

APPEARANCES

Commissioners: ROBERT SCHMIDT
 RONALD F. EDERER
 MIKE MARTIN
 GLORIA HICKS
 GARY P. ABER
 JOHN T. STEEN, III
 VICTORIA NORTH
 A. CYNTHIA LEON

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1 CHAIRMAN SCHMIDT: Good morning. Thank
2 you very much for your patience. We'll now call the
3 meeting to order. It's 10:30.

4 Mary Welch, will you please call the
5 roll?

6 MS. WELCH: Commission Gary Aber?

7 COMMISSIONER ABER: Here.

8 MS. WELCH: Commissioner Ron Ederer?

9 VICE-CHAIRMAN EDERER: Here.

10 MS. WELCH: Commissioner Gloria Hicks?

11 COMMISSIONER HICKS: Here.

12 MS. WELCH: Commissioner Cynthia Leon?

13 MS. LEON: Here.

14 MS. WELCH: Commissioner Michael Martin?

15 COMMISSIONER MARTIN: Here.

16 MS. WELCH: Commissioner Victoria North?

17 MS. NORTH: Here.

18 MS. WELCH: Chairman Robert Schmidt?

19 CHAIRMAN SCHMIDT: Here.

20 MS. WELCH: Commissioner John Steen?

21 COMMISSIONER STEEN: Here.

22 CHAIRMAN SCHMIDT: Mary, we have a
23 quorum?

24 MS. WELCH: We have.

25 CHAIRMAN SCHMIDT: Great.

1 Okay. Public comment. There's a couple
2 of items. Number one, I would like to just publicly
3 acknowledge State Representative Eddie Rodriguez,
4 Representative Joe Moody, Representative Sarah Davis,
5 Representative Donna Howard, Vice-Chair Representative
6 Sylvester Turner, and Senator Nelson for their comments
7 to the Racing Commission. They're appreciated.

8 In order to minimize the impact of their
9 day, the Commission will now take any public comments
10 on the issue of historical racing from any State
11 legislators at this time.

12 Okay. We just wanted to make sure that
13 we did not impact their day significantly. When we get
14 to the rules on the agenda, we'll open the meeting for
15 additional public comment at that time.

16 Devon, has anyone else turned in a
17 testimony card?

18 MS. BIJANSKY: No, sir.

19 CHAIRMAN SCHMIDT: Okay. General
20 business, a report by the executive director and staff
21 regarding administrative matters, budget and finance.

22 Adrienne Courtney?

23 MS. COURTNEY: Good morning,
24 Commissioners.

25 On pages nine and 10 of your agenda

1 packet you will find an update on the agency's fiscal
2 year 2015 budget status as of July 31st, 2015. With
3 almost 92 percent of the year completed, the agency has
4 collected 8.6 million or 92.2 percent of projected
5 revenue and has spent 7.5 million or 84.5 percent of
6 our budgeted expenditures. We are well within the
7 budget that was forecasted for the year.

8 I'd be happy to take any questions.

9 CHAIRMAN SCHMIDT: Any questions of
10 Adrienne?

11 Thank you very much, ma'am. Appreciate
12 it.

13 MS. COURTNEY: You're welcome, sir.

14 CHAIRMAN SCHMIDT: Report on wagering
15 statistics, Lila Smith.

16 Lila?

17 MS. SMITH: Good morning, Commissioners.
18 I'm Lila Smith.

19 And on pages 11 through 13 of your agenda
20 packet is the wagering statistics report for the
21 periods of January 1st through August 16th for both
22 2014 and 2015. The report reflects total wagers placed
23 in Texas has decreased by 1.35, but the total wagers
24 placed on Texas tracks has increased by 1.84.

25 If you have questions, any --

1 CHAIRMAN SCHMIDT: Any questions of
2 Ms. Smith?

3 Thank you, Lila. Thank you very much.
4 Mr. Blodgett, director of
5 investigations?

6 MR. BLODGETT: Good morning,
7 Commissioners.

8 Commissioners, during the summer
9 reporting period there were four racetracks conducting
10 live meets: Lone Star Park, Retama Park, Gillespie
11 County Fair, and Gulf Greyhound Park. Lone Star Park
12 and Retama Park completed their meets earlier this
13 summer and the Gillespie County Fair meet just
14 concluded this past weekend, August 23rd. Gulf
15 Greyhound Park continues year-round operation. In
16 addition, simulcast operations continued during this
17 reporting period at the Race Barn in Fredericksburg,
18 Valley Greyhound Park, and Gulf Coast Racing in Corpus
19 Christi.

20 As reflected within your agenda material,
21 agency investigative activities have included
22 investigations of racehorse drug positives, human drug
23 violations, riding infractions, conduct violations,
24 human alcohol violations, minor medical violations,
25 financial obligations, and trainer violations.

1 Racetrack inspections at Lone Star Park,
2 Retama Park, Gillespie County Fair, and Gulf Greyhound
3 Park revealed no unresolved inspection issues during
4 this same reporting period.

