

BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

COMMISSION MEETING

BE IT REMEMBERED THAT the above-titled matter came to hearing on the 18th day of February, 2016, beginning at 10:30 a.m. and adjourning at 11:20 a.m. at 105 West 15th Street, Room 120, held in Austin, Travis County, Texas, and the following proceedings were reported by APRIL C. BALCOMBE, Certified Shorthand Reporter for the State of Texas, reported by computerized stenotype machine.

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APPEARANCES

Commissioners:

- ROLANDO PABLOS
- RONALD F. EDERER
- MARGARET MARTIN
- GLORIA HICKS
- GARY P. ABER
- ROBERT SCHMIDT
- JOHN T. STEEN, III
- VICTORIA NORTH
- A. CYNTHIA LEON

P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN PABLOS: Good morning.

The time is 10:30, Thursday,
February 18th. And at this time I would like to call
this meeting of the Texas Racing Commission to order.

Mary, will you please call roll?

MS. WELCH: Commissioner Gary Aber?

COMMISSIONER ABER: Here.

MS. WELCH: Commissioner Gloria Hicks?

COMMISSIONER HICKS: Here.

MS. WELCH: Commissioner Cynthia Leon?

COMMISSIONER LEON: Here.

MS. WELCH: Commissioner Margaret Martin?

COMMISSIONER MARTIN: Present.

MS. WELCH: Commissioner Victoria North?

COMMISSIONER NORTH: Here.

MS. WELCH: Commissioner Robert Schmidt?

COMMISSIONER SCHMIDT: Here.

MS. WELCH: Commissioner John Steen?

COMMISSIONER STEEN: Here.

MS. WELCH: Vice-Chairman Ron Ederer?

VICE-CHAIRMAN EDERER: Present.

MS. WELCH: Chairman Rolando Pablos?

CHAIRMAN PABLOS: Here.

Mary, do we have a quorum?

1 MS. WELCH: We do.

2 CHAIRMAN PABLOS: Okay. At this time I
3 would like to bring up Item II, "Proceedings on
4 Rulemaking," and let Mr. Fenner lay out this item,
5 please.

6 MR. FENNER: Yes, sir.

7 This is the proposed -- or the repeal of
8 the historical racing rules. This means that we are
9 going to take the rules that pre-existed historical
10 racing, return them to the fashion in which they were
11 before. Also, Subchapter F of Chapter 321, which is
12 dedicated solely to historical racing, that entire
13 subchapter is a propose for repeal during this -- this
14 Agenda item.

15 Just to bring up a little history, these
16 rules were determined to be -- to have exceeded the
17 Commission's authority by a Travis County District
18 Court. Staff proposed a repeal in order to clean up the
19 rules. That's all.

20 They have been considered on multiple
21 occasions. They were discussed by the Commission at its
22 meetings in June, August, and again in December. This
23 most recent repeal was published in the January 1, 2016
24 Edition of the Texas Register. And during that public
25 comment period, we received almost 1,000 public

1 comments.

2 There was one comment from the Kickapoo
3 Traditional Tribe of Texas in support of repeal. All
4 the remaining comments were in opposition to the repeal.
5 And the compilations were provided to you separately and
6 they were also made available on the Agency's website.

7 So these proposals are now eligible for
8 adoption -- adoption of a repeal. The staff does not
9 have a recommendation.

10 CHAIRMAN PABLOS: Thank you, Mark.

11 Mark, can you walk us through some of
12 these legal proceedings that have been taking place
13 since our last meeting in December, please?

14 MR. FENNER: Yes, sir.

15 At the -- as you well recall, at the
16 Commission's meeting on February 9th, the Commission was
17 served with a temporary restraining order by the Texas
18 Greyhound Association. That was filed in Cameron
19 County. And so the Commission adjourned the meeting
20 without taking action on the historical racing rules.

21 The Attorney General's office filed a writ
22 for mandamus in the Corpus Christi Court of Appeals.
23 While that was pending, the matter was transferred to a
24 different judge within Cameron County, and so the 13th
25 Court of Appeal remanded it back to the new district

1 judge to consider whether or not the restraining order
2 should continue.

3 Then the Texas Greyhound Association filed
4 a nonsuit the day before yesterday; and, therefore, as a
5 result, a temporary restraining order is dissolved
6 automatically, and you are no longer bound by it and you
7 may take actions on it today.

8 CHAIRMAN PABLOS: Can you explain what a
9 "nonsuit" is, please?

10 MR. FENNER: A "nonsuit" is a voluntary
11 dismissal of the case filed by the plaintiff, the Texas
12 Greyhound Association.

13 Yesterday morning, the Texas Horsemen's
14 Partnership filed an emergency motion for temporary
15 relief with the Third Court of Appeals here in Austin,
16 asking that the Court enjoin the Commission from taking
17 action today. However, the Third Court of Appeals
18 denied that motion early yesterday afternoon.

19 There is still the other lawsuit from the
20 Texas Horsemen's Partnership against the Comptroller.
21 That's still pending, but there is nothing in that that
22 prevents the Commission from taking action today.

23 CHAIRMAN PABLOS: Okay, Mark. Thank you.

24 Commissioners, are there any technical or
25 clarifying questions of Mark regarding this issue?

1 Okay. Hearing none, do we have anybody
2 signed up for public comment on this item? Do we have
3 any cards?

4 So I have several files for folks not
5 wishing to testify, but they have submitted their cards.
6 We will recognize those accordingly.

7 So Commissioners, we have heard a lot of
8 this public comment already in -- during our December
9 meeting. I think we have been extremely generous in
10 allowing everyone who wished to speak to speak.

11 I will open it up for public comment at
12 this time. But for those of you who have already
13 addressed us, whether it's in December or prior to that,
14 I would ask you to either forego your testimony or to
15 come up and to please keep it brief. That way, we can
16 move forward with this.

17 At this time, I would like to call the
18 following individuals: Rob Kohler.

19 Rob, are you here?

20 MR. KOHLER: Good morning. My name is
21 Robert Kohler. I am here representing the Christian
22 Life Commission of the Baptist General Convention of
23 Texas. I have testified before you, and I will -- I
24 will leave it at that. We hope you will repeal these
25 rules.

