pass

1 a program like this that will benefit the racing
2 interests as well as charitable bingo.

3 I'll be happy to answer any questions,
4 Mr. Trout.

5 MR. TROUT: Thank you.

6 Lisa Stevens?

7 MS. STEVENS: Good morning.

8 MR. TROUT: Good morning.

9 MS. STEVENS: My name is Lisa Stevens.

10 I'm actually here as a member representative of the
11 Texas Humane Legislation Network. And we are speaking
12 in opposition to what we consider as expansion of
13 greyhound racing in Texas because we believe actually
14 this instant racing option, which is also called
15 historical racing, is truly an instant opportunity and
16 it's not historical in the same sense that we would be
17 seeing it if it was a 30-year-old race or a 40-year-old
18 race.

19 It's going to increase the number of
20 tracks and it's going to increase the frequency with
21 which the dogs are raced. And we believe that it is
22 actually slightly out of the purview of the Commission
23 because we understand that State agencies and
24 Commissions are here to help us clarify rules, not to
25 add or expand their areas of activity. And given that

1 instant racing is not possible in the State of Texas
2 now, or historical racing, this would be an expansion.
3 So we question whether that should actually go to the
4 Legislature. And that is actually our position on it.

5 In addition to it, I would let you know
6 that I am an owner of two greyhounds, both of which are
7 rescued, one of which has a broken right hind leg. And
8 in the greyhound racing industry, broken right rear
9 legs are very, very common because of the severe angle
10 at which the dogs race around the tracks. My dog --
11 when I adopted my dog, she was three years old, so it's
12 been less than a couple of years. I've had her maybe
13 four. I've had her three years, so she's not even six
14 yet.

15 The organization that I work with is
16 working with a specific kennel in Texas, Clear The Way
17 Kennel. And Clear The Way Kennel on its website says
18 that it does everything it can to try to place dogs
19 that don't work out as racing dogs. And I respect that
20 tremendously. They even say that they have options for
21 the dogs to be homed permanently on their farm if there
22 is no option for adoption. This is not a common
23 thing. They actually put out money. If it were
24 common, I probably wouldn't be saying what I'm saying
25 to you right now.

1 I love the breed. It's an incredibly
2 sensitive breed. It's not a piece of livestock. It's
3 truly a companion animal. And while this will
4 unfortunately impact horse racing -- and I have a
5 horse, so I have feelings about that as well and I'm
6 not real happy with that, increasing horse racing,
7 either, because I've worked with a lot of the horses
8 that didn't make it off the tracks -- or made it off
9 the tracks because they couldn't run or were injured.

10 My position -- and I'd like you to
11 consider it -- is that even though the intentions are
12 all good and everybody who comes here comes with their
13 own specific interests in mind, I would say please
14 remember that their interests are monetary. I'm not
15 here for a monetary reason and I don't speak from a
16 monetary standpoint.

17 I do believe that -- we do believe that
18 there is an issue with purview here and whether the
19 Commission should be looking into an expansion of
20 racing. And as a last comment, what I would say is
21 that the greyhound racing association means well and I
22 listened to the gentleman who spoke and I was
23 impressed, very, very impressed, but then it occurred
24 to me -- one thing occurred to me. And this is not
25 even something really that should belong here, but

1 unfortunately it comes up.

2 If they're self-policing, we all know
3 what that means. I mean, no one -- maybe even Abe
4 Lincoln. Nobody self-polices all that well. And when
5 you have a large group of people who are doing
6 something to make a profit, unless there is an
7 objective external organization that ensures that their
8 policies are being adhered to and well administered,
9 self-policing is just a nice way to put, you know,
10 "We'll take care of it. You all don't have to worry
11 about it." And that doesn't settle well enough for
12 me.

13 So I'm here because I really believe that
14 this is an expansion of racing and that probably needs
15 to go to the Legislature and I'd like you guys to give
16 that some consideration.

17 MR. TROUT: Thank you, ma'am.

18 MS. STEVENS: I appreciate you.

19 MR. TROUT: Jim Helzer?

20 MR. HELZER: Good morning. I'm Jim
21 Helzer. And I represent myself and my family.

22 And, Mr. Trout, Mr. Fenner, and staff, I
23 would like to echo all of the comments that those that
24 have spoke in favor of authorizing the -- letting the
25 Texas Racing Commission authorize historical racing

1 terminals at racetracks. Those statistics that were
2 presented this morning are overwhelming, in my opinion,
3 and I think going forward we can renew the horse and
4 greyhound industry in Texas.