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

7 CHAIRMAN SCHMIDT: Any questions of
8 Mr. Blodgett from anyone?

9 Thank you, sir. Appreciate your work.

10 MR. BLODGETT: Yes, sir.

11 CHAIRMAN SCHMIDT: Moving on to
12 designation of members of the rules committee,
13 Mr. Pablo, as the former chairman, had set up the rules
14 committee and we really actually had not restructured
15 this committee since we've added some members and so
16 what I'd like to do is update the rules committee,
17 which it's really one of the most important
18 committees. We do -- they do so much of the legwork
19 and I just want to thank everyone in advance for their
20 willingness to serve and for the efforts they expend on
21 behalf of the Racing Commission.

22 I've appointed Vice-Chair Ederer as
23 chairman; Commissioner Aber, Dr. Aber, as vice-chair;
24 and Commissioner North as a member for the rules
25 committee. Thank you very much for your willingness to

1 serve.

2 Proceedings on racetracks, allocation of
3 live race dates for horse racetracks under Commission
4 Rule 303.41 for the period beginning January 1, 2016,
5 and ending August 31st, 2017.

6 Mr. Speight, will you lay out this item
7 for us and bring us up to date?

8 MR. SPEIGHT: Good morning,
9 Commissioners.

10 On pages 16 and 17 you will find the 2016
11 and 2017 race calendar. On pages 18 through 60 you'll
12 see the individual racetracks' requests along with
13 their recorded efforts to coordinate with the THP, TTA,
14 and TQHA. And you'll also find their comments on those
15 race requested dates.

16 Also included in your packet are two
17 calendars which I'd like to direct your attention to
18 for 2016 and 2017. Looking at the 2016 calendar, you
19 will see it includes both granted and new race dates
20 there in red. It totals 162 dates, less 24 dates that
21 are associated with Sam Houston Race Park's meet --
22 Quarter Horse meet that they run usually in the spring
23 which they have not submitted to date.

24 Also in the 2016, Retama Park has
25 requested Thoroughbred dates and Lone Star Park has

1 requested both Thoroughbred and Quarter Horse dates.
2 And Lone Star Park already had granted dates, but they
3 wanted to move their Thoroughbred meet up one week,
4 from April 14th to April 7th. Those are the only items
5 I'd want to talk about on the 2016.

6 If we move to the 2017 calendar, you'll
7 see that there are no granted dates and all the dates
8 are newly requested and the two tracks that have
9 requested dates are both Lone Star Park and Gillespie
10 County Fair.

11 I would have one -- I'd draw your
12 attention to one footnote on page 45. Gillespie County
13 Fair has expressed objection to sharing an overlap day
14 of racing with Retama Park. In past history they've
15 shared that date. Just this past year, on the 22nd of
16 August, they shared the date. Gillespie ran in the
17 early hours and Retama ran in the later hours. But
18 both tracks' representation are here if you all have
19 questions that you want to ask of them because they did
20 not completely reconcile their positions that Retama
21 was going to come forward with that date and Gillespie
22 is going to keep the date.

23 CHAIRMAN SCHMIDT: I think we've had that
24 before. I think we've had this issue before. Just for
25 clarification, Gillespie is primarily Quarter Horse and

1 isn't Retama --

2 MR. SPEIGHT: It's a mixed meet.

3 CHAIRMAN SCHMIDT: A mixed meet. Okay.

4 MR. SPEIGHT: So they run predominantly
5 Quarter Horse, but they do have some --

6 CHAIRMAN SCHMIDT: And Retama that night
7 would be Thoroughbred?

8 MR. SPEIGHT: It would be Thoroughbred,
9 yes, sir.

10 CHAIRMAN SCHMIDT: Okay. Thanks, Joel.
11 Any other questions of Joel?

12 Okay. Steve Ross from Retama?

13 Mr. Ross, welcome.

14 MR. ROSS: Good morning. Good morning,
15 Commissioners. I'll be very brief. I know we've got a
16 lot to do today. But I just wanted to address the --
17 what I see as the significance of the one day of
18 overlap.

19 Looking back on this past Saturday,
20 Gillespie had 114 horses entered and handled \$220,000
21 on Saturday. On Sunday they had 87 horses in 10
22 races. As the chairman pointed out, they have the
23 opportunity to run Quarter Horses. We end our Quarter
24 Horse meet earlier in the month. They have -- Lone
25 Star doesn't open their Quarter Horse meet until mid

1 September typically. So they have an ample supply of
2 Quarter Horses. And based on this past weekend, I just
3 don't see it being a problem for us both to race on
4 that one day.

5 Any questions about that?

6 CHAIRMAN SCHMIDT: Any questions of
7 Mr. Ross?

8 Thank you, sir.

9 MR. ROSS: Thanks.

10 CHAIRMAN SCHMIDT: Testifying against,
11 Ms. Rountree with the Horsemen's Partnership.

12 Marsha?

13 MS. ROUNTREE: Good morning,
14 Commissioners. I'm Marsha Rountree, executive director
15 of Texas Horsemen's Partnership.

16 Several weeks ago I sent a letter to the
17 staff requesting that a race date application period be
18 extended. I suggested that the horsemen's organization
19 could not support race date requests due to uncertainty
20 in the industry. The possible repeal of historical
21 racing rules, combined with the new Thoroughbred race
22 day format at Retama, made it irresponsible to consider
23 approving future race dates. Allocating dates only to
24 have those dates amended later is not in the best
25 interest of horsemen who need to make plans for each

1 meet in the state.