1 CHAIRMAN PABLOS: Thank you, Mr. Kohler.

2 Next, Mary Ruyle.

3 MS. RUYLE: Good morning, Commissioners.

4 I am Mary Ruyle, the executive director for the Texas
5 Thoroughbred Association. First-off, I want to give you
6 a report.

7 At the December 15th Commission meeting,
8 Commissioner Ederer said it was incumbent upon us as
9 horsemen to reach out to the Governor and the Lieutenant
10 Governor to request assistance from them for the Texas
11 horse industry, and I would like to outline our efforts
12 to do so.

13 On November 4th, Mr. Patrick wrote a
14 letter to the state's horsemen and racetracks asking for
15 "recommendations on how we can help preserve and grow
16 your industry." November 16th, a letter was sent from
17 TTA to Mr. Patrick, officially requesting a meeting.
18 December 1st, Mr. Patrick issued a press release on the
19 subject of historical racing.

20 December 2nd, Marsha Rountree and I met
21 with Jared Staples, the policy advisor for Governor
22 Abbot, and provided him with verbal and written
23 information covering why Texas cannot compete on an
24 even-playing field with our surrounding states who boost
25 their race purses with income from additional form of

1 gaming.

2 We also provided him of a timeline of
3 events regarding how the rules for historical racing
4 came about, the public comment periods, votes, and
5 explanations of why historical racing terminals are not
6 slot machines, since historical racing involves actual
7 pari-mutuel wagering on a horse product with no random
8 number generator and would be available only within the
9 enclosure of a licensed racetrack.

10 December 3rd, I sent a letter to
11 Mr. Patrick in response to his December 1st press
12 release, again asking for the opportunity to meet with
13 him. A copy was sent to Governor Abbot, Speaker Straus,
14 and members of this Commission.

15 December 16th, a letter from industry
16 representatives was sent to Mr. Patrick requesting a
17 meeting. Numerous emails were then exchanged between
18 myself and Mr. Patrick's scheduler, Hannah Hamilton, to
19 follow up.

20 December 21st, Ms. Hamilton emailed a
21 meeting request form to me, which I completed and
22 returned the next day. January 5th, I emailed
23 Ms. Hamilton to follow up and was told that Mr. Patrick
24 was traveling often and did not have any availability in
25 Austin.

1 January 7th, I emailed Ms. Hamilton,
2 advised her that if it suited Mr. Patrick, we could be
3 available to meet in a location other than Austin.

4 January 13th, 22nd and February 3rd, I
5 emailed Ms. Hamilton to follow up and received no
6 response. January 19th, TTA issued a press release to
7 inform the public of our efforts in seeking a meeting
8 with the Lieutenant Governor.

9 February 3rd, Ms. Hamilton responded that
10 the meeting needed to take place in Austin so that the
11 proper policy staff within the office could participate
12 and that his schedule was currently filled with travel
13 and commitments in and out of state.

14 In January, Kimberly Reeves with the
15 "Quorum Report" called me and we discussed the issue of
16 historical racing. I told her we had requested a
17 meeting with Lieutenant Governor Patrick, and she said
18 she would like to follow up.

19 On January 20th, Ms. Reeves requested
20 under the Public Information Act that Mr. Patrick's
21 office provide, one, all emails between Mary Ruyle or
22 the Texas Thoroughbred Association and Hannah Hamilton
23 since September 2015; and, two, a letter to the
24 Lieutenant Governor dated December 16th from Mary Ruyle
25 or the Texas Thoroughbred Association, plus any response

1 from the Lieutenant Governor's office.

2 On February 3rd, Ms. Reeves received an
3 email response, providing her with the requested
4 December 16th letter and stated that her office did not
5 have the email information she requested.

6 Ms. Reeves sent a copy of that
7 communication to me, and I provided her with copies of
8 my email exchange with Mr. Patrick's office.

9 I just want the Commission to be aware
10 that we have repeatedly reached out in good faith to try
11 to meet with the Lieutenant Governor; and despite the
12 statement in his letter of November 4th, he has not
13 reciprocated.

14 Finally, I want to address very briefly
15 the proposed repeal of the rules. The procedure that we
16 follow is this for a reason, with the publishing of the
17 proposal in the Texas Register to determine the will of
18 the public.

19 In the last comment period that Mark
20 advised you, 1,000 comments were received with only one
21 in favor of repeal. Each time there has been a public
22 comment period, the people have overwhelmingly been in
23 support of keeping the historical racing rules. We feel
24 it's your obligation to represent those people and vote
25 accordingly.

1 I will be happy to answer any questions.

2 CHAIRMAN PABLOS: Commissioners, any
3 questions?

4 Thank you.

5 MS. RUYLE: Thank you.

6 CHAIRMAN PABLOS: Next is Wesley Melcher.

7 MR. MELCHER: Thank you for allowing me to
8 speak. I spoke at the December meeting, but I would
9 like to speak about a few different things today that I
10 spoke about then. I just want to encourage everybody to
11 do their job today. And in order to do your job, we
12 need to follow the rules and laws that are in place.

13 Texas is very specific in its
14 Constitution, explaining the separation of powers. And
15 the Constitution says the powers of the government of
16 the State of Texas shall be divided in three distinct
17 departments, each of which shall be combined into a
18 separate body of magistracy; to wit, those are
19 legislative to one, executive to another, judicial to
20 another; and no person or collection of persons being of
21 one of those departments shall exercise any power
22 properly attached to the others except in instances
23 provided by the Constitution.

24 The legislature is supposed to consider
25 proposed laws and resolutions and also appropriate

1 funds. Appropriate. Not eliminate an entire agency.

2 The Texas judicial system is supposed to
3 interpret and enforce laws that are created by the
4 legislature. The current Texas Racing Commission was
5 created by The Racing Act of 1986, which was also voted
6 on by the people. And I want to keep coming back to
7 what the people have said and not what just a couple of
8 politicians have said.

