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BEFORE THE  
TEXAS RACING COMMISSION  
AUSTIN, TEXAS

COMMISSION MEETING  
JUNE 10, 2014

BE IT REMEMBERED that the above-entitled matter came on for hearing on the 10th day of June, 2014, beginning at 10:28 a.m. at 105 West 15th Street, Room 120, Austin, Travis County, Texas, and the following proceedings were reported by Jan E. Harrison, Certified Shorthand Reporter for the State of Texas.

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APPEARANCES

COMMISSIONERS :      ROBERT SCHMIDT  
                                 RONALD F. EDERER  
                                 MICHAEL MARTIN  
                                 GLORIA HICKS  
                                 GARY P. ABER  
                                 VICKI WEINBERG  
                                 ANN O'CONNELL  
                                 A. CYNTHIA LEON

1 PROCEEDINGS 10:28 A.M.

2 CHAIRMAN SCHMIDT: We are waiting for one  
3 more commissioner, who is en route in a little traffic  
4 at the airport, so we might start ... on time. There  
5 she comes.

6 Vicki, welcome.

7 Well, it's 10:28, and let's get going.

8 Welcome to the Texas Racing Commission on June 10.

9 Mary, call the roll.

10 MS. WELCH: Chairman Robert Schmidt?

11 CHAIRMAN SCHMIDT: Present.

12 MS. WELCH: Commissioner Ron Ederer?

13 COMMISSIONER EDERER: Present.

14 MS. WELCH: Commissioner Gloria Hicks?

15 MS. HICKS: Here.

16 MS. WELCH: Commissioner Michael Martin?

17 COMMISSIONER MARTIN: Here.

18 MS. WELCH: Commissioner Vicki Weinberg?

19 COMMISSIONER WEINBERG: Here.

20 MS. WELCH: Commissioner Gary Aber?

21 COMMISSIONER ABER: Here.

22 MS. WELCH: Commissioner John Steen?

23 Commissioner Ann O'Connell?

24 COMMISSIONER O'CONNELL: Here.

25 MS. WELCH: Commissioner Cynthia Leon?

1 COMMISSIONER LEON: Here.

2 CHAIRMAN SCHMIDT: Mary, we have a quorum,  
3 don't we?

4 MS. WELCH: We do.

5 CHAIRMAN SCHMIDT: Great. A quorum is  
6 present. We have one public comment, Mr. Nick James,  
7 from the Texas Greyhound Association.

8 Mr. James, welcome.

9 MR. NICK JAMES: Mr. Chairman and  
10 Commissioners, I'm Nick James, Texas Greyhound  
11 Association. I'm only here on this particular part of  
12 the agenda to say thanks to the Commission staff and  
13 especially Joel, wherever Joel is, on our injuries that  
14 have gone way down.

15 We are right now about 81 injuries for  
16 this year, which is down from 342 last year total. If  
17 we keep going, we're going to have fewer than 200; and  
18 they're sprains, mostly dislocated toes, very few  
19 breaks.

20 So the Commission and Gulf Greyhound have  
21 been working with us and working fantastically to reduce  
22 the injuries, and we appreciate it.

23 That's it.

24 CHAIRMAN SCHMIDT: Thank you, sir. We  
25 appreciate your comments.

1                   General business report by the executive  
2 director regarding administrative matters. First budget  
3 and finance, Lane Goetsch, administration and finance.

4                   Lane?

5                   MS. GOETSCH: Morning, Commissioners. My  
6 name is Lane Goetsch, director of finance and  
7 administration for the Texas Racing Commission. I'm  
8 here to give the budget and finance update.

9                   On Page 4 and 6 of your agenda packet, you  
10 will find the Fiscal Year 2014 Operating Budget  
11 reflecting revenue collections and signatures as of  
12 April 30, 2014.

13                   As of that date, the agency had collected  
14 6.5 million, or 66 percent of revenues, and expended 5  
15 million, or 54 percent of budget and expenditures. At  
16 this time, the Racing Commission is in good operating  
17 condition.

18                   If you have any questions, I will be happy  
19 the answer those questions.

20                   CHAIRMAN SCHMIDT: Do the commissioners  
21 have any questions of Ms. Goetsch?

22                   Thank you, Lane. Thank you very much.

23                   Wagering statistics, Lila Smith?

24                   Ms. Smith?

25                   MS. SMITH: Good morning, Commissioners.

1                   On Page 11 through 13 of your packet, you  
2 will see the wagering statistics for the period of  
3 January 1 through June 30 for both 2013 and 2014. The  
4 reports reflect that the 2014 total wagering activities  
5 have increased at the horse racetracks by 1.95 percent  
6 and has decreased at the greyhound racetracks by  
7 2.68 percent.

8                   Do you have any questions?

9                   CHAIRMAN SCHMIDT: They're pretty  
10 straightforward. Right?

11                   Any questions?

12                   Thank you, Ms. Smith.

13                   Racetrack inspections, Jim Blodgett,  
14 director of investigations.

15                   MR. BLODGETT: Morning, Commissioners.

16                   Commissioners, the racetrack inspection  
17 report is included in your agenda packet under the  
18 General Business tab, which covers the period of time  
19 from April 1 to May 31, 2014.

20                   During this period of time, a total of 16  
21 racetrack inspections were conducted and reported by  
22 staff. As outlined within your packet, these  
23 inspections were included within the areas of  
24 veterinarian, safety and security, racing,  
25 administration, wagering at the tracks of Lone Star

1 Parks, Sam Houston Race Park, Gillespie County Fair,  
2 Gulf Greyhound Park, Gulf Coast Racing and Valley Race  
3 Park.

4 A breakdown of the inspections includes  
5 five scheduled inspections, five no-notice inspections  
6 and six follow-up inspections. For the period of time,  
7 several issues were reported -- several issues that were  
8 reported earlier this year were resolved and currently  
9 no inspection items remain unsatisfactory.

10 I'll be happy to answer any questions for  
11 you.

12 CHAIRMAN SCHMIDT: Any questions of Jim?  
13 Thank you very much, Jim.

14 Enforcement report, Joel Speight.

15 MR. SPEIGHT: Included in your information  
16 on Page 15 is the current enforcement report for the  
17 period between April 1 and May 31, 2014. On May 3,  
18 2014, two animal Class I drug positives occurred during  
19 the quarter horse meet at Sam Houston Race Park. A  
20 split has been sent off and will be pending.

21 Animal one positives now total five for  
22 2014; and the previous quarter, on March 22nd and 29th,  
23 there were three class one positive violations occurring  
24 during the quarter horse meet at Sam Houston Race Park.

25 These violations resulted in a total of a

1 five-year suspension and \$35,000 in fines. The last two  
2 class one positives occurred, excuse me, on July 7 and  
3 October 12, 2012, during quarter horse meets at the  
4 Retama and Lone Star Parks respectively. The violations  
5 during this period resulted in two one-year suspensions  
6 with \$5,000 fines. So we have now instituted the new  
7 fines and new penalties.

8 In addition, I wanted to direct your  
9 attention to one of the 41 searches conducted during the  
10 third quarter on April 10, 2014. Four machines were  
11 discovered during one of the administrative inspections  
12 on the jockeys' facilities.

13 The machines were found in the ceiling  
14 tiles above the jockeys' sleeping area. No ownership  
15 was determined.

16 I'll answer any questions you have.

17 CHAIRMAN SCHMIDT: Two questions. One,  
18 where are we sending our splits to, California or  
19 Kentucky?

20 MR. SPEIGHT: Sir, there's a list of  
21 certified splits that have all been RMTC certified that  
22 the trainers can send their splits off to.

23 CHAIRMAN SCHMIDT: It's their option.

24 Okay. Great. Nice work. Thank you, sir.

25 Chuck Trout, can you present us with the

1 strategic plan, please?

2 MR. TROUT: Yes, sir.

3 Good morning, Commissioners. Under  
4 Chapter 2056 of the Texas Government Code, in each  
5 even-numbered year, the agency is required to provide  
6 the governor and the legislative budget board a  
7 five-year strategic plan.

8 Staff circulated copies of the plan for  
9 your review and comment, and I appreciate the time you  
10 have taken to review this plan. We still have a few  
11 days before the June 23 due date in order to address any  
12 suggestions you have, but I would like your approval of  
13 the plan today subject to the final review and approval  
14 of the chairman.

15 Any questions?

16 CHAIRMAN SCHMIDT: Any questions for  
17 Director Trout?

18 I just had one question about, Chuck, I  
19 guess, Page 13. You had top 20 states ranked by total  
20 purses paid for thoroughbred races. I know you're not a  
21 mathematician. We're ranked 17th in total purses, and  
22 we have a thousand races. That puts us second to last  
23 in terms of purse per race?

24 MR. TROUT: It's very low, yes, sir.

25 CHAIRMAN SCHMIDT: Okay. It's a little

1 lower, then.

2 MR. TROUT: Yes, sir.

3 CHAIRMAN SCHMIDT: Any questions,  
4 comments? I'll certainly entertain a motion to approve  
5 the strategic plan.

6 MS. HICKS: I submit the motion.

7 CHAIRMAN SCHMIDT: Motion by Commissioner  
8 Hicks, seconded by Dr. Martin.

9 All those in favor, signify by saying  
10 "aye."

11 COMMISSIONERS: Aye.

12 CHAIRMAN SCHMIDT: Anyone opposed?

13 That passes unanimously.

14 COMMISSIONER EDERER: I have one comment.  
15 It's very informative, the report that you put together.  
16 I thought this was -- the strategic plan was very well  
17 done and very informative.