5 I think that -- you know, just to give
6 you a small statistic, I think it's deplorable that
7 we've let all of our horses and greyhounds go to other
8 states. Okay? We have lost the best quality of
9 Thoroughbred horses that used to reside in Texas to
10 other states and we need to get all of those good
11 horses back.

12 And being here in Texas for most of my
13 life, I know that Texas likes to be first in
14 everything. We would like to be first in the horse
15 industry. We would like to be first in the greyhound
16 industry. And in order to start making that climb of
17 that very steep hill, we need historical racing
18 terminals at racetracks.

19 I think another thing that we need to
20 consider is where are we globally. Okay? And I'm
21 talking around the world. You know, right now we are
22 nearly at the bottom rung relative to horses. I'm not
23 sure where we are relative to greyhounds. But we have
24 all the management techniques. We have all the
25 skills. We have all the real estate in the world. And

1 I think that if we implement the new terminals, we can
2 get all of those broodmares back, we can get better
3 quality of stallions in the state, and within several
4 years we can be a global force rather than just one
5 that's being mentioned out there.

6 Texas is a very large state. We need to
7 take advantage of everything that Texas can do. We
8 have some small sale companies here in Texas right
9 now. They could grow to phenomenal size. And that's
10 what we want to do.

11 To give you a typical example, I have a
12 stallion farm -- I have a breeding farm in Whitesboro
13 and we breed about 600 mares -- 500 mares a year
14 there. I also have one in Oklahoma that I was forced
15 to leave Texas because everybody wanted to participate
16 in the Oklahoma racing. We breed over 600 mares there
17 every year.

18 I would like to move that operation back
19 to Texas. What that does -- and this is a small
20 number, but it's just the tip of the iceberg -- is I
21 would bring six full-time employees, I would bring 16
22 part-time employees, and I would then purchase \$400,000
23 of feed in Texas rather than in Oklahoma.

24 So the gentleman that spoke representing
25 the agricultural industry, we need to support -- we

1 need this in order to support our agricultural industry
2 in Texas, a very, very important element in this
3 equation.

4 So with that, I think it's very important
5 of the jobs that we can grow to. And I think those
6 statistics have already been mentioned. And I know
7 Governor Perry, with his Economic Development Fund, has
8 increased employment here in Texas. You know, I know
9 Toyota brought in 2500. I'm not sure what are the
10 other numbers.

11 But the horse racing industry will jump
12 to 10,000 employees without any money from Texas
13 Government at all. We'll stand on our own. We'll make
14 the investment. We look forward to making that
15 investment.

16 Relative to the humane treatment of both
17 the greyhounds and the horses, I would like to be taken
18 care of like a racehorse is taken care of. And my wife
19 is a pretty darn good keeper. But I'm telling you that
20 these horses get the best care in the world. I mean,
21 there is no animal taken better care than the horses.
22 I've got several friends in the greyhound industry as
23 well. I know that they take very, very good care of
24 these dogs.

25 You know, another specific example, you

1 know, I have over 400 head of horses. You know, out
2 there running, they get injured. They get injured more
3 so than the ones on the racetrack. Dogs, I've just got
4 three of them. I had one that had a broken leg last
5 year. She was just running and playing. Okay? They
6 get injured. Okay? That's just part of the animals
7 that we love and that we cherish and that we take very,
8 very good care of.

9 Additionally, relative to the charities,
10 I really believe that competition -- I've never seen,
11 in my 74 years, where competition didn't make something
12 better. It will make it better. You know, you don't
13 want to say, "Hey, don't get in my territory."

14 You know, I was in the roofing supply
15 business for 35 years. Okay? Everybody wanted to
16 come. The manufacturers would come to see and they'd
17 say, "Jim, what do you think?" I says, "Bring them
18 on. I don't care. They can set up shop right
19 next-door to me."

20 It makes you better. It makes you think
21 out of the box. Competition has never hurt anybody one
22 iota. Okay? But if you're saying, "Hey, don't touch
23 me," you're going to get touched. Somewhere out there
24 somebody is going to touch you.