9 The purpose of the act is to provide
10 strict regulation of horseracing and greyhound racing
11 and control of pari-mutuel wagering in connection with
12 that racing.

13 It says on the Commission's website that
14 the mission of the Racing Commission is to enforce the
15 Texas Racing Act and rules to ensure the safety,
16 integrity, and fairness of Texas pari-mutuel racing.

17 Attorneys came into this situation, which
18 also had a very specific job, to recommend policies,
19 procedures and rules and regulations -- two different
20 agencies and two individuals that hired them. We did a
21 lot of investigation with the Racing Commission in
22 regards to the historical racing rules.

23 As Mary mentioned in her letter -- or when
24 she spoke, all of the different public comment periods
25 have been in overwhelming favor of historical racing.

1 So how did we get from a 7:1 decision to a
2 split decision with one abstention?

3 Well, two new appointments were made by
4 the Governor, and it was obvious the purpose of those
5 two new appointments because of the way that they voted
6 the last time they were asked to vote.

7 Money poured into campaigns across the
8 nation -- or across the state from out-of-state casinos
9 and people with out-of-state casino interests. And
10 obviously, that's where everything got political.

11 And so what I would like to do today is
12 just remind everybody to do their job. The job of the
13 Racing Commission is to take care of the racing industry
14 and enforce pari-mutuel laws in gaming, and we have had
15 attorneys --

16 VICE-CHAIRMAN EDERER: Don't tell us how
17 to do our job.

18 MR. MELCHER: I know, but --

19 VICE-CHAIRMAN EDERER: Don't tell us what
20 our job is.

21 MR. MELCHER: But --

22 VICE-CHAIRMAN EDERER: I mean, as far as I
23 am concerned, you are Johnny-come-lately. You are just
24 coming in here, and you have appeared once before.

25 Don't go lecturing us.

1 MR. MELCHER: But --

2 VICE-CHAIRMAN EDERER: You have given a
3 summation of everything, and we appreciate that.

4 MR. MELCHER: Right, but it's --

5 VICE-CHAIRMAN EDERER: But don't go
6 telling us how to do our job.

7 MR. MELCHER: It is not meant in any
8 offense.

9 My point is that I was going to make the
10 recommendation that the two commissioners that were not
11 present during all of the discussions on historical
12 racing and involved in the process of determining
13 whether or not the Commission had the authority to
14 create the rules were not there when that happened, and
15 they voted against it last time.

16 And so my suggestion today was for them to
17 abstain because they weren't there during the process,
18 and Lieutenant Governor Patrick was also not there. He
19 has refused to look at the machines.

20 And so I feel like the commissioners that
21 voted to approve the historical racing rules the first
22 time were doing their jobs based on the knowledge and
23 information that they have.

24 Whereas today, we have two people that
25 were not part of that initial process and politicians

1 that were also not part of that process that are
2 enforcing their will and their opinions that were not
3 educated, and so that's why I brought up the people's --

4 CHAIRMAN PABLOS: So not only are you
5 telling us what we should do but also insulting me?

6 MR. MELCHER: No, I am not insulting you
7 at all.

8 CHAIRMAN PABLOS: It sure sounds like it.

9 MR. MELCHER: But the point is that you
10 weren't present during those discussions and all of the
11 conversations with attorneys whenever they came --

12 CHAIRMAN PABLOS: Very well. Thank you
13 very much.

14 MR. MELCHER: Thank you.

15 CHAIRMAN PABLOS: Next is David Cabralas,
16 please.

17 MR. CABRALAS: Good morning,
18 Commissioners. Ahead of your February 9th meeting, I
19 was advised that Chairman Pablos wanted me to attend and
20 bring you to up to date on a lawsuit that I had filed
21 regarding Rider 7, which is the Rider that is causing
22 the funding problems for the Racing Commission.

23 Of course you didn't take any action on
24 February 9th. So I am here today to make good on that
25 request and bring you up to date on what that lawsuit is

1 about and where it stands. I am the attorney
2 representing the Texas Horsemen's Partnership.

3 MR. FENNER: Is this -- can you make the
4 tie to the -- to the adoption of the amendments and the
5 adoption of repeals?

6 MR. CABRALAS: Well, I am -- I am here in
7 response to your call, Mr. Fenner.

8 MR. FENNER: Which was a different Agenda.

9 MR. CABRALAS: But the same issue, though,
10 I think.

11 MR. FENNER: No.

12 CHAIRMAN PABLOS: Can you give a -- Mark,
13 what is your concern, that it is not germane to the
14 rules or --

15 MR. FENNER: Yes, we want to stay on the
16 Agenda.

17 So to the extent you can tie this to the
18 Agenda item, I am comfortable.

19 MR. CABRALAS: Well, I mean, the purpose
20 of our lawsuit was to call into question whether or not
21 Rider 7, which has been the basis on which funding has
22 been withheld from the Racing Commission, is a
23 constitutional act by the legislature or not.

24 The reason why we believe it is relevant
25 is because that has been the method by which we believe

1 certain members of the legislature have tried to
2 encourage or obtain a change in direction with this
3 Commission with regard to the historical racing rule
4 package.

5 So our -- the basis of our lawsuit is to
6 argue that Rider 7 is unconstitutional for three
7 reasons: First, we believe that it is an improper
8 delegation of the legislature's power. The legislature
9 does have power and can -- and can delegate that to
10 agencies or legislative committees. But when they do
11 so, they have to provide clear guidance on when and how
12 those entities are to exercise legislative power.

13 We do not believe that was done with Rider
14 7. All Rider 7 says is that it is up to the LBB to
15 decide whether or not to grant approval for central
16 administration funding. We don't think that that
17 provides the right parameters; and, therefore, it is
18 unconstitutional for that reason.

19 We've also argued that Rider 7 is
20 unconstitutional in the method in which it is being
21 applied; namely, to try and exact a change in
22 substantive policy from an executive agency on -- on the
23 decisions that have previously been delegated to you
24 under The Racing Act.