18 MR. TROUT: Thank you.

19 COMMISSIONER EDERER: I appreciate it.  
20 Sorry.

21 CHAIRMAN SCHMIDT: No, no.

22 Proceedings on racetracks, request by Gulf  
23 Greyhound for approval of amendment to their contract  
24 with United Tote Company.

25 Mark, can you lay out the matter for us?

1 MR. FENNER: Yes, sir.

2 Gulf Greyhound Parks has submitted an  
3 amendment to the previously approved contract between  
4 itself and United Tote. This amendment extends the  
5 contract through May 14 of 2018.

6 Our staff has reviewed the contract and  
7 found that it's in compliance with the act and the  
8 rules, and so staff recommends approval of the  
9 amendment.

10 CHAIRMAN SCHMIDT: And there's no public  
11 comment?

12 Great.

13 Any discussion by the Commission? Anyone  
14 have any comments, concerns?

15 I'll certainly entertain a motion to  
16 approve the request by Gulf Greyhound for approval of  
17 its amendment to its contract with the United Tote  
18 Company.

19 COMMISSIONER WEINBERG: Motion.

20 CHAIRMAN SCHMIDT: Motion by Commissioner  
21 Weinberg and seconded by Commissioner Hicks.

22 All those in favor, signify by saying  
23 "aye."

24 COMMISSIONERS: Aye.

25 CHAIRMAN SCHMIDT: All those opposed?

1 Motion carries.

2 Okay. Thank you, Devon.

3 Okay. And the next item is proceedings on  
4 rule-making. We will consider the proposed amendments  
5 and new rules authorizing historic racing.

6 Just a word of introduction, I've had --  
7 I've had a couple of questions informally coming in  
8 today and over the weekend about the rule-making process  
9 and actually how the posting process works and how the  
10 voting process works.

11 And just for clarification, today we're  
12 going to discuss -- actually, we're going to discuss two  
13 potential rule changes, and we are just discussing  
14 really the posting process.

15 The posting process was really designed by  
16 legislature to ensure transparency. And once a rule is  
17 vetted by the Commission and comes before the entire  
18 Commission, Commissioners for consideration, the first  
19 step is to consider posting it.

20 The idea is, one, it's posted in certain  
21 public domains so everyone can see it, everyone can  
22 comment. If there's a new nuance that's been missed, it  
23 can be -- the feedback can come back to the Commission,  
24 and it's sort of a fact-finding type of process for the  
25 commissioners in case they miss something in their own

1 deliberations. So I also -- so that's our focus today.  
2 We're going to focus on simply posting potentially two  
3 rule changes today and then we'll vote on three others.

4 I would also caution you, the bar for  
5 posting is a low bar. A commissioner may actually feel  
6 ambivalent or somewhat reluctant to support the rule but  
7 will be willing to support posting the rule, so I  
8 wouldn't read -- I wouldn't overread any postings on the  
9 voting process.

10 Going back, then, in the fall of last  
11 year, we were approached by the horsemen regarding  
12 authorizing some new rules regarding historic racing,  
13 and some of the amendments have worked their way through  
14 the Commission, through a Commission subcommittee and  
15 now before us today.

16 And I think that I'm going to first  
17 recognize Ken Carson from the Texas Thoroughbred  
18 Association to lay out the matter from their  
19 perspective.

20 Mr. Carson, welcome.

21 MR. CARSON: Morning, Commissioners.

22 Excuse me.

23 My name is Ken Carson. I'm president of  
24 the Texas Thoroughbred Association. I've been involved  
25 in the thoroughbred industry for about 35 years,

1 primarily in Texas.

2 I've been the general manager of Valor  
3 Farms for the past 20 years. Valor Farms -- Valor Farms  
4 was established in the early '90s; and for the first 15  
5 or 16 years, we did very well.

6 Then over the past five or six years,  
7 seven years, we have had a number of challenges that  
8 face the horsemen nowadays; and virtually every aspect  
9 of our business has declined, the number of mares we  
10 breed, the number of clients we have, the number of  
11 boarders that we have, what we can charge for our  
12 stallions. Purses have gone down by any measure. Every  
13 aspect of our industry has gone down probably 40 or  
14 50 percent.

15 We used to employ about 20 to 25 people  
16 given the season annually. Now that number has probably  
17 sunk to about half of that. Kentucky horsemen have  
18 successfully countered their declines by incorporating  
19 pari-mutuel wagering on historic races.

20 If we don't embrace this new technology,  
21 we won't be able to compete in the future. This has  
22 been very good for Kentucky, and I think it will be very  
23 good for Texas.

24 On behalf of the participants of the Texas  
25 Thoroughbred Association, I respectfully ask you and

1 encourage you to adopt these rules, these potential  
2 rules.

3 Thank you very much.

4 Do you have any questions?

5 CHAIRMAN SCHMIDT: Thank you, Mr. Carson.  
6 We might call you back later, but we don't have any  
7 questions here.

8 Jimmy Eller, Texas Quarter Horse  
9 Association. Mr. Eller, welcome.

10 MR. ELLER: Thank you, Mr. Chairman. Good  
11 morning, Commissioners. My name is Jimmy Eller, and I'm  
12 the past president of the Texas Quarter Horse  
13 Association.

14 I'm here today to testify on behalf of the  
15 almost 3,000 members of the Texas Quarter Horse  
16 Association and express our support for historical  
17 racing terminals.

18 I'm a fourth generation Texan, all of  
19 which have been farmers and ranchers; and I'm in my 32nd  
20 year as owner and operator of Granada Farms in Wheelock,  
21 Texas, just north of College Station.

22 It's a commercial breeding --  
23 horse-breeding facility, and my plight as farm owner and  
24 manager is no different than Mr. Carson just explained.  
25 The study that this Commission did a couple of years ago

1 is real indicative and correlates and mirrors my plight  
2 in that when you cut purses in half and you cut race  
3 days in half, then you also cut my labor force in half  
4 and the amount of money I spend on feed and grain and  
5 insurance and fertilizer and all those other things that  
6 I know you guys are familiar about.

7           And I can tell you sometimes it's real  
8 challenging to attract new and retain existing  
9 customers. This is especially true in the Texas  
10 horse-racing industry.

11           However, through new technology such as  
12 Facebook and Twitter and e-mail, we have been able to  
13 reach out to potential new customers, and we have been  
14 able to do a better job of keeping our current customers  
15 informed.

16           Historical racing terminals can do the  
17 very same thing for our Texas horse racing and breeding  
18 industries by capitalizing on these new technologies.  
19 Texas racetracks will be able to attract new customers  
20 and offer new pari-mutuel options for existing  
21 customers.

22           I'm sure that you are aware that several  
23 other states have passed similar rules that has given  
24 racetrack management another option to attract new  
25 customers and make a day at the races more enjoyable and

1 entertaining.

2 Like any sport, however, it's critical to  
3 the continuance of that sport to embrace a younger fan  
4 base. In order to do that, we need to embrace new  
5 technologies. And I appreciate this opportunity today  
6 and would urge you on behalf of the Texas Quarter Horse  
7 Association to support the publishing and posting  
8 process and open it for public comment.

9 Thank you very much.

10 CHAIRMAN SCHMIDT: Thank you, Mr. Eller;  
11 and again, we may call you back later.

12 And then Mr. Bruce Bennett, attorney for  
13 Lone Star Park, Grand Prairie.

14 Mr. Bennett, welcome.

15 MR. BENNETT: Thank you, Mr. Chairman,  
16 Commissioners.

17 The petition filed with Mr. Trout on  
18 May 27 is from a united industry, which are in unanimous  
19 support of the proposed rules. The petition contains  
20 the proposed rules authorizing and regulating  
21 pari-mutuel wagering on historical racing and sets forth  
22 the legal authority that you have to publish and adopt  
23 the rules.

24 I'm going to briefly talk to you about the  
25 legal authority that you have to adopt and publish or

1 publish and adopt the rules.

2           And Mr. Philip Oldham and Ms. Katie  
3 Coleman are here to answer any specific questions you  
4 may have about the specific provisions of those rules.  
5 I have a PowerPoint. I have Mike here to help me  
6 operate it. I'm not the best at this, but I think I  
7 want to show you a PowerPoint that lays out your legal  
8 authority.

9           And we begin with the one that's up there  
10 right now on the screen. The legislature gives you very  
11 broad authority to license and regulate all aspects of  
12 the horse and greyhound industry in this state.

13           You also have the authority to make and  
14 adopt rules regulating pari-mutuel wagering on those  
15 races. And The Racing Act direct -- gives you and  
16 directs you to make rules and take any other necessary  
17 action relating to such racing.

18           As you can see, your power is not  
19 restricted to licensing and regulating live racing.  
20 Considering and adopting the proposed rules, allowing  
21 Texas tracks to offer pari-mutuel wagering on historical  
22 races, falls squarely within your legal authority.

23           One reason the legislature gives you such  
24 broad and expansive authority and power is to use it to  
25 keep pace with the new technological developments

1 occurring in the industry that you regulate.

2 Pari-mutuel wagering on historical racing is simply the  
3 latest evolution in the way one can make a pari-mutuel  
4 wager on a horse or greyhound race.

5 We began in this industry with making your  
6 wager at a window. We expanded to self-service  
7 terminals or live and then simulcasting. Today I can  
8 still make a wager at the track in the old-fashion way  
9 by going to the window, or I can make a wager on a live  
10 race or a simulcast race by using one of the  
11 self-service terminals.

12 At Sam Houston, I can do it on my iPhone  
13 when I'm in the -- in the facility. And I can make one  
14 using a simulcast, make a bet on a simulcast race using  
15 a terminal or, again, at Sam Houston on my iPhone.