2 At that time I was told by staff that the
3 horsemen's organization could not make that request and
4 that a racetrack needed to request an agenda item to
5 that purpose. I spoke with each one of the Class 1
6 racetracks and told them that the customary letter of
7 support that they requested from the horsemen's
8 organization would not be coming and why. Each one of
9 the tracks understood and supported our position and
10 our request to have the race date application period
11 extended or another period opened.

12 Sam Houston Race Park has requested and
13 been granted that it be on today's agenda. So at this
14 time the horsemen's organization cannot support the
15 requested race dates and instead supports Sam Houston's
16 request for another application period.

17 Does anyone have any questions?

18 CHAIRMAN SCHMIDT: Does anyone have any
19 questions?

20 Okay. Thank you, Ms. Rountree.
21 Appreciate it.

22 MS. ROUNTREE: Thank you.

23 CHAIRMAN SCHMIDT: Any other testimony,
24 Devon?

25 MS. BIJANSKY: No, sir.

1 CHAIRMAN SCHMIDT: Okay. Good.

2 Any public comment? No.

3 Any thoughts by the Commission? Yes,
4 sir.

5 COMMISSIONER ABER: Mr. Chairman, I'd
6 like to ask Mr. Fenner, is there some legal problem for
7 having -- running races on the same date with the
8 Racing Act?

9 MR. FENNER: There is a prohibition in
10 the rules against two Class 1 tracks running the same
11 breed of horses at the same time. Gillespie County
12 Fair is a Class 3 track, so that prohibition does not
13 apply in this situation.

14 CHAIRMAN SCHMIDT: Any other comments,
15 suggestions?

16 I'll certainly entertain a motion to
17 approve the race dates as requested by Lone Star,
18 Retama Park, and Gillespie County as shown on
19 packets -- pages 16 and 17 of the packet.

20 Is there a motion?

21 VICE-CHAIRMAN EDERER: So moved.

22 CHAIRMAN SCHMIDT: There is a motion.

23 Okay. Is there a second?

24 COMMISSIONER STEEN: I'll second.

25 CHAIRMAN SCHMIDT: There is a second.

1 Okay. We have a motion and we have a
2 second to approve the race dates as requested by Lone
3 Star Park, Retama Park, and Gillespie County Fair as
4 shown on the calendar at pages 16 and 17 of the
5 packet.

6 Any further discussion?

7 Then let's bring this up to a vote. I
8 think we should probably do a roll call vote.

9 MS. WELCH: Commissioner Gary Aber?

10 COMMISSIONER ABER: No.

11 MS. WELCH: Commissioner Rob Ederer?

12 VICE-CHAIRMAN EDERER: Approve.

13 MS. WELCH: Commissioner Gloria Hicks?

14 COMMISSIONER HICKS: No.

15 MS. WELCH: Commissioner Cynthia Leon?

16 MS. LEON: Yes.

17 MS. WELCH: Commissioner Michael Martin?

18 COMMISSIONER MARTIN: No.

19 MS. WELCH: Commissioner Victoria North?

20 MS. NORTH: Abstain.

21 MS. WELCH: Chairman Robert Schmidt?

22 CHAIRMAN SCHMIDT: For.

23 MS. WELCH: Commissioner John Steen?

24 COMMISSIONER STEEN: Approve.

25 CHAIRMAN SCHMIDT: Okay. The motion

1 carries four to three to one. Those race dates are
2 approved.

3 MR. FENNER: Mr. Chairman, actually it
4 requires a majority vote of the quorum, so --

5 CHAIRMAN SCHMIDT: The motion is
6 defeated. The motion is defeated. Basically the
7 motion is defeated.

8 Okay. Item B, a request by Sam Houston
9 Race Park that the Commission designate an application
10 period for race dates under Commission Rule 303.41.

11 Mr. Fenner, can you lay out this request
12 for us?

13 MR. FENNER: Yes, sir.

14 Sam Houston Race Park has requested that
15 the Commission open an application period to entertain
16 requests for race dates for the period January 1, 2016,
17 through August 31, 2017. Gulf Greyhound Park has
18 written a letter supporting the request of Sam Houston
19 Race Park but also asking that it -- that the
20 Commission consider an expanded application period to
21 include January 1, '16, through August 31, 2018, so an
22 extra year.

23 I know that Ms. Young and I believe
24 there's a representative on behalf of Gulf here as
25 well.

1 CHAIRMAN SCHMIDT: Okay. Good.

2 Do we have any public comment? Good.

3 Andrea? Andrea Young from Sam Houston?

4 Welcome.

5 MS. YOUNG: Thank you. Good morning,
6 Commissioners.

7 I think Mark did an effective job, as did
8 Marsha before me, laying out this issue. Our request
9 comes -- to open up a new period comes on the heels of
10 the Horsemen's Partnership's request that we continue
11 the discussion. As Joel noted earlier, Sam Houston
12 Race Park did not apply for Quarter Horse dates or any
13 dates in 2017, so we've -- we're asking for you to vote
14 in favor of this today.