25 And on the flip side of that, rather

1 than -- like my family, rather than make a few thousand
2 dollars donation to charitable organizations throughout
3 the state that we do each and every year -- and I'm
4 sure many of the greyhound people, many of the horse
5 owners do the same thing. Rather than doing three or
6 four thousand dollars a year, you might do 10 or 15
7 thousand dollars a year.

8 So there's a plus side to everything that
9 this additional historical gaming terminals would allow
10 us. And I want you to strongly consider those as we go
11 forward.

12 And I guess that's all of the comments I
13 have. I'd be interested in taking any questions.

14 MR. TROUT: Thank you, sir. Appreciate
15 it.

16 MR. HELZER: Thank you.

17 MR. TROUT: Dallas Keen?

18 MR. KEEN: Thank you. My name is Dallas
19 Keen. I'm a Thoroughbred horse trainer. I also, along
20 with my wife, own and operate a training facility and a
21 breeding facility here in the State of Texas. We
22 also -- I'm a cofounder with my wife, Donna Keen, with
23 Remember Me Racehorse Rescue. We place hundreds of
24 horses from our facility. We retrain them and find
25 them homes after their racing careers are over.

1 Right now there is no racing for
2 Thoroughbred horses in the State of Texas. Everybody
3 is exiting right now from -- Lone Star just finished
4 their meet. They're going to Louisiana, New Mexico,
5 Oklahoma, the states that have lobbied against our
6 industry here in the State of Texas and has continually
7 taken our best horses and our best owners, our best
8 horse players into these states.

9 It is very important to us as a
10 Thoroughbred industry here to support our industry and
11 I think these historical terminals definitely can help
12 save an industry that is dying at this point. Right
13 now I have -- my racing stable is actually in southern
14 Florida at Gulfstream. And I'm a Texan. I want to
15 race in Texas. And I'm seeing all these big farms here
16 in Texas. You know, they're sitting vacant right now.
17 We're not talking bingo halls. We're talking about big
18 industry. We're talking about a lot of employees and
19 real people out there that are really hurting right now
20 in this industry. And we need some help. I support
21 historical racing terminals.

22 Thank you.

23 MR. TROUT: Thank you.

24 Michael -- is it Mark or Marke?

25 MR. MARKE: Hello. My name is Michael

1 Marke, M-a-r-k-e. And I don't have a dollar on the
2 table in this game other than when I go to the betting
3 window. I'm a horse racing fan. I've been a horse
4 racing fan in Texas for over 25 years. And I realize
5 how the horse racing industry is suffering in Texas and
6 I do support historical racing terminals in the state.

7 I think it will be good for the tracks,
8 good for people I know that work at the tracks, good
9 for people I know that are jockeys, good for people I
10 know that are trainers, and some horse owners that I
11 know. And I support it.

12 And that's all I have to say. I
13 appreciate the opportunity to speak.

14 MR. TROUT: Thank you, sir.

15 Michael Bingaman?

16 MR. BINGAMAN: Director Trout,
17 Mr. Fenner, as you know, I'm the chaplain at Retama
18 Park Racetrack. What you might not know is I have the
19 longest history of chaplaincy in horse racing in the
20 history of the world, in Texas, in the United States.
21 I'm also the only chaplain in the country that's a
22 licensed practicing counselor. And I'm here to speak
23 in favor of the proposition.

24 You know that I love my community. I
25 came to Texas specifically to work in horse racing from

1 Washington State, where I was a chaplain there. When I
2 came to Texas, I came bringing an education in
3 compulsive gambling -- or compulsive addictions. And I
4 began the education process on compulsive gambling in
5 Dallas with the Texas Council on Compulsive and Problem
6 Gaming.

7 I was only able to complete half of that
8 education because the funding ran out. But I learned a
9 lot about compulsive gaming. And during that education
10 I learned that only five percent of gamblers are
11 attracted to pari-mutuel wagering. Since one of the
12 greatest arguments against gaming in Texas is a moral
13 argument, I'd like to speak to the moral argument for a
14 moment as a chaplain.

15 Pari-mutuel wagering is the fairest form
16 of wagering for the public in that the bettor is given
17 a wealth of information in order to intelligently
18 wager. For that reason, I am most comfortable with
19 this expansion in that it doesn't increase the
20 footprint nor change the manner of gaming. It is just
21 an improvement in technology.