16 The proposed rules, if adopted, will  
17 simply allow me to use a terminal to make a pari-mutuel  
18 wager on a previously run live race and then to watch a  
19 recording of that race.

20 This technological evolution in making a  
21 pari-mutuel wager is, we think, very similar to what we  
22 have seen occur in the book-publishing industry. You  
23 know, we started with hardback books that evolved into  
24 paperbacks. Later technology has made books available  
25 on Kindles and iPads.

1                   The book is still a book, even though I  
2 can read it on my Kindle or iPad. And a horse race is  
3 still a horse race, even though it's recorded and  
4 displayed on a terminal screen.

5                   Because other states are taking advantage  
6 of this new and entertaining way of making a pari-mutuel  
7 wager on a race and Texas tracks are not, our racing  
8 industry here in Texas is, as you've heard today from  
9 these gentlemen, at a severe and growing competitive  
10 disadvantage.

11                  Now, the Racing Act directs you to  
12 consider the impact this disadvantage is having on  
13 members of the Texas agricultural and racing industries  
14 and especially on the breeders and the trainers and to  
15 take necessary action. We urge you to exercise your  
16 discretion to vote to publish the proposed rules for  
17 comment today.

18                  Now, you may hear several arguments today  
19 against publishing the proposed rules, but we assure you  
20 that the rules are within your legal authority and power  
21 to publish and to adopt and that the rules comply with  
22 all aspects of the Racing Act.

23                  Now, one argument you may hear is that  
24 wagering on a historical racing terminal is not  
25 pari-mutuel, but that's wrong for several reasons.

1 First, there is no wager against the house. The track  
2 takes a small commission with the remainder paid to the  
3 winning patron just like it does on live and simulcast  
4 wagers at the tracks today. The historical racing  
5 wagers are pooled, and the types of wagers and pools are  
6 consistent with those already allowed by your rules.

7 Second, the proposed rules require you to  
8 disapprove any historical wagering option that is not  
9 pari-mutuel. Another argument you may hear is that  
10 wagering on historical racing terminals is a lottery  
11 forbidden by the Texas Constitution and that the  
12 terminal is a slot machine.

13 But that's wrong, too, Commissioners. The  
14 proposal concerns pari-mutuel wagering on horse and  
15 greyhound races. The Texas courts have already ruled  
16 that such wagering is not a lottery or illegal gaming  
17 device.

18 Furthermore, a slot machine is a device  
19 that awards cash or prizes solely on the basis of chance  
20 and is not affected by the skill, judgment or knowledge  
21 of a particular player. In addition, slot machines are  
22 bets against the house. Pari-mutuel wagering is not.

23 Pari-mutuel wagering on historical racing  
24 is not a game of chance and it's not a bet against the  
25 house. It's connected to a central tote system and

1 divided into pools just like your regular wager is done  
2 today, according to your rules.

3 That terminal, that historical racing  
4 terminal, is not going to work if you unplug it from the  
5 central system and take it to your house. It's not  
6 going to work. Slot machines, they can do that. You  
7 can just take them to your house. It's illegal to do  
8 it, but they're not going to work. So this is nothing  
9 like a slot machine.

10 As I said before, the historical racing  
11 terminal is simply a new technological means of making a  
12 pari-mutuel wager on an actual race. The proposed rules  
13 give you the power and the obligation, Commissioners, to  
14 ensure through regulatory approval, independent testing  
15 and independent inspection, that the racing terminals  
16 are substantively identical -- the wagers made on those  
17 racing terminals are substantively identical to the  
18 pari-mutuel wagers authorized by your rules and made  
19 daily at the Texas tracks on simulcast and live races.

20 So whether you decide today to publish and  
21 ultimately adopt the proposed rules is not a question of  
22 your legal authority, you have it; but it's, rather, one  
23 of your discretion. We ask you to exercise that  
24 discretion and authority that you have to vote to  
25 publish.

1                   And if anyone today argues that you lack  
2 the legal authority to publish and adopt the rules, then  
3 ask him or her to show you the exact basis for that  
4 position, because we don't believe it exists.

5                   I'll be happy to answer any questions that  
6 you have.

7                   CHAIRMAN SCHMIDT: Any questions for  
8 Mr. Bennett?

9                   Ann?

10                  COMMISSIONER O'CONNELL: Does the  
11 Commission have the authority to establish a state share  
12 of the proceeds from the historical racing? Because I'm  
13 under the impression that the Racing Act establishes the  
14 state's share from live racing and also from simulcast.

15                  MR. BENNETT: Commissioner, we think you  
16 can make an argument to that effect, but we -- the  
17 proposed rules do not provide for a state share or for,  
18 we call it, tax.

19                  Although you have the authority to prevent  
20 the pari-mutuel wagering on historical races, we believe  
21 a court could rule that only the legislature can impose  
22 a tax or decide to impose a tax on that form of  
23 wagering.

24                  That's what occurred in Kentucky. The  
25 Kentucky Racing Commission did include a tax in the

1 proposed rules, but the Kentucky appellate courts struck  
2 that down.

3 Their rationale was that only the  
4 legislature can decide whether or not to tax the  
5 pari-mutuel wagering on historical racing. So we  
6 believe it is prudent not to include the tax in these  
7 rules.

8 CHAIRMAN SCHMIDT: Any questions of  
9 Mr. Bennett?

10 Thank you very much, Mr. Bennett. We may  
11 ask you to come back and visit with us a little bit.

12 MR. BENNETT: Thank you.

13 CHAIRMAN SCHMIDT: Mark, could you also  
14 review whether or not the Commission has the authority  
15 to propose these rules?

16 MR. FENNER: Yes, sir.

17 Commissioners, what I can tell you is that  
18 the request that they have submitted complies with the  
19 Commission's rule-making procedures that are set out in  
20 Chapter 307, and that in reviewing the act, I found  
21 nothing in the Act that specifically prohibits the  
22 proposed interpretation of your authority to adopt these  
23 rules.

24 So I would tell you that if the Commission  
25 would like to publish the rules for public comment so

1 you can make an informed decision as to whether it's  
2 good policy or not, that you can do so.

3 CHAIRMAN SCHMIDT: Okay.

4 Any questions of Mr. Fenner?

5 Great.

6 COMMISSIONER O'CONNELL: I have a  
7 question.

8 CHAIRMAN SCHMIDT: Yes, Ms. O'Connell.

9 COMMISSIONER O'CONNELL: What is the legal  
10 support in favor of us -- in favor of this Commission  
11 moving forward? Who would happen if these rules were  
12 changed in court? What would the chances of success be?

13 MR. FENNER: Well, there are no  
14 guarantees. If you go to court, we may lose. If this  
15 were adopted and put into place, reasonable minds could  
16 differ; however, the problem for a challenger is they're  
17 going to be making arguments, I believe, based on policy  
18 that this is legislative intent.

19 They are not going to be able, as far as I  
20 can tell, to look to a specific provision in the act and  
21 say, "You can't do this." So, you know, I'm not really  
22 in a position to give you odds, even though it's the  
23 Racing Commission.

24 CHAIRMAN SCHMIDT: Any further questions  
25 of Mr. Fenner at this time from the commissioners?

1                   Okay. We move to public comment. I think  
2 we have one other public comment. Mr. Weems from Grand  
3 Prairie. He represents Stop Predatory Gaming Texas.

4                   Welcome.

5                   MR. WEEMS: If I may, the organization I  
6 represent is Stop Predatory Gambling Texas. We think  
7 that the stakes is quite an important one.

8                   CHAIRMAN SCHMIDT: Okay. I'm sorry.

9                   MR. WEEMS: It is my honor to testify  
10 today before the distinguished Racing Commission. My  
11 name is Rodger Weems, and I'm privileged to serve as  
12 chairman of Stop Predatory Gambling Texas.

13                   Although I'm sure you'll understand --

14                   COMMISSIONER EDERER: Mr. Weems, excuse  
15 me. I'd like to have a little clarification, if I  
16 could.

17                   Are you an attorney?

18                   MR. WEEMS: I am not.

19                   COMMISSIONER EDERER: Are you a lobbyist?

20                   MR. WEEMS: I am not.

21                   COMMISSIONER EDERER: And you represent  
22 who?

23                   MR. WEEMS: Stop Predatory Gambling Texas.  
24 I am the chair. It as an entirely voluntary  
25 organization, entirely voluntary chairmanship and so ...

1                   COMMISSIONER EDERER: How many members do  
2 you have in your organization?

3                   MR. WEEMS: I honestly couldn't tell you  
4 right now. I will tell you that our board of directors,  
5 which meets semiannually in Dallas, the attendance  
6 generally is about 40; but I don't keep the membership  
7 rolls and I don't want to misrepresent before you.

8                   COMMISSIONER EDERER: So you have at  
9 least 40.

10                  MR. WEEMS: That would be -- that would be  
11 a fair statement.

12                  COMMISSIONER EDERER: Thank you. Sorry  
13 to interrupt you.

14                  MR. WEEMS: Although you'll understand the  
15 need for plain, perhaps even blunt words today, let me  
16 assure you of my respect for this Commission and for the  
17 great state of Texas you serve.

18                         It's almost been 20 years since I last  
19 testified before the honorable Texas Racing Commission.  
20 On that, the industry testimony was pretty much the same  
21 as today with a few variations, of course.

22                         The racetrack industry said they simply  
23 must expand to different forms of gaming or the entire  
24 industry would disappear. They also brought it to you  
25 for rule making, that is, to your predecessors, because

1 it is a rule, a law, that the legislature had not and,  
2 insofar as I know, would not pass.