15 I'm happy to answer any questions.

16 CHAIRMAN SCHMIDT: Any questions of
17 Ms. Young?

18 Okay. Thank you, Andrea.

19 MS. YOUNG: Thank you.

20 CHAIRMAN SCHMIDT: Tommy Azopardi?

21 Mr. Azopardi, welcome.

22 MR. AZOPARDI: Good morning,
23 Mr. Chairman, Commissioners. My name is Tommy
24 Azopardi. I'm here today representing Gulf Greyhound
25 Park.

1 I agree with Andrea. I think Mr. Fenner
2 did a great job of laying out the request. We have
3 asked for an extension to include August of 2018. We
4 know historically the Commission has set application
5 periods using the month of August as its termination
6 date. We would just like to request that that be
7 extended one more year from Sam Houston Race Park's
8 request because of the uncertainty that's out there.

9 Gulf Greyhound, looking at the issues in
10 front of it, would just like to have more options. We
11 recognize that any approval that we requested within
12 that application period we still have to come to you
13 for for consideration and approval. So we would just
14 ask that you give us more flexibility in that
15 application period.

16 CHAIRMAN SCHMIDT: Okay. Any questions
17 of Mr. Azopardi?

18 Thank you, Tommy.

19 MR. AZOPARDI: Thank you for your time.

20 CHAIRMAN SCHMIDT: Thank you, sir.

21 Any other public comment, Devon? No.
22 Good.

23 Any further discussion by the
24 Commission?

25 Okay. If not, I'll certainly entertain a

1 motion to approve the request to open an application
2 period for live race dates from 1 January 2016 through
3 31 August 2018. Is that correct? 2018?

4 MR. FENNER: You have the alternative of
5 approving a motion on either '17 or '18.

6 CHAIRMAN SCHMIDT: Okay. Give them as
7 much time as they want. 2018.

8 Is there a motion?

9 VICE-CHAIRMAN EDERER: So move.

10 CHAIRMAN SCHMIDT: A motion made by
11 Vice-Chair Ederer.

12 Is there a second?

13 COMMISSIONER HICKS: I'll second.

14 CHAIRMAN SCHMIDT: A second by
15 Commissioner Hicks.

16 Any further discussion?

17 Hearing none, let's move to a vote.

18 MS. WELCH: Commissioner Gary Aber?

19 COMMISSIONER ABER: Yes.

20 MS. WELCH: Commissioner Ron Ederer?

21 VICE-CHAIRMAN EDERER: Yes.

22 MS. WELCH: Commissioner Gloria Hicks?

23 COMMISSIONER HICKS: Yes.

24 MS. WELCH: Commissioner Cynthia Leon?

25 MS. LEON: Yes.

1 MS. WELCH: Commissioner Michael Martin?

2 COMMISSIONER MARTIN: Yes.

3 MS. WELCH: Commissioner Victoria North?

4 MS. NORTH: Yes.

5 MS. WELCH: Chairman Robert Schmidt?

6 CHAIRMAN SCHMIDT: Yes.

7 MS. WELCH: Commissioner John Steen?

8 COMMISSIONER STEEN: Yes.

9 CHAIRMAN SCHMIDT: So that's approved
10 unanimously. We have approved the request to open an
11 application period for live race dates from 1 January
12 2016, next January, to August 31st of 2018.

13 Okay. Item C, a request by Valley Race
14 Park to amend its live racing schedule.

15 Mr. Fenner, can you lay this item out for
16 us, please?

17 MR. FENNER: Yes, sir.

18 Valley Race Park currently has a race
19 date scheduled for November 28th, 2015, and it has
20 requested approval by the Commission to move that live
21 race date to November 26th of 2016. It states in its
22 letter that the reason for the change is a concern
23 about lack of kennels and purse dollars. And the Texas
24 Greyhound has provided -- Association has provided a
25 letter of support.

1 CHAIRMAN SCHMIDT: They're talking about
2 moving one day, correct?

3 MR. FENNER: Yes, one year later.

4 CHAIRMAN SCHMIDT: One year later.

5 Do we have a representative from Valley
6 Race Park to speak today?

7 Okay. Andrea?

8 MS. YOUNG: Good morning again, with my
9 Valley Race Park hat on.

10 As Mark laid out the request, we are
11 requesting to move our race date from November of this
12 year to November of next year. That comes after
13 discussion with the TGA. We have their support as well
14 as Gulf Greyhound's support to our knowledge.

15 And I'm happy to answer any questions.

16 CHAIRMAN SCHMIDT: Any questions of
17 Mrs. Young?

18 Thank you, Andrea. Thanks very much.

19 MS. YOUNG: Uh-huh.

20 CHAIRMAN SCHMIDT: Any further discussion
21 by the Commission? We're moving one date, one
22 Thanksgiving holiday to the next.

23 If not, I'll certainly entertain a motion
24 to approve Valley Race Park's request to amend its live
25 racing schedule.