25 We do not think that a committee of the

1 legislature -- and we believe we have precedent -- is
2 allowed to have had an ad-hoc veto over decisions that
3 you make over substantive policy. So for that reason,
4 we believe the attempt to use Rider 7 and withhold
5 funding for that purpose is unconstitutional.

6 But their argument is that should this
7 result in a shutdown of the agency, that would be a
8 violation of the due-process rights of my clients, which
9 are the horsemen and women of Texas, which you know pay
10 a license fee and are licensed in order to be able to
11 operate in the state of Texas.

12 They would lose the benefit of that
13 license and all of the guarantees that come with it,
14 without any attempt to have a hearing or notice as to
15 the reason for why they can no longer practice their
16 trade. So those are the arguments that we have made.

17 Now, we have brought that lawsuit against
18 Comptroller Hegar, which may seem like an unusual place
19 to place this lawsuit, but the way Rider 7 is written --
20 well, just as a sidenote on funding -- State agencies
21 receive an appropriation, but they do not have their own
22 checkbook. There is no way for the Racing Commission to
23 cut a check to pay its rent, cut a check to pay its
24 employees.

25 The way an agency operates in Texas is

1 they submit a voucher to the Comptroller. The
2 Comptroller has a series of things that it has to do in
3 order to determine whether that voucher is appropriate.

4 Once that process is completed, then the
5 Comptroller will issue a warrant and pay whatever it is
6 that the agency is asking to have paid, whether it's the
7 rent, the light bill, salaries, vendors; you name it.

8 What is happening here is that, with Rider
9 7, Comptroller Hegar has made it clear -- and he has
10 made it clear in the pleadings of my lawsuit -- that
11 until and unless the LLB provides Rider 7 approval, he
12 will not honor a voucher for the central administration
13 funding expenditures of the Racing Commission.

14 So because he is the entity that is
15 implementing Rider 7 by requiring that approval, among
16 other things, that's the reason why we brought that
17 lawsuit against him.

18 The -- the Attorney General's office,
19 representing the Comptroller, filed a plea to the
20 jurisdiction in our district court proceeding here in
21 Travis County, arguing that we are in the wrong court
22 and that this should be brought up in the Supreme Court
23 as a writ of mandamus.

24 We -- we disputed that. We won on the
25 plea to the jurisdiction of the district court. The

1 Attorney General's office, on behalf of their client,
2 has now appealed that decision on -- on an expedited
3 basis and has invoked a mandatory stay, which is their
4 right under the statute to do when we are fighting over
5 a plea to the jurisdiction.

6 So we are currently sitting in the Third
7 Court of Appeals on that jurisdictional issue. I, just
8 the other day, requested from the Third Court of Appeals
9 that they set an accelerated briefing schedule so we can
10 quickly brief the issue, present it to those judges, and
11 get that resolved, in my opinion, with the hopes that we
12 get back to district court and can get back on track to
13 have our argument heard, which, if we are successful,
14 will result in an injunction which will allow the Racing
15 Commission to continue to be funded while the ultimate
16 determination of the constitutionality of Rider 7 is
17 decided later at a trial.

18 And so I am available for any questions
19 you may have.

20 CHAIRMAN PABLOS: It is true that I've
21 asked Mr. Cabralas to come again in an effort to be as
22 accommodating as possible, giving him the leeway today
23 to explain that to us.

24 David, could you please explain to us what
25 happened yesterday? You went to the Court yesterday.

1 What happened there?

2 MR. CABRALAS: I did. My clients asked
3 me -- the Third Court of Appeals has jurisdiction over
4 the historical racing lawsuit, and the Texas Horsemen's
5 Partnership is one of the many parties in that lawsuit.
6 That's a different lawsuit than the one I had just
7 talked about earlier.

8 We went over there in the hopes that the
9 Third Court of Appeals would recognize that, in order to
10 preserve its jurisdiction over the appeal of the vote
11 you-all originally took; they would prevent any further
12 action -- which we believe is being brought about
13 primarily by your concerns that the industry will be
14 shut down because of the lack of funding at the end of
15 the month -- have that vote stopped, so that that appeal
16 can play itself out and we can get a final determination
17 as to whether the original action that you took --
18 permitting historical racing -- was or was not within
19 the purview of the authority you were granted under the
20 Historical Racing Act.

21 That effort, which, as you know, those of
22 you who are lawyers, that was an extraordinary effort.
23 Temporary relief from a Court of Appeals is a very
24 difficult thing to obtain, and we were unsuccessful in
25 getting that.

1 CHAIRMAN PABLOS: Correct me if I am
2 wrong, but did you argue that we are being coerced?

3 MR. CABRALAS: I -- well, I argued that
4 the LBB is attempting to coerce outcome by threatening
5 to withhold funding at the end of the month. That is
6 it. That is -- that was in my request for temporary
7 relief as well as the lawsuit I just briefed you on.

8 CHAIRMAN PABLOS: Commissioners, any
9 questions?

10 VICE-CHAIRMAN EDERER: No. Thank you for
11 the explanation. I appreciate that.

12 MR. CABRALAS: Thank you.

13 CHAIRMAN PABLOS: I think that's all I
14 have. Okay. I think that's everyone who asked to speak
15 today. We still have the cards for those --

16 VICE-CHAIRMAN EDERER: Somebody raised it.

17 CHAIRMAN PABLOS: Oh, yes.

18 Two more, actually. John Boegner.

19 MR. BOEGNER: "Boegner."

20 CHAIRMAN PABLOS: "Boegner." I am sorry.
21 I didn't mean to mispronounce. I apologize.

22 MR. BOEGNER: That's fine. Thank you.

23 I appreciate this opportunity to talk to
24 you commissioners today. I just have three little
25 points -- high points that I wanted to highlight out,

1 and he was just talking about one of them.

2 I am not a lawyer, but that Rider 7, it
3 looked like it would be really unconstitutional, and I
4 don't understand why the Historical Commission, the
5 Railroad Commission, and everybody else funded by the
6 LBB would not be up here fighting for this same thing,
7 because if they win this deal, that sets a precedence.
8 Then they could just fund it -- they could just put a
9 Rider 7 on any of the commissions or anybody funded by
10 the LBB, and that would narrow where one senator and the
11 Lieutenant Governor could rule the whole thing. And
12 that's not the way it's supposed to work.