3 With all due respect, we've heard this all  
4 before. Perhaps my best contribution to today's  
5 proceedings is in the form of a couple of analogies or  
6 anecdotes, if you prefer.

7 The first of these comes from Abraham  
8 Lincoln. Lincoln once asked an associate, "How many  
9 legs does a horse have?"

10 His associate answered, "Four."

11 "And if we call his tail a leg, how many  
12 legs would he have then?" The associate answered, "I  
13 guess five."

14 "I'm afraid that's wrong," Lincoln said.  
15 "Calling a tail a leg doesn't make it a leg."

16 In the same vein, calling a slot machine  
17 "historical racing" does doesn't make it pari-mutuel  
18 gambling.

19 While it is true, as my fellow Grand  
20 Prairie resident has said, that some states like  
21 Kentucky have declared historical racing to be  
22 pari-mutuel, other states like Wyoming have looked at  
23 the same issue and said that it is not, that it is  
24 slot-machine-type gambling. So, at a bare minimum, the  
25 experience of other states says proceed through this

1 landmine with extreme caution.

2 Further, if it's true that upwards of  
3 85 percent of Texans favor gambling expansion of  
4 racetracks, as some advocates of gambling expansion have  
5 expressed, why do Texans consistently send to the Texas  
6 legislature members who refuse to enact gambling  
7 expansion, and why do they elect attorneys general,  
8 whose opinions consistently uphold the prohibition in  
9 the state constitution against gambling?

10 I respect the opinion of the distinguished  
11 attorney who has said that this is pari-mutuel. With  
12 all due respect, why don't you check that opinion out by  
13 asking the opinion of the state attorney general's  
14 opinions committee since, let's be frank, it is more  
15 likely than not to wind up in that office anyway. Facts  
16 are stubborn things. They refuse to succumb to a change  
17 of names.

18 Second anecdote; some years ago just after  
19 the Texas legislature passed a zero tolerance bill for  
20 juvenile DWI, the Texas Alcoholic Beverage Commission  
21 noticed a pattern; when underaged drinkers were caught  
22 having ingested alcohol, even though they were not  
23 legally intoxicated, those underaged drinkers would only  
24 protest, "But I only had one drink." In response, the  
25 TABC enacted an education campaign directed at underaged

1 drinkers that was bluntly titled, "What part of 21 do  
2 you not understand?"

3 With apologies for similar bluntness here,  
4 perhaps a similar question might be posed to those  
5 proposing this rule making today. That part is -- that  
6 question is: What part of 'there's a legislative  
7 process' do you not understand?

8 The only way rule-making can succeed is by  
9 persuading the honorable members of this Commission that  
10 it is not gambling expansion, which it is, and that it  
11 is not a violation of the Texas Constitution, which it  
12 is.

13 It can be renamed a dozen different times,  
14 but the stubborn fact remains. I leave it to others far  
15 wiser than I to determine whether you can take this  
16 action today. I would ask your own good reason and will  
17 as to whether it's something you should.

18 I thank you for your attention and your  
19 courtesies.

20 CHAIRMAN SCHMIDT: Thank you, Mr. Weems.  
21 Just one second. Do we have any questions of Mr. Weems?

22 All right. Thank you, sir. I appreciate  
23 it.

24 I think that takes care of all the public  
25 comment. I just wanted to appreciate all the folks who

1 have been willing to serve as resources. I'd like to  
2 just call Mr. Oldham up to the microphone. I just had  
3 two quick questions, and we're going to open it up to  
4 further discussion.

5 Can you just -- can you work through us  
6 how the flow of money and how this is going to help the  
7 horses and help the purses?

8 MR. OLDHAM: Sure. I just want to get my  
9 statute.

10 CHAIRMAN SCHMIDT: Uh-huh.

11 MR. OLDHAM: So the way this has been  
12 structured and in discussions with the horsemen, as well  
13 as the Commission staff, who I would commend, by the  
14 way, for their assistance in this, was to require the  
15 entering into of agreements between the horse industry  
16 and the facilities, the associations that operate the  
17 tracks.

18 And that process is delineated in your  
19 packet under Subchapter F, and this is in Rule 321 or  
20 Proposed Rule 321.703. It requires before you engage or  
21 have the privilege of engaging in wagering, pari-mutuel  
22 wagering on historical races, that you have a valid  
23 contract with the horsemen's representative authorized  
24 under Section 309.299 and a valid contract with the  
25 official breed registries. That, then, would allow you

1 to begin to conduct pari-mutuel wagering on historical  
2 racing.

3 Now, that doesn't tell you exactly what  
4 the allocation is between the breeds or what we refer to  
5 as the breed splits under the rule. That would be under  
6 a separate agreement; and in that way, the money would  
7 be able to be -- start to come in for purses and then  
8 ultimately that second set of agreements would determine  
9 which breed splits it received, what amounts of those  
10 funds.

11 If the breed splits cannot come to an  
12 agreement, that money would be escrowed through the  
13 agency for the benefit of those breeds. So that's the  
14 mechanism by which the additional funds for purses that  
15 are generated from the machines -- I'm sorry, the  
16 terminals that -- how those would then flow again to the  
17 horse industry.

18 CHAIRMAN SCHMIDT: I'm not holding you to  
19 any specifics because I realize this is a negotiation.  
20 Just in general terms, assuming we accept that this is a  
21 pari-mutuel wager -- okay? -- 80 percent of the money  
22 goes among the betters. Right? Does the house keep  
23 10 percent and the horsemen keep roughly 10 percent?  
24 Are those the types of numbers we're talking about?

25 MR. OLDHAM: Obviously, each state that

1 has done this has come up with a slightly different sort  
2 of allocation of the split between the association.  
3 That obviously -- and how much, then, ultimately goes to  
4 the betting public, which would be determined on what  
5 makes this a competitive product. And so I think that  
6 those numbers, give or take, are sort of what people are  
7 looking at and thinking about.

8 I think that -- and again, I want to  
9 commend the entire industry for coming together and  
10 having fruitful discussions about this, because I think  
11 everybody benefits when it succeeds, when the product  
12 works and the horse industry receives the benefits they  
13 would like to receive from it, as well as the tracks,  
14 who are making the investment in this product.

15 So I think, you know, give or take, I  
16 think you can look at Kentucky and see what the  
17 differentials are there, the allocations, and say that  
18 looks -- would probably look similar here.

19 CHAIRMAN SCHMIDT: Okay. One other  
20 question. I literally don't want to put the cart before  
21 the horse.

22 Were these things to go forward just as a  
23 matter of housekeeping, do you see us -- I'm thinking  
24 about the Racing Commission as an administrative body  
25 here.

1 MR. OLDHAM: Right.

2 CHAIRMAN SCHMIDT: Is it going to require  
3 additional funds, additional investigators, or is this  
4 just part of the tote system, we just simply open up  
5 additional windows? Are there going to be additional  
6 demands for our regulatory responsibilities to supervise  
7 these at the various tracks?

8 MR. OLDHAM: You know, Mr. Chairman, we've  
9 had a little bit of that discussion with your staff in  
10 terms of would there be additional demands on the agency  
11 going forward.

12 As you know, the industry through  
13 assessment funds the agency through fees authorized by  
14 the statute. I think our view on that would be to take  
15 a somewhat of a wait-and-see.

16 CHAIRMAN SCHMIDT: Uh-huh.

17 MR. OLDHAM: You're correct; this is a  
18 standard tote system with a few additional elements, and  
19 it could turn out that it fits largely within your  
20 existing agency personnel and infrastructure; but to the  
21 extent that there is some additional demands on the  
22 agency, we would expect your staff, through its normal  
23 process, to assess those needs and then develop a  
24 program, in essence, to ensure that those get taken care  
25 of.

1 CHAIRMAN SCHMIDT: Thank you, sir, for  
2 coming up.

3 Any other questions for him? I appreciate  
4 your input.

5 MR. OLDHAM: Thank you, Mr. Chairman.

6 CHAIRMAN SCHMIDT: We have one other  
7 individual who submitted a card to testify, Ms. Stacy  
8 Kerby.

9 Ms. Kerby, you are here with the Texas  
10 Humane Legislative Network from Austin. Welcome.

11 MS. KERBY: Thank you so much for letting  
12 me address you today.

13 I represent the Texas Humane Legislation  
14 Network. We are a mainstream animal welfare nonprofit  
15 organization in Texas. We have approximately 8,000  
16 members across the state. We are not a national  
17 organization. We're not a local organization.

18 We draw Texans from all corners of Texas  
19 to promote the humane treatment of animals through  
20 legislation, legislation and advocacy. This measure in  
21 particular, making historical racing with regard to  
22 greyhound racing, allowing that to pass, we believe that  
23 that would prop up a dying industry of greyhound racing.

24 It's our understanding there's only one  
25 park left that allows live dogs -- live dog racing, Gulf

1 Greyhound Park.

2                   During a five-year span, between 2008 and  
3 2013, over 2,000 injuries were recorded; and of those  
4 2,000 injuries, 86 were so severe that the dogs either  
5 had to be euthanized or they died of their injuries.

6                   There's good reason why live greyhound  
7 racing is in decline. Much attention has been brought  
8 to the treatment of the animals. They are warehoused in  
9 their kennels, which are typically three-feet high,  
10 four-feet long, three-feet wide.

11                   They live their entire lives in their  
12 kennels, except when they're being used on the  
13 racetrack. So, for that reason, we are interested in  
14 whether or not this measure passes.

15                   Additionally, we take issues down to the  
16 legislature when they are in session; and during the  
17 2013 legislative session, the Texas legislature did, in  
18 fact, pass the strongest penalties yet with regard to  
19 violations at greyhound racing tracks. And we believe  
20 that this is something that they should take a look at  
21 as opposed to circumventing the legislative process.