1 Is there a motion?

2 COMMISSIONER STEEN: I'll make a motion.

3 CHAIRMAN SCHMIDT: A motion made by
4 Commissioner Steen.

5 Is there a second?

6 COMMISSIONER ABER: I'll second.

7 CHAIRMAN SCHMIDT: A second by Dr. Aber.
8 All those in favor signify by saying
9 aye.

10 COMMISSIONERS: Aye.

11 CHAIRMAN SCHMIDT: Anyone opposed?

12 Okay. That motion also carries
13 unanimously.

14 Next is a request to the Legislative
15 Budget Board requesting ratification of a request for
16 approval to expend funds under the Texas Racing
17 Commission Rider 7, HB-1, General Appropriations Act,
18 for the 84th Legislature, regular session, 2015.

19 Mr. Fenner, can you bring us up to date
20 on this?

21 MR. FENNER: Yes, sir.

22 We received a letter from Ms. Parks, the
23 director of the Legislative Budget Board, and that
24 letter begins on page 65 of your materials. We had
25 previously written to the LBB asking for direction as

1 to criteria that we should address in requesting
2 approval under Rider 7. And as you probably remember,
3 Rider 7 says that the Commission cannot expend funds
4 for central administration and other support services
5 without written approval from the LBB.

6 We received a letter on August 12th from
7 Ms. Parks that specified the criteria that the
8 Commission has to consider and the first one is the
9 date on which the Commission approved the request, if
10 applicable. We responded to this criteria and all the
11 rest of the criteria. On this one we stated that we
12 don't believe that the approval of the Commission is
13 applicable since you've already approved the
14 legislative appropriations request; but just to be
15 careful and, you know, belt-and-suspenders this thing,
16 we brought it to you to ratify the request of Mr. Trout
17 to the LBB for approval to expend funds under that
18 rider.

19 I'll be happy to answer any questions
20 about the response or the letter that we received that
21 you may have.

22 CHAIRMAN SCHMIDT: I have a couple of
23 questions. When did you send a letter requesting
24 criteria to the LBB?

25 MR. FENNER: We sent that letter on June

1 4th.

2 CHAIRMAN SCHMIDT: The 4th of June.

3 MR. FENNER: Yes, sir.

4 CHAIRMAN SCHMIDT: Okay. And again, this
5 is for Strategy D.1.1, which was basically
6 approximately \$700,000?

7 MR. FENNER: Yes.

8 CHAIRMAN SCHMIDT: Approximately?

9 MR. FENNER: 750, about.

10 CHAIRMAN SCHMIDT: 750 per biennium?

11 MR. FENNER: Per year. So it's 1.5
12 almost for the biennium.

13 CHAIRMAN SCHMIDT: And so could you go
14 over again for the Commission why -- the significance
15 of that money?

16 MR. FENNER: Well, the funds within
17 central administration and other support services go to
18 things like the salary of the executive director, our
19 chief financial officer, some support personnel, our
20 public information officer, and also for our rent for
21 the State headquarters and the utilities for the State
22 headquarters.

23 Of central importance is that this pays
24 the salary of the person who arranges for the payment
25 of every other employee in the agency. If we are

1 prohibited from spending money to pay the person who
2 arranges for the payment of everybody else, we can't
3 pay any employees and the Commission will have to shut
4 down.

5 CHAIRMAN SCHMIDT: Okay. Effective 31
6 August. Is that correct?

7 MR. FENNER: Yes, sir.

8 CHAIRMAN SCHMIDT: Okay. And I guess the
9 only other question I had is: This is money that's
10 already collected from the tracks, not from the
11 taxpayers. Is that correct?

12 MR. FENNER: Yes, sir.

13 CHAIRMAN SCHMIDT: Okay. I'm looking at
14 this page 69 of 133. This is the criteria that's been
15 forwarded to the Commission?

16 MR. FENNER: Yes, sir.

17 CHAIRMAN SCHMIDT: So has the LBB been
18 critical of the number of employees we have? We have
19 an all-time low number. Has that been an issue?

20 MR. FENNER: No, sir.

21 CHAIRMAN SCHMIDT: Have they been
22 critical of our purchases or our purchasing process?

23 MR. TROUT: No, sir.

24 CHAIRMAN SCHMIDT: Are they unhappy with
25 our drug testing protocol?

1 MR. TROUT: Not that I'm aware of, no,
2 sir.

3 CHAIRMAN SCHMIDT: Okay. There's no
4 mention here either of historical racing?

5 MR. TROUT: No, sir.

6 CHAIRMAN SCHMIDT: ADW's?

7 MR. TROUT: No, sir.

8 CHAIRMAN SCHMIDT: I guess where I have a
9 problem is we have -- I'm not certain where the
10 criteria tells us what we're responsible for. Is it
11 clear to you? Or it's just what the letter says?

12 MR. TROUT: Well, I think their letter is
13 clear as to what we were supposed to respond to and we
14 were able to do that within 24 hours. It was not
15 difficult to answer their questions.

16 CHAIRMAN SCHMIDT: Okay.

17 COMMISSIONER MARTIN: Have we had to do
18 that in the past?

19 MR. TROUT: No, sir, not -- not since
20 I've been in the headquarters, no, sir.

21 COMMISSIONER MARTIN: In the past when
22 have they let us know about this money? Has it come
23 down to August 31st in the past?