22 About six years ago I again was here in
23 Austin speaking on behalf of my industry. At that time
24 I ran into the director of the compulsive gaming
25 program that I had attended. Her name is Sue Cox.

1 During our conversation, I assumed that she was here to
2 speak against the expansion that the industry was
3 asking for at that time. To my surprise, she stated
4 that she acknowledged that Texans love to gamble. She
5 was here to ask that if any expansion were to occur,
6 she was not here to speak against it, but she was here
7 to ask that she might have some funding dedicated to
8 support the Texas Council on Compulsive and Problem
9 Gambling. I'm asking that same thing today.

10 I noticed on the State of Texas website
11 that there is no longer a local state network to aid
12 any and all Texans who wrestle with compulsive gaming.
13 She said that she had been offered a large amount of
14 money to lobby against the industry by entities in
15 Louisiana but that she declined to take that offer.

16 Sue Cox is correct. Texans do love to
17 gamble. You've heard it said many times that parking
18 lots of racetracks in neighboring states are flooded
19 with Texas license plates. I can attest to that. It's
20 true, insofar as I visited tracks in Louisiana and
21 Oklahoma. Although I haven't visited the tracks in New
22 Mexico, I did note that the last time Zia Park was
23 arguing for expansion, they cited Texas gamblers as the
24 reason for needing to expand.

25 I love my industry. I love my

1 community. These are good people. I have no moral
2 problem with gambling in that in the form of
3 pari-mutuel wagering. I'm respectfully asking the
4 Commission to consider adopting this change. It will
5 benefit the racing community by putting Texas racing on
6 a more level footing with the surrounding states, thus
7 allowing expatriated Texans to come back to the state
8 and at the same time restore funding, if considered, as
9 a network for helping -- restore funding, if
10 considered, basing a network for helping not only those
11 problem gamblers who attend horse racing, but also
12 problem gamblers who are addicted to poker, bingo,
13 eight-liners, and any other form of gambling. I ask
14 that you consider that.

15 Thank you for your time.

16 MR. TROUT: Thank you.

17 Steve Bresnen?

18 MR. BRESNEN: Thank you, Mr. Chairman --
19 or Mr. Trout. My name is Steve Bresnen. I'm here on
20 behalf of Bingo Interest Group.

21 I learned a long time ago in a hearing
22 like this you can't respond to everything everybody
23 says even if you're not exactly happy with it. So I
24 won't. I do want to say to everybody behind me, the
25 people in bingo look a lot like you all. They're

1 everyday people. The people we represent, sir, are
2 everyday people. 17 million everyday people went to a
3 bingo hall. We don't represent bingo halls. Bingo
4 halls are buildings. We represent the people, the
5 everyday people that go to those bingo halls.

6 Just by comparison, if I heard right, the
7 purses at the tracks are about 130 million dollars in
8 the most recent numbers. Prizes in the bingo locations
9 around the state were 550 million dollars. So these
10 people in these halls have a very significant
11 interest.

12 So who are the people? At Mr. Anawaty's
13 hall in La Marque, Texas, it's the Galveston Marine
14 League. And by Marine, I don't mean the water and
15 boats in it. I mean Marines, the people that serve
16 their country. There's the Boys and Girls Club, the
17 Mark Kilroy Foundation that does after-school programs
18 for kids that have got no place else to go, the Knights
19 of Columbus. And by the way, the people in Hitchcock,
20 Texas, the everyday people, appreciate the fact that
21 they have a volunteer fire department that gets money
22 from Mr. Anawaty's bingo hall in order to put out the
23 fires in the area.

24 Those real people are located in about
25 12 -- there's about 1200 charities and about 400

1 locations. They're spread throughout the state. They
2 have a very significant payroll, with 12,000 people
3 registered to be able to work in those bingo halls, all
4 of whom have gone through criminal background checks
5 and all of whom are working for a lot less than a whole
6 lot of the people in this room, including me. So it's
7 a big deal. They're everyday people.

8 I regret that we're here in opposition to
9 something with people who we have no beef with and no
10 battle with. It's a shame that the politics in this
11 state have pitted everyday Texans against each other
12 who are just trying to make a living and do something
13 that lots and lots of Texans, in the case of bingo 17
14 million of them, want to participate in and benefit
15 from.