22                   I did bring a letter for you here today.  
23 If it pleases the Commission, I'll hand that in at the  
24 end of any questions you may have.

25                   Thank you.

1 CHAIRMAN SCHMIDT: Thank you, Ms. Kerby.  
2 Any questions of Ms. Kerby?  
3 Thank you very much, ma'am. We appreciate  
4 it.

5 MS. KERBY: Thank you.

6 CHAIRMAN SCHMIDT: Okay. We've completed  
7 public comment.

8 First of all, I'd like to thank the  
9 advisory committee on pari-mutuel wagering.  
10 Commissioner Steen is overseas. We appreciate the  
11 efforts of Vice Chair Ederer and Dr. Martin, multiple  
12 meetings, extensive legwork. We appreciate your efforts  
13 and appreciate the interest.

14 Do you have any comments, suggestions or  
15 thoughts right now?

16 COMMISSIONER EDERER: Well, there's been  
17 a lot of hard work. There have been a number of  
18 attorneys representing not only the tracks, but the  
19 horsemen. And there has been -- it's been a unified  
20 effort to review historical racing to determine if, in  
21 fact, the legality is there, that we do have the  
22 authority to go forward. They have come forward with  
23 their determination, as Mr. Bennett has just set out  
24 very clearly.

25 I believe what the industry is trying to

1 do is they're trying to bring the Texas racing industry  
2 into the 21st century. I think it's been an awful lot  
3 of hard work. Like I said, I think what Mr. Bennett has  
4 set out is very clear demonstration of the work that has  
5 been put forward.

6 I believe that we do have the authority to  
7 go forward, and certainly I would like to see this  
8 matter posted. I think that's where we are now. And,  
9 of course, that gives the public the opportunity to give  
10 us further information to go forward.

11 CHAIRMAN SCHMIDT: Mr. Martin, anything?

12 COMMISSIONER MARTIN: I feel the same way.  
13 Racing has suffered in Texas, and it seems like we're  
14 always a step behind the other states in doing things.  
15 And bringing us up with the latest technology and -- and  
16 like was mentioned earlier, whether it's an iPad or  
17 whatever it is, this is just new technology and it is  
18 not slot machines. It's pari-mutuel. And I agree with  
19 Mr. Ederer about I would certainly want to see it  
20 posted, also.

21 CHAIRMAN SCHMIDT: Any other comments?

22 Commissioner O'Connell?

23 COMMISSIONER O'CONNELL: Yes.

24 The comptroller appreciates all the hard  
25 work done exploring this issue, but the comptroller will

1 be casting a "no" vote on the posting of the proposed  
2 rules in the Texas Register. She strongly supports open  
3 government, and she values public comment on proposed  
4 rules that fall squarely within the rule-making  
5 authority of the Commission.

6 But she believes that these proposed rules  
7 are not within the commission's rule-making authority.  
8 And because public comment cannot cure that, she  
9 believes that these rules should not be posted.

10 I think the testimony that we've heard  
11 today, even from the general counsel of the Racing  
12 Commission, with all due respect, shows that the  
13 authority of the Commission to move forward here is  
14 arguable at best and certainly incomplete as evidenced  
15 by the testimony we've heard from the counsel from  
16 industry stakeholders, that the Commission does not have  
17 the authority to establish a state share or allocate the  
18 flow of money that would come out of historical racing.

19 So the comptroller believes that this  
20 would be a very significant impact on pari-mutuel  
21 wagering, that it is such that the legislature is the  
22 appropriate venue for moving this proposal forward, if  
23 it is to move forward.

24 COMMISSIONER EDERER: The basis for that?  
25 Give us the basis for your comment, please.

1                   COMMISSIONER O'CONNELL: I believe  
2 Mr. Fenner has indicated that a challenge -- the outcome  
3 of a challenge is that there are no guarantees, that it  
4 is --

5                   COMMISSIONER EDERER: Well, isn't that  
6 the case -- isn't that the case in every law that has  
7 ever passed, in every lawsuit that has -- ever takes  
8 place?

9                   COMMISSIONER O'CONNELL: Well, not  
10 necessarily.

11                  COMMISSIONER EDERER: There's never  
12 guarantees. It can always go one way or the other.

13                  COMMISSIONER O'CONNELL: No, but there is  
14 certainly a range of what authority that one can stand  
15 on to move forward with their proposition.

16                  COMMISSIONER EDERER: What is that  
17 authority? That's what I'm asking.

18                  COMMISSIONER O'CONNELL: I think that's  
19 what the comptroller believes, it is not -- the  
20 authority is not there. She does not agree with the  
21 interpretation of some of the other stakeholders.

22                  COMMISSIONER EDERER: What does she base  
23 that on?

24                  COMMISSIONER O'CONNELL: She is basing  
25 that on her expertise as an attorney reading this for

1 herself and having her opinion about whether or not the  
2 authority is there and whether or not it is good public  
3 policy to move forward with changing the landscape this  
4 significantly without legislative action, typically if  
5 there is going to be no benefit to the citizens of the  
6 State of Texas and the general revenue fund.

7 She does not believe that the rules that  
8 are being cited allow -- were intended to allow the  
9 Commission to establish a new form of gaming that would  
10 not benefit the State of Texas. She thinks that that is  
11 the purview of the legislature.

12 COMMISSIONER EDERER: But there is no new  
13 form of gaming. It's the same form of gaming; and if,  
14 in fact -- it's my understanding that the only person  
15 that could tax this is the comptroller, and so the  
16 comptroller does have the authority, is my  
17 understanding, to go forward, which we don't have the  
18 authority to tax.

19 COMMISSIONER O'CONNELL: The comptroller  
20 is only allowed to enforce a tax. The comptroller does  
21 not make a tax, and the comptroller does not establish  
22 the state's share. That is done by the legislature.

23 COMMISSIONER EDERER: Then they can do  
24 that, that's correct.

25 COMMISSIONER O'CONNELL: The legislature.

1                   COMMISSIONER EDERER: That's correct. We  
2 don't have the authority to tax anything.

3                   COMMISSIONER O'CONNELL: Right.

4                   COMMISSIONER EDERER: But we are giving  
5 the legislature the ability to make a lot more money by  
6 being able to tax.

7                   COMMISSIONER O'CONNELL: Well, I believe  
8 historically the legislature has not adopted new forms  
9 of pari-mutuel wagering without including a total  
10 package that discusses how the money is going to go  
11 down; and as the state's chief financial officer, that's  
12 concerning to her, and so that is her vote.

13                   And we certainly respect your opinion,  
14 Commissioner Ederer, but that is the way the comptroller  
15 will be voting today.

16                   COMMISSIONER EDERER: Fine.

17                   COMMISSIONER ABER: Let me make a comment.  
18 What's wrong with posting it and letting  
19 it go through the process?

20                   CHAIRMAN SCHMIDT: Any other comments?

21                   COMMISSIONER WEINBERG: I have a question.  
22 Arkansas and Kentucky are the states that  
23 have this in place. Is that correct?

24                   CHAIRMAN SCHMIDT: Yes.

25                   COMMISSIONER WEINBERG: And what

1 percentage of increases in revenues were brought to  
2 their tracks or the industry?

3 CHAIRMAN SCHMIDT: We have to rely on  
4 resources. Are you able to provide that?

5 MR. OLDHAM: Yeah.

6 If you look, Mr. Chairman, Commissioners,  
7 again, back at the submission, there is some discussion  
8 about the impact. This is on the first page of the  
9 letter that was submitted by the entire industry.

10 There's some -- there's some information,  
11 and I think we have a little bit more. First, at the  
12 bottom of that page, it talks about the declines in  
13 Texas.

14 And I thought there was something here --  
15 Mr. Bennett, do you want to come up here as well, if you  
16 don't mind?

17 CHAIRMAN SCHMIDT: No, we just need some  
18 information. That would be great. Thank you.

19 MR. OLDHAM: This is obviously laying out  
20 the comparison between Texas and Kentucky at the bottom  
21 of that page; and if you -- if you look for thoroughbred  
22 or horse races in Texas, 139,459 compared to 352,235 in  
23 Kentucky.

24 I know that we have looked at the  
25 situation in Kentucky. Since they got this product,

1     there have been increases every year in the purse  
2     levels.

3                   MR. BENNETT:   I think they were  
4     experiencing the same decline in purses and things that  
5     we have here; and when this was new, you know,  
6     pari-mutuel wagering on historical racing was introduced  
7     there, they reversed those declines.

8                   And as Mr. Oldham just pointed out, you  
9     can see the effect it's having on Texas; our purses are  
10    going down, theirs are going up because they have this  
11    forum to support live racing, which is the overriding  
12    goal, is to support live racing, which is going to help  
13    the Texas industry, who will pay more in taxes and sales  
14    taxes, because the breeders will be doing better, they  
15    will be selling more feed for those horses, and  
16    everybody is going to benefit out of this.

17                  MR. OLDHAM:   So I would say, Commissioner,  
18    I don't have an exact percentage increase, but I know  
19    it's year-over-year increases that have occurred in  
20    Kentucky and Arkansas as a result of the implementation  
21    or the ability to make pari-mutuel wagers on historical  
22    races.