24 MR. TROUT: Not that I'm aware of, no,
25 sir.

1 COMMISSIONER MARTIN: Do you have any
2 idea when they usually let us know?

3 MR. TROUT: Well, usually when the
4 governor signs the appropriations bill, that's when we
5 know.

6 MR. FENNER: Right.

7 COMMISSIONER MARTIN: Okay.

8 CHAIRMAN SCHMIDT: But the written
9 criteria here has no reference to any of the items I
10 suggested, particularly historical racing.

11 MR. TROUT: No, sir.

12 CHAIRMAN SCHMIDT: Okay.

13 COMMISSIONER ABER: Mr. Chairman, could I
14 ask a question? On this -- on this request, what did
15 they request you to send to them, to the Legislative
16 Budget Board, exactly?

17 MR. TROUT: They want the date on which
18 the Commission approved the request, if applicable, and
19 that would be today if you approve it. They wanted a
20 statement justifying the need for the expenditure,
21 including any associated statutory or other
22 requirements, a detailed explanation of the intended
23 use of the affected administrative funds, the impact on
24 the agency's operations and mission of not expending
25 the affected administrative funds, an estimate of how

1 performance measures would be affected by not expending
2 those administrative funds.

3 COMMISSIONER ABER: Okay. So you're not
4 against doing that. You did that, that request.

5 MR. TROUT: Yes, sir. In your packet
6 there is -- my reply is in your packet, yes, sir.

7 COMMISSIONER ABER: Okay.

8 COMMISSIONER MARTIN: And to your
9 knowledge, we've never had to do this in the past.

10 MR. TROUT: I've only been the executive
11 director for a little less than five years. I've never
12 experienced this, no, sir.

13 COMMISSIONER MARTIN: Mr. Fenner?

14 MR. FENNER: No, sir, not in my nine
15 years.

16 CHAIRMAN SCHMIDT: Any other questions of
17 Mr. Trout or Mr. Fenner?

18 Any public comment, Devon?

19 VICE-CHAIRMAN EDERER: I have a couple of
20 questions.

21 CHAIRMAN SCHMIDT: Yes, sir.

22 VICE-CHAIRMAN EDERER: There's been no
23 indication that they are unhappy with anything that we
24 are doing. Is that correct?

25 MR. TROUT: I'm not aware of anything,

1 no, sir.

2 VICE-CHAIRMAN EDERER: Absolutely nothing
3 in writing.

4 MR. TROUT: No, sir.

5 VICE-CHAIRMAN EDERER: And there's been
6 no further explanation as to -- any further guidance as
7 to how -- in response to their request.

8 MR. TROUT: No, sir.

9 VICE-CHAIRMAN EDERER: No communication
10 whatsoever.

11 MR. TROUT: I have had one conversation
12 with the executive director. She acknowledged receipt
13 of the letter. And at that time she said that the
14 program analyst -- our program analyst was studying the
15 answers and that they would get back to us if they have
16 any questions.

17 VICE-CHAIRMAN EDERER: Did she give any
18 reason whatsoever for the delay in approval?

19 MR. TROUT: No, sir.

20 VICE-CHAIRMAN EDERER: Ordinarily --

21 MR. TROUT: Well, I'm not so sure. The
22 delay could hinge on the first item, which is the date
23 the Commission approved the request. And if you do
24 that today, then we will be notifying them that you
25 approved the request and I assume that that will then

1 fulfill all the requirements.

2 VICE-CHAIRMAN EDERER: But that's out of
3 the ordinary. Because ordinarily it would be approved
4 in June when the governor signs it.

5 MR. TROUT: When the governor signs it,
6 yes, sir.

7 VICE-CHAIRMAN EDERER: So this is the
8 first time in at least nine years that this has
9 happened.

10 MR. FENNER: Yes, sir.

11 VICE-CHAIRMAN EDERER: Thank you.

12 COMMISSIONER HICKS: I have one
13 question. Are all the other Commissions under this
14 same type of reporting to get their money this year?

15 MR. TROUT: I'm not aware of any. It's
16 possible they could be, but I'm not aware of any.

17 COMMISSIONER HICKS: Thank you.

18 COMMISSIONER ABER: Mr. Fenner, are you
19 aware of that?

20 MR. FENNER: No, I do not believe any
21 other State agencies are under a similar rider, but I
22 have not thoroughly examined the Appropriations Act to
23 make sure of that.

24 CHAIRMAN SCHMIDT: Okay. Any further
25 discussion by the Commission?

1 VICE-CHAIRMAN EDERER: Well, I have one
2 more question. Is there any indication that our funds,
3 the funds that we will be getting, are dependent upon
4 historic racing?

5 MR. TROUT: I have nothing in writing.

6 VICE-CHAIRMAN EDERER: There's nothing in
7 writing.

8 MR. TROUT: No, sir.

9 COMMISSIONER ABER: Otherwise?

10 MR. TROUT: Sir?

11 COMMISSIONER ABER: Anything otherwise?

12 MR. FENNER: I have heard from certain
13 legislative staffers that this is dependent on
14 historical racing; but as Mr. Trout said, there's
15 nothing in writing, nothing that anybody would want to
16 go on record saying this is what it's about.