13 The people -- the Governor is not supposed
14 to control the people. The people are supposed to
15 control the government. That's what I have on that
16 talking point.

17 This other talking point -- you know, a
18 million dollars a day leaves the state of Texas for
19 out-of-state casinos and gambling. A million dollars,
20 that doesn't sound like much. But according to my
21 bookkeeper, money is supposed to cross hands seven times
22 before it goes out of state.

23 A lot of this money is sent straight out
24 from a paycheck straight to the casino. Well, that's a
25 fast-track. So that's seven times. The State would be

1 under the burden of an economic impact of \$7 million a
2 day, which would be \$2.5 billion a year. That's --
3 that's a lot more money than people think about. I
4 mean, it gets to be something then.

5 And the third thing, which you know, we
6 are trying to save 36,000 jobs here in Texas. We've
7 already lost 100,000 jobs in the state of Texas over the
8 last ten years in the same industry.

9 It has been replaced by computer companies
10 out of California and automobile companies that come
11 down here out of the Northeast, and that's why you
12 aren't feeling a big impact on it because they just are
13 slicing us away a little at a time.

14 Well, this last thirty-six [sic] jobs is
15 really important to Texans. I mean, the Texans are the
16 ones that are leaving and these out-of-state people are
17 coming in and getting these other jobs to -- that's why
18 you aren't seeing the whole different economic impact.
19 But two and a half billion dollars a year is a lot of
20 money.

21 CHAIRMAN PABLOS: Thank you.

22 Commissioners, any questions?

23 Thank you, sir. I appreciate it.

24 COMMISSIONER SCHMIDT: Thank you.

25 MR. BOEGNER: You are welcome.

1 CHAIRMAN PABLOS: Andrea Young.

2 MS. YOUNG: Good morning, Commissioners,
3 Chairman Pablos.

4 I have to say I feel a little bit like
5 Bill Murray in "Groundhog Day" this morning, so to your
6 request, Chairman Pablos, I am not going to list the
7 many reasons why we -- the various tracks that we
8 represent -- are here again in opposition to the repeal.

9 We've heard a statement of facts in terms
10 of the type of outcry and already what the public
11 comment periods have provided you with. We've also
12 heard about pending litigation that would be impacted by
13 the outcome of your decision today.

14 All of that said, I also do believe there
15 is a fair compromise. It has been proposed on your
16 Agenda here today, and that's to change the effective
17 date of this rule.

18 The industry is united in that it sees
19 that it's both a practical and a political solution. It
20 would change the effective date of the rule to September
21 of 2017.

22 What that does, in my view, and in many's
23 view, is it acknowledges that there is leadership in the
24 legislature. They have said they want an opportunity to
25 address this issue. But there are also 181 members of

1 the legislature, and they have not taken action on this
2 issue.

3 We acknowledge that it's appropriate to
4 give them another bite at the apple in the next session,
5 but we don't feel that it's appropriate that a select
6 few drive your decision here today when so many
7 people -- an entire industry that you have heard from
8 for months and months -- would be impacted after so much
9 thought and hard work was put into the original effort.

10 As someone mentioned to me recently, it's
11 not like the Commission woke up one day and just put
12 this historical racing rules on the Agenda. I mean,
13 Commissioner Ederer, Commissioner Steen, you were
14 intimately involved in that process that lasted well
15 over six months.

16 A year ago I was really excited about the
17 possibilities for this industry. Today feels a little
18 bit different, I have to say, walking into the room. I
19 suspect many of you had made up your mind before you
20 walked in to here today, and maybe a few of you have
21 not.

22 Should that decision go against our
23 request to either consider you not repeal these rules or
24 that you not consider what I would call "Option C,"
25 changing the effective date, it's my and I believe the

1 industry's sincere hope that those in statewide
2 leadership that have expressed a desire to help this
3 industry find solutions, through their public statements
4 time and time again, will stay true to their word, that
5 they will meet with the industry and proactively support
6 legislation during the 2017 session that gives both the
7 tracks and the horsemen in this state a fighting chance
8 to compete against our neighbor states.

9 In 2017, the 36,000 people who work in our
10 industry need nothing short of action. This is not a
11 dying industry, and I will take anyone to task who
12 suggests that it is.

13 This is, however, an industry being
14 suffocated by the current regulatory environment, an
15 environment that has prohibited us, a voter-approved
16 industry, from pursuing new technologies while every
17 single one of our competitors has.

18 In closing, I want to thank the
19 Commissioners who have supported this concept
20 consistently back in 2014 and in most recent commission
21 meetings who are still here today.

22 I know that you've studied this issue
23 carefully and thoughtfully. Our greatest hope, my
24 greatest hope, is that those in statewide leadership who
25 have delegated these issues pertaining to pari-mutuel

1 wagering to you will do the same when given the
2 opportunity. I am happy to answer any questions you
3 have.

4 CHAIRMAN PABLOS: Commissioners, any
5 questions?

6 VICE-CHAIRMAN EDERER: Excuse me.

7 Andrea, as far as the amendment -- I
8 appreciate your comments very much on the amendment --
9 the proposed amendment -- obviously you have studied
10 this. And do you feel that the industry would go along
11 with the amendment?

12 MS. YOUNG: Absolutely.

13 VICE-CHAIRMAN EDERER: And that they want
14 the amendment to go forward?

15 MS. YOUNG: Absolutely.

16 VICE-CHAIRMAN EDERER: Now, it appears to
17 me, that if the amendment does go forward, it is
18 answering everyone's question. It is giving the
19 legislature the opportunity to step in and help the
20 industry. It's giving the legislature the opportunity
21 to speak to the historic racing question, which they
22 have not done up until this day.

23 MS. YOUNG: Correct.

24 VICE-CHAIRMAN EDERER: So it seems to me
25 that the amendment is giving the legislature exactly

1 what they are asking for but it's also preserving the
2 historical racing rule and giving -- giving us a shot,
3 giving the horsemen a little hope?