23                  COMMISSIONER   EDERER:   Is Mr. Lewis here  
24    from Arkansas?

25                  CHAIRMAN SCHMIDT:   You mean we've got

1 Dr. Lewis here. Or Mr. Cella?

2 COMMISSIONER EDERER: The fellow that  
3 made the presentation to -- at one of our --

4 MR. BENNETT: No, he's not here.

5 COMMISSIONER EDERER: Well, if I remember  
6 his presentation, he stated that the racing industry was  
7 dying in Arkansas, and they were desperately trying to  
8 find something that would help bring the industry back;  
9 and this, in fact, has brought it back. I know it was  
10 very positive what he was saying, how it has  
11 successfully rejuvenated the racing industry in  
12 Arkansas.

13 MR. OLDHAM: And, Commissioner, if I might  
14 suggest, perhaps in public comment we could provide some  
15 additional information in relation to the financial  
16 impact of the product and some of the other  
17 jurisdictions.

18 CHAIRMAN SCHMIDT: I think we would be  
19 more interested in Arkansas pre and post. I think the  
20 one problem with Kentucky numbers is historically they  
21 get a little extra funds from the Kentucky Derby and  
22 Keeneland has been a high-running track.

23 So there have been little industry decline  
24 there, but Arkansas is a better comparison for the  
25 Commission, if that's possible.

1 MR. OLDHAM: We will try to put data  
2 together.

3 COMMISSIONER EDERER: Also, I'd like to  
4 see, along with the comptroller's office, what benefit  
5 Texas will get from this step, this procedure. I think  
6 that that's -- that would be very important for us to  
7 know. So, in your research, the feedback that we will  
8 get from the public, I think, this will be very helpful.

9 MR. BENNETT: I know the breeders are  
10 leaving the state for other states, so we are losing all  
11 that. What they bring to their community, you know, the  
12 taxes they pay, they are moving their operations out.  
13 It will stop that.

14 CHAIRMAN SCHMIDT: Thank you, Gentlemen.  
15 Thank you very much.

16 MR. OLDHAM: Thank you.

17 CHAIRMAN SCHMIDT: Any other questions by  
18 any other commissioners?

19 I think we have vetted this -- I'll  
20 certainly entertain a motion to publish the proposed  
21 amendments described in Sections V.A. and V.X. in the  
22 Texas Register for public comment.

23 Motion made by Vice Chair Ederer and  
24 seconded by Dr. Martin. I think we had enough  
25 discussion. I think we ought to call this for a vote.

1 Roll call vote?

2 MS. WELCH: Chairman Robert Schmidt?

3 CHAIRMAN SCHMIDT: In favor.

4 MS. WELCH: Commissioner Ron Ederer?

5 COMMISSIONER EDERER: In favor.

6 MS. WELCH: Commissioner Gloria Hicks?

7 MS. HICKS: In favor.

8 MS. WELCH: Commissioner Michael Martin?

9 COMMISSIONER MARTIN: In favor.

10 MS. WELCH: Commissioner Vicki Weinberg?

11 COMMISSIONER WEINBERG: In favor.

12 MS. WELCH: Commissioner Gary Aber?

13 COMMISSIONER ABER: In favor.

14 MS. WELCH: Commissioner Ann O'Connell?

15 COMMISSIONER O'CONNELL: Against.

16 MS. WELCH: Commissioner Cynthia Leon?

17 COMMISSIONER LEON: In favor.

18 CHAIRMAN SCHMIDT: I think the motion

19 carries. And, Mark, please post it in the Texas

20 Register. As we discussed, this is a vetting process in

21 the Register. We welcome more comment, scrutiny; and we

22 will come back in August in the fall or December to make

23 a final decision.

24 Next item is new rule proposal, Rule

25 309.13, for Temporary License to Conduct Racing. And

1 I'd like to note that this has not been forwarded to the  
2 Commission from the rules committee. The rules  
3 committee did not take the position to include it on the  
4 agenda. They gave the chair the option, and I did  
5 authorize the staff before. So this has not been  
6 endorsed by the rules committee.

7 Mark, can you lay the item out for us,  
8 please?

9 MR. FENNER: Yes, sir.

10 Proposed new Rule 309.13 will outline the  
11 temporary license to conduct racing at locations other  
12 than the designated locations. You'll see on Pages 106  
13 through 108 of the packet the specific proposal that  
14 you're considering.

15 Now, it addresses the standards for  
16 issuance of a temporary license, the information that  
17 must be in the application for a temporary license, and  
18 provisions relating to the expiration of the license.  
19 It also includes a provision allowing the Commission to  
20 require a bond from the licensee to ensure that the  
21 proposed live race days are run.

22 Now, at Saddle Brook Park's request, the  
23 rule also contains a provision allowing the Commission  
24 to grant a two-year extension of a temporary license as  
25 long as the extension is granted before the license

1 expires.

2 To request an extension, the licensee  
3 would have to submit a management and business plan  
4 describing its strategy for funding and completing  
5 construction of the permanent facility within the period  
6 of the extension.

7 Once the license expires, an association  
8 has no ability to extend the temporary license or to get  
9 a new temporary license. As the chairman mentioned,  
10 this was discussed at the rules committee meeting on  
11 May 20 and the chairman authorized staff to bring it to  
12 you on this agenda.

13 CHAIRMAN SCHMIDT: Okay. Thank you, Mark.

14 I'd like to recognize Brian Newby  
15 representing Saddle Brook, traveled here from Fort  
16 Worth.

17 Welcome, Mr. Newby.

18 MR. NEWBY: Thank you, Mr. Chairman,  
19 Commissioners.

20 My name is Brian Newby. I'm an attorney  
21 from Fort Worth, and I'm here representing Saddle Brook  
22 Park, LLC, and I'm joined here by the CEO of Saddle  
23 Brook, Lynn Alexander, and also by Jeff Hooper.

24 I'd like to begin my presentation by  
25 thanking the Commission and its staff for the support

1 for license holders and the true commitment that you  
2 always had to ensure successful racing in Texas. And I  
3 recognize that you have addressed some very challenging  
4 issues here this morning; and because of that, you also  
5 need to be commended.

6 Now, Mr. Fenner did a good job of kind of  
7 laying out the rule, and I'd like to focus on a couple  
8 of pieces to that. We've had a very, very good  
9 opportunity to work with the Commission staff on this  
10 proposed rule, and it really focuses on two points.

11 The first is ensuring that there's a rule  
12 that describes how we craft the issuance of temporary  
13 licenses in Texas; and that, we believe, will benefit  
14 not only Saddle Brook but also the entire industry.

15 But the proposed rule also sets out the  
16 exact sequence in the process of that, how that  
17 application is going to be submitted to you and confirms  
18 that that license expires after the expiration of two  
19 years.

20 Now, we've also added the second piece to  
21 that, and that is the extension of a temporary license.  
22 And that extension is very important in that it provides  
23 the Commission with complete control -- complete control  
24 over how that extension is going to be issued.

25 And this is how it does it. First off,

1 with the issuance of a temporary license, you have to  
2 hold a valid license. You also have to ensure that  
3 you've not completed construction within the designated  
4 location of a license holder.

5 The temporary location that you're going  
6 to be placing your facility has to be in the same county  
7 as the designated county. You have to make sure that  
8 you meet all zoning laws, and you have to ensure that  
9 the association has no outstanding fees or bonds for the  
10 Commission and the Commission has also issued future  
11 race dates. If the Commission finds that the temporary  
12 license is in the public interest, then they can issue  
13 that temporary license.

14 And the reason I went through all of that  
15 is because that's really the test, the test that you  
16 will look at in issuing both the temporary license as  
17 well as an extension, and the standards are the same.

18 Now, in regards to the extension of a  
19 license, that is going to be done through a written  
20 request, and that written request is important because  
21 it will detail specifically through a management plan  
22 and a business plan how the temporary license is in the  
23 best interest of not only the license holder but also  
24 the industry in general.

25 And that will be submitted to the

1 Commission for its review and its analysis, so you'll  
2 have an opportunity to review that application, examine  
3 it and make decisions for yourself.

4 And it's upon the completion of that  
5 review that you'll have an opportunity to then exercise  
6 that control by either approving the temporary license  
7 or refusing to extend the temporary license.

8 And the Commission then, under the draft  
9 rule that we presented to you, has another opportunity,  
10 an opportunity to monitor that extended temporary  
11 license after one year and get a progress report from  
12 the license holder.

13 Now, we have not proposed that the  
14 staff -- we have not proposed this, but the staff did  
15 recommend that a temporary license also post a bond.  
16 Now, we don't believe that's necessary in Saddle Brook's  
17 instance, but it may be a situation where if you're  
18 going to extend a temporary license, you may want that  
19 temporary license holder to have a bond put in place.  
20 That's your determination.

21 Overall, we think this proposed rule is a  
22 good rule. We think it meets the needs of temporary  
23 license holders, meets the needs of the Commission, but  
24 most importantly, it meets the public's interest.  
25 Because what it does is it provides you with another

1 creative solution, solution to the issues that face the  
2 Texas racing industry.

3 We believe that you'll find this temporary  
4 rule ultimately results in the presence of additional  
5 racing in Texas, additional racing obviously in West  
6 Texas under Saddle Brook, and we believe it will assist  
7 you in ensuring that there's a viable racing industry in  
8 Texas.

9 And I'm here to answer any questions.

10 CHAIRMAN SCHMIDT: Any questions of  
11 Mr. Newby at this time?

12 Thank you, Mr. Newby. We may call you  
13 back, though. Thank you very much.

14 Lynn Alexander, CEO at Saddle Brook.

15 Mr. Alexander, welcome.

16 MR. ALEXANDER: Thank you.

17 Mr. Chairman, Commissioners, I'm basically  
18 here to answer any questions you might have of Saddle  
19 Brook Jockey Club, Saddle Brook Park. We have had our  
20 license for 18 months; and since we started, our revenue  
21 from handle has gone up about 15 percent.