17 VICE-CHAIRMAN EDERER: But legislative
18 staffers have tied -- have told you that our funding is
19 tied to --

20 MR. FENNER: Yes.

21 VICE-CHAIRMAN EDERER: -- the withdrawal
22 of historic racing.

23 MR. FENNER: Yes.

24 CHAIRMAN SCHMIDT: I find that
25 disappointing that we have not received anything in

1 writing. I think that reflects negatively on the
2 process.

3 I'll certainly entertain a motion to
4 ratify Mr. Trout's request to the Legislative Budget
5 Board for approval to expend funds under Rider 7.

6 Is there a motion?

7 VICE-CHAIRMAN EDERER: I make the
8 motion.

9 CHAIRMAN SCHMIDT: A motion by Vice-Chair
10 Ederer.

11 Is there a second?

12 COMMISSIONER MARTIN: Second.

13 CHAIRMAN SCHMIDT: Seconded by Doctor --
14 Commissioner Martin.

15 Any further discussion?

16 All those in favor signify by saying
17 aye.

18 COMMISSIONERS: Aye.

19 CHAIRMAN SCHMIDT: Anyone opposed?

20 COMMISSIONER ABER: No.

21 CHAIRMAN SCHMIDT: Okay. So we have
22 seven ayes and one opposed. The motion carries.

23 Okay. Proceedings on rulemaking,
24 discussion and possible action on the following
25 matters: Now, just to bring you up to date, these are

1 new rule proposals. Again, I appreciate Commissioners
2 Aber and Commissioners North for doing the due
3 diligence and working through these rules.

4 We're discussing whether to post these
5 rules in the Texas Register. We're not voting on these
6 rules. We're discussing -- these rules have been
7 vetted by the rules committee and we're discussing
8 whether these rules should be posted in the Texas
9 Register for further comment, just for clarification.

10 Mark, can you go through each of the
11 rules for us? And we'll take them as a whole since I
12 think they're noncontroversial.

13 MR. FENNER: Yes, sir.

14 The first rule proposal is for Rule
15 321.322, the triple trifecta. This is a new wager
16 based on the correct selection of the first three race
17 animals in order in three successive races. It's not
18 currently existing anywhere in the United States, but
19 Sam Houston believes they can work with their tote
20 company to implement it.

21 The staff has reviewed it and found no
22 legal or technical problems with the proposal. This
23 was discussed at the rules committee meeting on August
24 11 and no attendee expressed opposition.

25 The proposal to amend Rule 311.1 and,

1 associated with it, the proposal to amend 311.104,
2 Trainers, were the change to 311.104, Trainers, would
3 allow an unlicensed trainer to enter a horse in a race,
4 an unlicensed trainer, which is a change. Our current
5 rules requires them to be licensed at the time. But in
6 fact, this has not worked out well for the racetracks.
7 I think there's been a practical application of
8 allowing some flexibility in this regard.

9 Staff has looked at it and we're
10 supporting it because it brings this into conformity
11 with other rules that allow, for example, an owner to
12 make an unlicensed entry.

13 Associated with this, if the Commission
14 makes this change, I would recommend that you also
15 change 311.1, the occupational licenses, which
16 specifically says that any individual who enters an
17 animal is deemed to be a participant in racing. So
18 that statement is going to be inconsistent with the
19 change to 311.104. If you go with the 311.104 change,
20 allowing an unlicensed trainer to make an entry as long
21 as he's licensed an hour before the first race, then
22 that's going to be inconsistent with 311.1. We should
23 just change 311.1 to be consistent with 104.

24 Do you have any questions about that
25 one? That's a little complicated.

1 All right. The next change is 313.110,
2 Coupled Entries. Currently horses with common
3 ownership interests run generally as a coupled entry,
4 meaning both horses run as a single betting interest.
5 There is an exception in the rule for stakes races of
6 \$50,000 or more. This is a proposal from Sam Houston
7 that would allow the uncoupling of those entries in a
8 stakes race without the 50,000-dollar threshold. So it
9 would remove the \$50,000 but still limit it to stakes
10 races.

11 CHAIRMAN SCHMIDT: Okay. One question.
12 The triple trifecta, is that going to be a low -- is it
13 a 25-cent bet, a 10-cent bet, something like that?

14 MR. FENNER: Mr. Hopf is here from Sam
15 Houston. I'll defer to him if you don't mind.

16 MR. HOPF: Good morning, Commissioners.
17 My name is Frank Hopf, senior director of racing
18 operations at Sam Houston.

19 To answer that question, the minimum will
20 probably be a 10-cent to a 20-cent minimum depending on
21 how breakage will work out with the tote company.

22 CHAIRMAN SCHMIDT: Pick nine in a row.

23 MR. HOPF: That's the goal.

24 CHAIRMAN SCHMIDT: Okay. Any further
25 questions about the triple trifecta?

1 Okay. Thank you, sir. Thank you very
2 much.

3 And then Rob Werstler from the Texas
4 Quarter Horse folks, you'd like to testify against the
5 coupled entries rule? Rob?