4 THE WITNESS: Yes. In that same optimism,
5 I would agree with you, that I spoke about that I had
6 about a year ago, yes.

7 CHAIRMAN PABLOS: In your discussions with
8 Lieutenant Governor Patrick, what has he said about
9 this -- what has he said about this amendment?

10 MS. YOUNG: I have not spoken to him about
11 this amendment.

12 CHAIRMAN PABLOS: So this hasn't been
13 broached with him?

14 MS. YOUNG: Not by me. Obviously we have
15 heard about the many attempts from the horsemen to
16 attempt to do so.

17 CHAIRMAN PABLOS: Any other questions or
18 comments, Commissioners?

19 Commissioner Schmidt?

20 COMMISSIONER SCHMIDT: I have one
21 question. Andrea, I actually watched the simulcast. I
22 think you have done a terrific job in a trying time. If
23 we were to repeal and we accept the status quo, just --
24 are you at liberty to say when the last time your track
25 was profitable? I know there is -- I know you are

1 partially owned by a public company. I don't know --

2 MS. YOUNG: No. I mean our records, we've
3 provided audited financials to the Racing Commission
4 every summer. So that is all a matter of a public
5 record. It has been a long time.

6 We are the only track in the state to my
7 knowledge that has generated some free cash flow over
8 the last couple of years, and I will be very honest and
9 tell you that every single one of those dollars we
10 generated in positive cash flow have gone back into
11 either this effort or capital into the facility.

12 Certainly no one is going home, and that's
13 really because I think a lot of folks in this room would
14 agree we have been the most aggressive track in changing
15 kind of the way the business is operated, you know, in
16 Texas, but also nationally.

17 CHAIRMAN PABLOS: Any other questions,
18 Commissioners?

19 Okay. Thank you.

20 MS. YOUNG: Thank you.

21 CHAIRMAN PABLOS: So at this time I would
22 like to close the public comment part of our meeting and
23 ask you what your pleasure is, Commissioners.

24 I would like to entertain a motion, and
25 that way we can begin some discussion around this item.

1 Commissioner Martin?

2 COMMISSIONER MARTIN: Yes, I would like to
3 make a motion to amend.

4 CHAIRMAN PABLOS: You would like to make a
5 motion to amend.

6 Is there a second?

7 MR. FENNER: To get clarification, are you
8 making an amendment -- a proposal -- excuse me, you are
9 making a motion to adopt the proposals?

10 CHAIRMAN PABLOS: Adopt the proposals.

11 COMMISSIONER MARTIN: To have it continue
12 on this discussion.

13 CHAIRMAN PABLOS: But we have to clarify.
14 Is this a motion to adopt and amend?

15 MR. FENNER: This would be to adopt. The
16 amendments, which were removed --

17 CHAIRMAN PABLOS: To repeal. You're
18 making a motion to repeal?

19 COMMISSIONER MARTIN: To repeal.

20 CHAIRMAN PABLOS: To repeal. So, in
21 effect, it's to repeal.

22 MR. FENNER: Yes.

23 CHAIRMAN PABLOS: So what would that
24 motion be like?

25 MR. FENNER: A motion to adopt the

1 proposals of Agenda Items through II(A)1 through II(A)14
2 as published in the Texas Register.

3 CHAIRMAN PABLOS: Okay.

4 Is there a second?

5 COMMISSIONER LEON: Second.

6 CHAIRMAN PABLOS: There is a motion and a
7 second. Okay. Thank you, Commissioners.

8 I would like to open it up for discussion
9 and see what your pleasure is, and then I will take this
10 up for a vote.

11 Any comments, Commissioners? Any
12 discussion?

13 VICE-CHAIRMAN EDERER: Well, I think that
14 I have to comment, and my comment would be -- however my
15 comment would -- has to encompass everything that is on
16 the Agenda and -- because I believe they are all
17 related. Everything on the Agenda is related.

18 The amendment to the proposal -- to the
19 proposed rules, which is the third item on the Agenda,
20 actually addresses all of the issues, in my opinion,
21 that have been put forth by the Lieutenant Governor's
22 office, by the LLB, by the senator from Fort Worth. I
23 believe that all of those issues are addressed in the
24 amendment.

25 It actually puts on hold the Racing

1 Commission. It gives -- excuse me, the historic
2 racing -- it gives the legislature the opportunity to do
3 what they say they want to do; and that is, to help the
4 industry, to address historic racing, and to go forward.

5 It also gives the horsemen the opportunity
6 to have hope, to work toward their industry, to continue
7 to improve their industry, and to look for ways to
8 continue to improve their industry.

9 It gives them a period of time to do so,
10 to try to influence the legislators. If they fail, they
11 fail; but if they fail to influence the legislators,
12 maybe they can -- they will have time to come up with
13 something else.

14 So, in my opinion, I believe that the
15 amendment to the proposed rules is an excellent
16 amendment and it should go forward.

17 I guess that's really all I have to say.

18 COMMISSIONER LEON: We are not voting on
19 the amendment now?

20 VICE-CHAIRMAN EDERER: Not at this time,
21 no. I threw them all in together. No. The first vote
22 would be --

23 COMMISSIONER LEON: Clarification on this
24 vote?

25 VICE-CHAIRMAN EDERER: Yes. The first

1 vote would be to amend or not to amend, whether it was
2 brought or not.

3 MR. FENNER: To effectively repeal the
4 historical racing?

5 VICE-CHAIRMAN EDERER: Correct.

6 CHAIRMAN PABLOS: Commissioners, any other
7 comments?

8 Okay. Well, hearing none, you know, I am
9 still really concerned about this shutdown. We have, I
10 guess, in essence, seven business days or so before we
11 have this deadline coming up.

12 The amendment you recommended, I don't
13 know that it addresses the funding issue.

14 VICE CHAIRMAN EDERER: No.

15 CHAIRMAN PABLOS: And we won't discuss it,
16 but it certainly doesn't address it. We still have this
17 funding issue in front of us. I think what we need to
18 create, we need to create certainty. We have an
19 obligation to the industry.