22 We have been able to put over \$400,000 in  
23 purses for the horse industry, and we just need more  
24 time in order to -- we ask for -- the rule gave us a  
25 two-year preopening simulcast, and that's what we have

1 done.

2 Our full intention was to build a track  
3 and hold live racing, but we just haven't been able to  
4 because of economics and time. And so this extension  
5 would give us more time.

6 It puts the Commission in control of -- of  
7 how many extensions we could have and so, you know,  
8 we're -- we're here to ask you to give us more time  
9 because we need more -- more revenue.

10 And it certainly hasn't been a profitable  
11 deal for us. It's been a very nonprofitable deal for  
12 us, but we do believe that we are getting much better  
13 and we think 2014 will be much better than 2013.

14 And so I think the horsemen are in full  
15 support of us, and I'm here to tell you that we need  
16 your help and we need your vote to give us an extension  
17 and then we will come back to you.

18 And we've always done exactly what we said  
19 we would do. Everything that we said we would do, we've  
20 done, but we just don't have the time or the money to  
21 complete a racetrack and hold live race dates in  
22 October. So that's what we're here for.

23 Any questions?

24 Yes, ma'am.

25 COMMISSIONER O'CONNELL: Mr. Alexander,

1 the law allows you to go ahead and open a simulcasting  
2 facility now at your licensed location. So wouldn't  
3 you -- if your temporary location license at your  
4 facility in town expires, you still have the ability to  
5 open up a simulcasting facility at your licensed  
6 location even if the racetrack has not yet been built.  
7 Are you aware of that?

8 MR. ALEXANDER: I'm not aware of that. I  
9 don't think that's -- Mr. Chairman, is that correct?  
10 She's saying that we can move to our permanent location  
11 and have a simulcast facility?

12 MR. FENNER: If I may.

13 That is correct, as long as you have live  
14 race dates granted to you by the Commission, you could  
15 relocate your operations to your designated location at  
16 any time, yes.

17 COMMISSIONER EDERER: You're established  
18 where you are at the present time. Is that right?

19 MR. ALEXANDER: Yes, we are.

20 COMMISSIONER EDERER: For you to  
21 relocate, would that hurt you?

22 MR. ALEXANDER: Financially?

23 COMMISSIONER EDERER: Yes.

24 MR. ALEXANDER: Yes.

25 COMMISSIONER EDERER: I'm talking about,

1 would you lose -- obviously, you've got a following  
2 there. You've got patrons that come to your  
3 establishment. If you relocated it out to where the  
4 track is going to be, would you be defeating your  
5 purpose? Would you be losing your patrons, or would you  
6 be able to keep your patrons and have your new facility?

7 MR. ALEXANDER: I don't know. That's a  
8 good question. I don't know that I can answer that,  
9 because it's -- certainly our racetrack is certainly out  
10 of town, and so I would think that it would be very  
11 tough for us to move all the people that we have right  
12 now in the middle of the town in Amarillo.

13 I don't think that we could take everybody  
14 out there with us. And financially, it would be very  
15 detrimental to us at this time. Certainly, we can't get  
16 it complete by October.

17 COMMISSIONER ABER: So you just need an  
18 extension of your temporary license.

19 MR. ALEXANDER: That is what we are  
20 asking.

21 COMMISSIONER ABER: And what is your  
22 projection to the live racing dates?

23 MR. ALEXANDER: We would ask to move our  
24 live racing dates, exactly the same thing. Live racing  
25 dates have been granted for 2014. If we're granted this

1 rule change that gives us a two-year extension, we would  
2 move the live race dates to 2016.

3 COMMISSIONER ABER: October of 2016?

4 MR. ALEXANDER: October of 2016.

5 COMMISSIONER EDERER: Do you think this  
6 two years will give you the opportunity to go ahead and  
7 build the track or are you just going to ask for another  
8 one in a few more years?

9 MR. ALEXANDER: Well, I would hope so, you  
10 know. That's our plan. I mean, everybody would like to  
11 see that. General -- we're only required to have two  
12 dates of live racing and, you know, spending 5 to  
13 \$12 million for a racetrack for two live race dates and  
14 to hold seven or eight races is a lot. And, you know,  
15 we are going to have to be able to have a lot more race  
16 dates than that probably in order to make it even  
17 feasible, so ...

18 COMMISSIONER EDERER: You can get a lot  
19 more race dates.

20 MR. ALEXANDER: We don't have any more  
21 horses, though. That's one of the biggest problems.

22 COMMISSIONER EDERER: I think the horses  
23 will come, but you have to have someplace to run them.

24 MR. ALEXANDER: Well, I don't think --  
25 it's -- it's, you know -- I can't tell you. I can just

1 tell you we feel like with this extension we can -- we  
2 plan to do that.

3 CHAIRMAN SCHMIDT: Mr. Alexander, I'm  
4 sympathetic to your proposal. I wanted to clarify. I  
5 would think it's fair to say that your license, prior to  
6 you assuming a role in the management of this operation,  
7 was dormant for almost 20 years.

8 MR. ALEXANDER: Yes, sir.

9 CHAIRMAN SCHMIDT: I think all the  
10 Commissioners -- Commission staff are very appreciative  
11 of your efforts to actually turn some dirt, open up a  
12 facility and make real plans and invest real money.

13 I felt a little sympathetic to your  
14 proposal in part, because while you have a financial  
15 plan, the Sunset Commission in turn changed the funding  
16 operation of this Commission.

17 And I would just ask you, the fact that  
18 you suddenly received an additional burden in terms of  
19 carrying the cost of your license, did it significantly  
20 affect your operations to any degree?

21 MR. ALEXANDER: Absolutely. Our license  
22 fee went from 100 to \$230,000 a year.

23 CHAIRMAN SCHMIDT: Okay.

24 MR. ALEXANDER: So quite a burden.

25 CHAIRMAN SCHMIDT: Yeah, I don't think it

1 was a Commission decision. We very much appreciate the  
2 work of the Sunset Commission, but I think they did  
3 change the rules a little bit on you in midstream.

4 MR. ALEXANDER: Yes.

5 CHAIRMAN SCHMIDT: Any other questions of  
6 Mr. Alexander?

7 Okay. Thank you, sir. We may call you  
8 back.

9 MR. ALEXANDER: Appreciate it.

10 CHAIRMAN SCHMIDT: Jeff Hooper with Saddle  
11 Brook Park. Mr. Hooper?

12 MR. HOOPER: I'm just here as a resource.

13 CHAIRMAN SCHMIDT: Just here as a  
14 resource. Great.

15 Any further comments from any of the  
16 Commissioners?

17 Ms. O'Connell?

18 COMMISSIONER O'CONNELL: I have a question  
19 for Mr. Fenner, and that is just about the section of  
20 the Racing Act that deals with temporary location  
21 licenses.

22 It seems pretty clear from reading that  
23 that the legislative intent was to only have these  
24 temporary licenses be two years, and that is really  
25 based on just the reading of the Act.

1           It says that -- it explicitly says you  
2 cannot extend the temporary location license after it  
3 expires, and it explicitly says you cannot get a second  
4 temporary location license, that the same parties cannot  
5 get a second license and that -- the Commission's  
6 rule-making authority has to be consistent with the  
7 grant that comes from the Act.

8           So it seems that this proposal is really  
9 asking us to circumvent that clear language. I think  
10 that's a concern to the -- to the comptroller. I mean,  
11 the statute does not -- it explicitly says you can't  
12 extend it after expiration and you can't get a second  
13 license.

14           And we're being asked to interpret the  
15 silence on whether you can extend it before it expires  
16 as legal authority to act, and that is -- that is a  
17 concern to the comptroller.

18           I think the comptroller is not, you know,  
19 feels like this kind of rule -- rule proposal is outside  
20 the bounds of our authority and that the Act is pretty  
21 clear on this point.

22           Is that what we are being asked to do, to  
23 find that silence is our legal authority for extending  
24 this license?

25           MR. FENNER: I agree that Section 6.15 of

1 the Act, from reading it, it appears to me that the  
2 intent is a two-year temporary license; and the fact --  
3 when the temporary license was granted, originally you  
4 may remember that the DPS representative asked me  
5 whether there was an opportunity for it to be extended,  
6 and I said no.

7 But subsequent to this time, you know,  
8 Mr. Newby, who is very creative and a good lawyer, you  
9 know, presented this interpretation of reading this  
10 word, you know, after a license has been expired, you  
11 can't get an extension or a new license. And that's  
12 what lawyers do; they look at language critically. And  
13 this is, I believe, a permissible -- it is an option for  
14 the Commission to consider.

15 This is a policy question that you could  
16 weigh in and decide that you do want to interpret it  
17 this way. I've been pretty upfront with people that in  
18 the plain language of this section it looks to be like  
19 it's a one-time, two-year temporary license.

20 CHAIRMAN SCHMIDT: So the critical  
21 perspective from your -- our counsel's perspective is  
22 simply the fact that if we act before it expires, it may  
23 be permissible.

24 MR. FENNER: Yes, you can interpret it  
25 that way.

1                   COMMISSIONER O'CONNELL: You can fairly  
2 interpret it the other way.

3                   MR. FENNER: Yes. Yes, ma'am.

4                   COMMISSIONER LEON: Is this a proposal --  
5 it's a proposal, again, for --

6                   CHAIRMAN SCHMIDT: A posting, a posting  
7 for public comment.

8                   COMMISSIONER LEON: And we can consider  
9 during this comment period this deliberation of the  
10 viewpoints until we make a vote at the --

11                  CHAIRMAN SCHMIDT: That's perfect.

12                  COMMISSIONER O'CONNELL: I think the  
13 comptroller, again, although we understand that's the  
14 purpose of the public comment period and that the  
15 comptroller welcomes public comment and the refinement  
16 of those ideas during that -- that period, the idea  
17 initially has to be within the rule-making authority of  
18 the Commission to move forward.