16 And so I'm sorry for that to everybody
17 behind me and I would hope during the legislative
18 session that we would continue to work together as we
19 have in the past. Most of you all probably don't know
20 it, but we talk to your representatives down here and
21 we have a very good relationship with them. And we
22 don't come down here and we don't call names and we
23 don't tell lies like some of the people that blew us up
24 at the Lottery Commission when we just tried to do a
25 little insignificant deal the other day. We will never

1 lie about you and we'll always respect the fact that
2 you are everyday Texans.

3 We thank you very much and I appreciate
4 the opportunity to make my little speech.

5 MR. TROUT: Thank you.

6 Mark, do you have some more to testify?

7 MR. FENNER: I have no other testimony
8 cards at this time indicating that they wish to
9 testify. If anybody would like to testify, now is the
10 time to come up.

11 MR. TROUT: Okay. I have several cards
12 of people who want to show that they're either for or
13 against but do not want to testify and I'd like to read
14 those into the record. Margaret Hoffman, against;
15 Katie -- is it Jarl? J-a-r-l. Okay. Against. Kris
16 Fullerton, for; Virginia Bonney, for; Chris Corrado,
17 for. I can't read the writing here. Doug Petrich,
18 for. Rick Pomposelli did not indicate whether for
19 or -- sir, are you here? Are you for or against?

20 MR. POMPOSELLI: For.

21 MR. TROUT: For?

22 MR. POMPOSELLI: Yes, sir.

23 MR. TROUT: Matthew Stahlbaum is for; Joe
24 Kerby, for; R.G. Johnson, for; Scott Sherwood, for;
25 Charles W. Graham, for; Tyler Graham, for; Bruce

1 Bennett, for; John Cardwell, for; Denis Blake, for;
2 Howard Phillips, for; Brandon Barentine, for; Alana
3 Morse, for; Trey Malechek, for; Kim Chandler, for;
4 R.D. Weilburg, for. Or is that Weilburg?

5 MR. FENNER: Weilburg.

6 MR. TROUT: Weilburg. Sorry. Charles
7 Wright, for; Jennifer Gibbs, for; William Tracy, for;
8 Joan Tracy, for; Rob Werstler, for; Jaime Hill, for;
9 Jamie Nelson, for; Cindy Johnson, for; Mike Steindler,
10 for; Tim Conley, for; Frank Hopf, for; Deborah Schmidt,
11 for; Rae Kolajajak -- pronounce that name for me,
12 please.

13 MS. KOLAJAJAK: Kolajajak.

14 MR. TROUT: I'm sorry?

15 MS. KOLAJAJAK: Kolajajak.

16 MR. TROUT: Kolajajak. I'm sorry. Thank
17 you. For. Donald Ahrens, for; Paul Watt, for; Joe
18 Frey, for; David Peck, for; Lane Hutchins, for; Tom
19 Hutchins, for; Kay Helzer, for; Marilyn Helzer, for;
20 Edward Gardner, for; Lewis Jordan, for.

21 Is there anyone else?

22 If there are no other individuals that
23 want to testify or enter, I'm going to adjourn this
24 meeting at 11:42.

25 (Proceedings concluded at 11:42 a.m.)

1 STATE OF TEXAS)
2 COUNTY OF TRAVIS)

3

4 I, SHERRI SANTMAN FISHER, a Certified Shorthand
5 Reporter in and for the State of Texas, do hereby
6 certify that the above-captioned matter came on for
7 hearing before the TEXAS RACING COMMISSION as
8 hereinbefore set out.

9 I FURTHER CERTIFY that the proceedings of said
10 hearing were reported by me, accurately reduced to
11 typewriting under my supervision and control and, after
12 being so reduced, were filed with the TEXAS RACING
13 COMMISSION.

14 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at Austin,
15 Texas, this 28th day of July, 2014.

16

17

18

19

20



21

SHERRI SANTMAN FISHER, Texas CSR 2336
Expiration Date: 12-31-15
Kennedy Reporting Service, Inc.
Firm Registration No. 276
7800 North Mopac Expressway, Suite 120
Austin, Texas 78759
(512) 474-2233

22

23

24

25 Job No. 95949