20 The gentleman earlier today said we have
21 to abide by our laws, the Texas Racing Act, which in
22 effect says we shall regulate and supervise every race
23 meeting. We have race dates that we have authorized for
24 2016, so it's our obligation to be there for the
25 industry when it races.

1 And if the agency is shut down, then we
2 are going to be in contravention of that -- of that
3 obligation, and so obviously my desire is to keep this
4 agency open.

5 My desire is to ensure that we also take a
6 look at the duty we have to our employees. We have
7 already lost some key employees because of this. We
8 have got other employees that are up for retirement who
9 have told me that they will take up that option if there
10 is any indication that the agency is going to shut down.

11 And so, you know, taking action that would
12 ostensibly shut this agency down I think would be
13 opposed to what we are supposed to be doing, which is
14 providing the regulation.

15 You know, I hear that if the agency does
16 shut down, our employees will lose their health
17 coverage. There is a 90-day waiting period for
18 regaining your health insurance. We have individuals
19 who are undergoing some very sensitive treatment as we
20 speak. And so my only desire is to create the certainty
21 that we need for the long term for the industry.

22 I also have to tell you that I have heard
23 from many silent stakeholders, many members from the
24 Horsemen's Partnership who have approached me in
25 confidence and have told me that they are not in

1 agreement with the way the Partnership is handling this
2 issue.

3 They -- they tell me that they are very
4 concerned that, come March 1, they are going to have
5 bills due. They are going to have note payments due,
6 and they are afraid they aren't going to have the
7 revenue to come in. And so that's the real concern.

8 These are individuals who wish not to, you
9 know, come in front of us but they have certainly spoken
10 to me in confidence about their concern. So we have got
11 concerns in the industry about the shutdown and have
12 asked me personally to ensure that we keep the agency
13 open, and so we are all in a bind here. We are all in a
14 bind.

15 We have heard arguments that, you know,
16 without the industry, we don't have an agency. Well,
17 come March 1, if there is no agency, then everybody
18 shuts down, but if we do have an agency open, every
19 single one of you will still be in business.

20 Now, the challenge is going to be going
21 from there to figure out, well, how it is that we can
22 help the industry, and there is no question that
23 everybody up on this dais wants to help the industry.
24 But we are faced with this issue that we have to
25 address.

1 And so, you know, the concern that I have
2 regarding, you know, our obligation in the industry by
3 keeping the agency open and providing regulation, our
4 duty to the employees, our duty to some of the industry
5 stakeholders who are very concerned about March 1
6 coming.

7 You know, the fact that the Horsemen have
8 not been able to -- has not been able to meet -- the
9 association has not been able to meet with Lieutenant
10 Governor Patrick is very troubling, which tells me that
11 I don't have any hope that you will be able to do that,
12 anyway.

13 My desire is to press the reset button.
14 My desire is to start with a fresh, new day. I have
15 already given you my commitment to work with you, to
16 ensure that we come up with other solutions that are not
17 this controversial.

18 This controversy that we have here in
19 front of us has created a lot of rancor and acrimony
20 that I think needs to go away. And so I look to you,
21 Commissioners, to vote to repeal today, not as a way of
22 hurting the industry but as a way of helping the
23 industry, by having an agency opened that will allow
24 racing to occur, that will give us that certainty that
25 we need.

1 Nobody here wants to hurt the industry,
2 but we are in this situation that we just happen to find
3 ourselves in, and it's a difficult decision that we have
4 to make.

5 It's unfortunate, but I think that, you
6 know, as some of these folks tell me -- these horsemen
7 tell me, you know, the fight to keep historical racing
8 rules that may or may not evolve into anything is not
9 worth it if they feel that they are not going to have a
10 job March 1. And so that's really, you know, what I am
11 concerned about. That's what, you know, worries me
12 every day. We have our employees that we have to take
13 care of. And I think we have to show a unified front
14 here.

15 And it's a unified front to show the world
16 that we care about the industry, but we are in a bind.
17 We have been put in a situation where we have to -- we
18 have to make a tough decision, but I think that we are
19 also empowered. We have the power to press the reset
20 button, get together, and find other solutions that are
21 not controversial like this one has proven to be.

22 I know that there was good intentions up
23 front. I am not questioning whether we have the
24 authority or not. That's not for me to decide. But
25 certainly, I think we need to move forward, and we need

1 to move forward together.

2 And I know that many of you believe that
3 by repealing the rules, you will be a trader to the
4 industry. Well, I ask you not to look at it that way.
5 I think by repealing the rules, we are going to be
6 actually helping the industry in the short term and then
7 promising to work with the industry for the long term.

8 That's how I feel. That's my opinion.
9 And so I hope that today we have a unanimous vote to
10 repeal.

11 COMMISSIONER ABER: Chairman, I am of the
12 other opinion.

13 CHAIRMAN PABLOS: Yes, sir.

14 COMMISSIONER ABER: I don't think we
15 should repeal the rules. I think in a long time, it's
16 going to help everybody here. It's for the horsemen, no
17 doubt. 1,000 to 1 on the public comment, do we just
18 ignore that?

19 You know, we have got to stand up, and we
20 have got to stand up. These people -- these elected
21 officials, don't forget, they are elected. And don't
22 forget what they are doing.

23 And we have discussed this before, we have
24 been bullied every which way there is, and we need not
25 to repeal these rules. If we need to go on with an

1 amendment, we can go on with an amendment. But if we
2 repeal these rules, that's the end of it.

3 So I have a complete different opinion of
4 that. I think everybody here should stand up and be
5 unanimous, just like the public is, and the horse
6 people.

7 CHAIRMAN PABLOS: Dr. Aber, how do you --
8 [APPLAUSE].

9 CHAIRMAN PABLOS: Dr. Aber, so how do you
10 suggest we address the issue of the shutdown in the
11 funding?

12 COMMISSIONER ABER: Well, I think we
13 should address that when it comes. And the thing about
14 it is, are they going to do that? We don't know that
15 they are going to do that. We do not know that they are
16 going to shut down.

17 I do think it's unconstitutional for them
18 to shut our funding out. Don't forget the funds are
19 ours, not theirs. They didn't make a dime.