19                  And so it is her opinion that this  
20 proposal is not within the Commission's rule-making  
21 authority, so she is going to vote "no" on the posting  
22 of it.

23                  She does feel like certainly the parties  
24 are welcome to take this to the legislature, and she's  
25 aware that they have taken it to the legislature

1 recently, although in slightly different time frames,  
2 and it did not pass. So that -- that's concerning and  
3 something that the comptroller has taken note of.

4 CHAIRMAN SCHMIDT: Any further discussion?

5 COMMISSIONER ABER: Yeah, I want to say,  
6 too, they contribute a lot of money and everybody wants  
7 them to be successful, and I still don't see what is  
8 wrong with posting it and getting the opinions of  
9 everybody to see if they can go forward, because they  
10 are doing a good job with it and it's tough.

11 COMMISSIONER O'CONNELL: I think just the  
12 issue is that public comment cannot cure whether or not  
13 the initial authority is there, and that's really the  
14 comptroller's concern.

15 The comptroller certainly would -- wishes  
16 all the best to Saddle Brook Park, but, you know, Saddle  
17 Brook Park had to know when they initially started this  
18 process there was a significant -- I mean, the law was  
19 it would only be a two-year license.

20 And Saddle Brook Park must have had a  
21 Plan B, and they must have known if the timeline ran  
22 out, that they could open a simulcast facility. And  
23 they still can at their temporary license location. But  
24 would that cost us money? Yes. Would it be as  
25 expensive as opening up a racetrack at that location?

1 No. But that is an option, and that is surely something  
2 that they contemplated.

3 CHAIRMAN SCHMIDT: Any further discussion?

4 COMMISSIONER EDERER: I have a comment.  
5 I was on the rules committee.

6 I support the posting, but also, after the  
7 posting, I would request that we, during this period, be  
8 given information concerning the expense and the cost to  
9 relocate, if it is, in fact, practical to do so. And  
10 also, of course, the questions that have been raised by  
11 the comptroller, but I know that you have support for  
12 that. You might, you know, reiterate that to the  
13 Commission during this posting comment period.

14 CHAIRMAN SCHMIDT: Any further  
15 discussions, comments?

16 Great. I'll certainly entertain a motion  
17 to publish the proposal for a new rule, 309.13,  
18 Temporary License to Conduct Racing to be published in  
19 the Texas Register for public comment.

20 Motion by Dr. Aber.

21 COMMISSIONER EDERER: And I'll second.

22 CHAIRMAN SCHMIDT: Second by Vice Chair  
23 Ederer.

24 Would you please call the roll?

25 MS. WELCH: Chairman Robert Schmidt?

1 CHAIRMAN SCHMIDT: Favor.

2 MS. WELCH: Commissioner Ron Ederer?

3 COMMISSIONER EDERER: In favor.

4 MS. WELCH: Commissioner Gloria Hicks?

5 MS. HICKS: In favor.

6 MS. WELCH: Commissioner Michael Martin?

7 COMMISSIONER MARTIN: In favor.

8 MS. WELCH: Commissioner Vicki Weinberg?

9 COMMISSIONER WEINBERG: In favor.

10 MS. WELCH: Commissioner Gary Aber?

11 COMMISSIONER ABER: In favor.

12 MS. WELCH: Commissioner Ann O'Connell?

13 COMMISSIONER O'CONNELL: Against.

14 MS. WELCH: Commissioner Cynthia Leon?

15 COMMISSIONER LEON: In favor.

16 CHAIRMAN SCHMIDT: Mark, please publish

17 that as well.

18 MR. FENNER: Yes, sir.

19 CHAIRMAN SCHMIDT: And please formally

20 advise Saddle Brook at Vice Chair Ederer's request.

21 MR. FENNER: Yes, sir.

22 CHAIRMAN SCHMIDT: Moving forward, next

23 proposal, 319.364, Testing for Steroids.

24 Can you bring us up to date, Mr. Fenner?

25 MR. FENNER: Yes, sir.

1                   This proposed amendment would remove the  
2 specific general threshold levels from the rule and  
3 allow the executive director to instead set those levels  
4 under the broad authority that has been granted to him  
5 under Rule 319.3.

6                   This approach is more flexible and allows  
7 the Commission to follow the standards established by  
8 ARCI and RMTC more quickly. If I might give you some  
9 examples.

10                   Winstrol is a therapeutic anabolic steroid  
11 that was on RCI's list of approved therapeutics and,  
12 therefore, it is in our rule of approved therapeutics.  
13 However, RCI subsequently removed it and so now our rule  
14 allows it, but RCI does not.

15                   Then another example is the thresholds  
16 that RCI has recently adopted for steroids and blood  
17 testing, testing either by serum or blood. This would  
18 actually be very beneficial to TVDML. It's more cost  
19 effective for TVDML to conduct testing in serum or  
20 blood, but our rule only provides for testing in urine  
21 because that's all that was available under the RCI  
22 standards at the time you guys looked at this rule.

23                   So, by taking those thresholds out of the  
24 specific rule and allowing the executive director to  
25 treat those thresholds like it does with other

1     therapeutics, we would have a lot more flexibility to  
2     follow the RCI standards.

3                     And then the proposed rule also  
4     promulgates other model rule changes that are in there,  
5     just kind of stylistic changes they made. This proposal  
6     was discussed at the rules committee meeting on May 20  
7     and -- (inaudible).

8                     CHAIRMAN SCHMIDT: Thank you, Mark.

9                     We don't have any public comment.

10                    Commissioner O'Connell, do you have  
11     anything to add?

12                    COMMISSIONER O'CONNELL: No.

13                    CHAIRMAN SCHMIDT: Great.

14                    Vice Chair Ederer?

15                    COMMISSIONER EDERER: No.

16                    CHAIRMAN SCHMIDT: Any questions for  
17     Commissioner O'Connell?

18                    COMMISSIONER EDERER: No.

19                    CHAIRMAN SCHMIDT: I'll entertain a motion  
20     to publish proposed amendment to Rule 319.364 for  
21     testing for anabolic steroids in the Texas Register.

22                    All those in favor, say "aye."

23                    Second -- motion made by Commissioner  
24     Weinberg, seconded by Dr. Martin.

25                    All those in favor say, signify by saying

1 "aye."

2 COMMISSIONERS: Aye.

3 CHAIRMAN SCHMIDT: Anyone opposed?

4 Okay. It's passed.

5 Rule adoptions. Adoption of amendments to  
6 Rule 309, Grading System, amendment of adoption to Rule  
7 311.2, Application Procedure, and adoption of Amendment  
8 Rule 313.110, Coupled Entries.

9 We vetted these fairly extensively. No  
10 public comment. Can you bring us up to date?

11 MR. FENNER: Yes, sir.

12 Each of these three proposals were  
13 published in Texas Register on April 25, and they were  
14 discussed at the rules committee meeting on May 20,  
15 which we received no comments in response to the  
16 publication.

17 309.355 permits the Greyhound Association  
18 to require a kennel owner to make a minimum of  
19 15 percent of the kennel's active greyhounds available  
20 for 660 yards or longer races.

21 The amendment to 311.2 addresses the  
22 requirement of SB162, which requires the state agency  
23 with licensing functions to adopt rules necessary to  
24 credit the service training or education of service  
25 members and veterans towards certain licensing

1 requirements.

2 And finally, the amendment to 313.110  
3 would permit the uncoupling of horses and stake races  
4 with the purse of at least \$50,000. The Texas Quarter  
5 Horse Association, with the support of the Thoroughbred  
6 Association, requested this change in order to increase  
7 the number of betting interest and thereby improve the  
8 attractiveness of the stakes of races of the potential  
9 betters.

10 CHAIRMAN SCHMIDT: There's no public  
11 comment.

12 Any questions or comments by the  
13 commissioners? Commissioner O'Connell? Thank you for  
14 your work on the rules committee.

15 COMMISSIONER O'CONNELL: You're welcome.

16 CHAIRMAN SCHMIDT: Appreciate it.

17 I'll certainly entertain a motion to adopt  
18 the proposed amendments described in Sections 5AA  
19 through 5BB as published previously in the Texas  
20 Register.

21 Motion by Commissioner O'Connell and  
22 seconded by Commissioner Hicks.

23 All those in favor, signify by saying  
24 "aye."

25 COMMISSIONERS: Aye.

1                   CHAIRMAN SCHMIDT:  Anyone opposed?  
2                   That amendment -- all oral -- oral  
3                   adoptions are now part of our rule system.  There's no  
4                   executive session.  Unless it is inconvenient for anyone  
5                   else, we will continue with our schedule.  The next  
6                   meeting is on the 12th of August and December 8, and  
7                   we're adjourned.

8                   Thank you very much.

9

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11                   (Proceedings concluded at 11:48 p.m.)

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REPORTER'S CERTIFICATE

I, Jan E. Harrison, Certified Shorthand Reporter in and for the State of Texas, hereby certify that the transcript is a true record of the testimony given;

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of this action.

Certified to by me on this \_\_\_\_\_ day of June, 2014.

JAN E. HARRISON, CSR, RPR, CRR  
Texas CSR 2142  
Expiration: 12/31/2015  
DEPOTEXAS - Firm Registration No. 17  
SUNBELT REPORTING - Firm Registration No. 87  
1016 La Posada Drive, Suite 290  
Austin, Texas 78752  
512.465.9100