20 So you better start looking at your
21 legislators.

22 CHAIRMAN PABLOS: Commissioners, any other
23 comments?

24 Thank you, Doctor.

25 COMMISSIONER SCHMIDT: I appreciate your

1 thoughtful remarks. I would just also add that I don't
2 think the Commission is voting to shut down anything.
3 We aren't shutting down anything. We are trying to help
4 the horsemen.

5 I think the status quo is a slow-death
6 spiral. I think the industry is suffocated by
7 regulations. The decision to shut down the agency is
8 not our decision. The decision to shut down the agency
9 is the Lieutenant Governor's decision and the leadership
10 of the Senate that wishes to do that. We are simply
11 trying to regulate the industry that we have before us
12 to the best of our ability.

13 We have offered, I think, a reasonable
14 compromise in Level III, in Item C, if we get to that
15 point that says: Here. Review everything we have.
16 They can actually appoint two new commissioners in
17 February of '17. They have complete control of the
18 final product, and we are -- I think we are responding
19 to all of their concerns.

20 CHAIRMAN PABLOS: Anyone else?

21 COMMISSIONER HICKS: I just would like to
22 say I find it very troubling that Dan Patrick would not
23 meet with any of these horsemen. If he has looked at
24 this -- has he actually seen this Proposal C? Has
25 anybody talked to him?

1 Rolando, have you?

2 CHAIRMAN PABLOS: I have not.

3 COMMISSIONER HICKS: So no one has really
4 seen what he thinks about this and talked to him about
5 this. I wonder if he has even seen this proposal.

6 Do you know that he has?

7 CHAIRMAN PABLOS: I don't know. I haven't
8 spoken with him about it.

9 COMMISSIONER HICKS: Or anyone from the
10 Governor's office?

11 CHAIRMAN PABLOS: I don't know. I
12 think -- I don't know -- I don't see a representative
13 who would be willing to come up. But your point being?

14 COMMISSIONER HICKS: Well, my point being
15 is I wish that they had seen this so they would -- we
16 would have some kind of feeling as -- of what we are
17 doing today if that were them. And I would think that
18 this is so important to all of these people, that they
19 know that this is out there for them.

20 I mean, it was published. I would think
21 that someone from their offices would have seen it and
22 we would have had some kind of comment. And that's
23 troubling to me as a resident of Texas. I am
24 disappointed.

25 CHAIRMAN PABLOS: Dr. Schmidt -- the

1 history with this is Dr. Schmidt brought this to me
2 during the last meeting, and I agreed to post it.

3 COMMISSIONER SCHMIDT: Yes. Right.

4 CHAIRMAN PABLOS: So that's really the
5 first time I actually read the amendment, and so he
6 passed -- he passed out the amendment.

7 COMMISSIONER SCHMIDT: I appreciate your
8 willingness, sir.

9 CHAIRMAN PABLOS: Absolutely. We are
10 trying to find solutions here.

11 So, okay -- so at this time, Mark, will
12 you walk us through the voting process and what a "yes"
13 vote would mean versus a "nay" vote.

14 MR. FENNER: Yes, sir. The process will
15 be that Ms. Welch will call the roll.

16 If you vote "yes," you are voting to
17 repeal the rules in Subchapter F of Chapter 321, which
18 would focus wholly on historical racing, and the other
19 rules that are listed in section II(A)1 through 13 are
20 amendments to restore rules to their prehistorical
21 racing condition.

22 So "yes" is to effectuate the repeal of
23 historical racing. "No" is to retain the rules.

24 CHAIRMAN PABLOS: Commissioners, any
25 questions?

1 Okay. Then I will bring this up for a
2 vote.

3 Mary, will you please take a vote?

4 MS. WELCH: Commissioner Gary Aber?

5 COMMISSIONER ABER: No.

6 MS. WELCH: Commissioner Gloria Hicks?

7 COMMISSIONER HICKS: No.

8 MS. WELCH: Commissioner Cynthia Leon?

9 COMMISSIONER LEON: Yes.

10 MS. WELCH: Commissioner Margaret Martin?

11 COMMISSIONER MARTIN: Yes.

12 MS. WELCH: Commissioner Victoria North?

13 COMMISSIONER NORTH: Yes.

14 MS. WELCH: Commissioner Robert Schmidt?

15 COMMISSIONER SCHMIDT: No.

16 MS. WELCH: Commissioner John Steen?

17 COMMISSIONER STEEN: Yes.

18 MS. WELCH: Vice-Chairman Ron Ederer?

19 VICE-CHAIRMAN EDERER: No.

20 MS. WELCH: Chairman Rolando Pablos?

21 CHAIRMAN PABLOS: Yes.

22 MS. WELCH: There are five ayes, four

23 nays.

24 CHAIRMAN PABLOS: Thank you.

25 Mark, there is five ayes and four nays.

1 What is the result?

2 MR. FENNER: The motion carries, and so
3 the rules will be repealed -- the historical racing will
4 be repealed.

5 CHAIRMAN PABLOS: Thank you,
6 Commissioners.

7 The next item is now moot.

8 At this time I would like to thank you,
9 thank the industry. I would like to work with you to
10 move forward. And so at this time, I would like to
11 adjourn this meeting. The time is now 11:20.

12 Thank you, Commissioners.

13 (Meeting adjourned at 11:20 a.m.).

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1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS)
 3 COUNTY OF TRAVIS)

4
 5 I, APRIL C. BALCOMBE, a Certified
 6 Shorthand Reporter, in and for the State of Texas, do
 7 hereby certify that the above-captioned matter came on
 8 to hearing before the TEXAS RACING COMMISSION as
 9 hereinbefore set out.

10 I FURTHER CERTIFY that the proceedings of
 11 said hearing were reported by me, accurately reduced to
 12 typewriting under my supervision and control and, after
 13 being so reduced, were filed with the TEXAS RACING
 14 COMMISSION.

15 GIVEN UNDER MY OFFICIAL HAND OF OFFICE at
 16 Austin, Texas, the 24th day of February, 2016.

17
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