6 MR. WERSTLER: No, sir. I wanted to --
7 we're in support.

8 CHAIRMAN SCHMIDT: I'm sorry. I
9 apologize. Yes. Let me just clarify that. Rob
10 Werstler is in support of the coupled entries rule. He
11 did not wish to testify. Sorry.

12 Okay. Any further cards?

13 MS. BIJANSKY: No, sir.

14 CHAIRMAN SCHMIDT: Okay. Any questions
15 about any of the rules?

16 Again, we appreciate Commissioner Aber,
17 Commissioner North.

18 Any comments from Commissioner Aber,
19 Commissioner North?

20 COMMISSIONER ABER: No. I think they're
21 fine.

22 MS. NORTH: No, sir.

23 CHAIRMAN SCHMIDT: Great.

24 Let's just take these as a whole. Again,
25 this is a Step 1. I'd certainly entertain a motion to

1 publish the proposals in the Agenda Items VI-A
2 through -- VI-A-1 through 4 in the Texas Register for
3 public comment.

4 A motion by Dr. Aber. A second by --
5 COMMISSIONER HICKS: Second.

6 CHAIRMAN SCHMIDT: By Commissioner
7 Hicks.

8 Any further discussion?

9 All those in favor signify by saying
10 aye.

11 COMMISSIONERS: Aye.

12 CHAIRMAN SCHMIDT: Anyone opposed?

13 Okay. That carries unanimously.

14 And moving to adoption of rule proposals,
15 Mark, can you lay out the rules that have been recently
16 posted in the Register? Now we're going forward,
17 correct?

18 MR. FENNER: Okay. Do you want to take
19 up the non-historical related rules first?

20 CHAIRMAN SCHMIDT: Non-historical related
21 rules. Let's just take up Rules 1 through -- yeah.

22 MR. FENNER: 1 through 8.

23 CHAIRMAN SCHMIDT: Right.

24 MR. FENNER: Okay. The rule proposal on
25 309.8 actually I prepared for you in two separate parts

1 because this rule touches both on the fees, the annual
2 fees for racetracks, and it also touches on historical
3 racing. So at this point we're only talking about the
4 change that would allow a nonoperating racetrack which
5 currently pays its annual fee in one lump sum September
6 1 to instead pay it on a quarterly basis. At the
7 beginning of the calendar quarter they would pay
8 one-fourth of their annual fee.

9 We've received no comments on that.

10 CHAIRMAN SCHMIDT: Okay.

11 MR. FENNER: The change to 309.365,
12 Breakage, is a change to -- to put in black and white
13 current practice, which is that half of the breakage
14 generated at a greyhound racetrack is going to the
15 association. They get to retain it. That's after a
16 change in the law in 2007, which that 50 percent used
17 to go to the Commission but they took that away from
18 the Commission's revenue stream but didn't say where it
19 went, so as a practical matter the association got to
20 keep it. They would like to have that in black and
21 white and that's what this rule change does.

22 The change to 315.111 was brought by our
23 racing judges at Gulf Greyhound Park. There's an
24 Administrative Code error in that rule that cites to
25 a -- it cites an entirely different provision. What

1 it's supposed to be about is schooling races. What
2 this does is make that language follow the RCI model
3 rule by establishing that all schooling races at
4 greyhound tracks shall be at a distance of not less
5 than three-sixteenths of a mile unless otherwise
6 approved by the judges. So it's to bring the rules
7 into conformity with the model rules and correct an
8 error.

9 CHAIRMAN SCHMIDT: Okay.

10 MR. FENNER: The change to 319.1, Purpose
11 and Definitions, is a staff proposal as well. We have
12 learned -- the industry has learned over time that
13 people are now using naturally occurring substances to
14 try and treat them as a performance enhancing substance
15 and this has arisen mostly with the use of cobalt. The
16 model rules now recognize that the presence of a
17 naturally occurring substance at a level beyond what
18 could naturally occur is a violation. This would
19 follow that model rule and we would similarly recognize
20 that an unnaturally high presence of a naturally
21 occurring substance would be a violation.

22 No comments on that one either.

23 Proposals related to safety equipment.
24 We have safety equipment rules that are about 10 years
25 old. They're tied to the ASTM's standards. But the

1 model rules now envision a broader array of possible
2 safety standards, like the British Equestrian Trade
3 Association.

4 What this would do is follow the model
5 rule as to the types of safety standards that have to
6 be followed. And it would also amend 311.216, 313.405,
7 and 313.406 which have references in them to safety
8 equipment. So we're going to change that so that they
9 point back to the new rule, Safety Equipment, 311.218.
10 So it was easier if you change 311.218 and that
11 reflects everywhere else as well.

12 313.406, the current rule provides that
13 Quarter Horses, Paints, and Appaloosas shall wear head
14 numbers but that Thoroughbreds and Arabian may wear
15 such head numbers. So this would be more consistent.
16 It would allow a Quarter Horse, Paint, or Appaloosa to
17 not wear the head number in the case of equipment
18 failure, missing equipment, or in the interest of
19 safety.

20 Staff is supporting this rule change.
21 We've received no comments.

22 The changes to 311.101 and 102, first,
23 the change to 101, Horse Owners, addresses both the
24 owner/trainer issue. There are situations in which an
25 owner -- or a trainer who frequently owns horses

1 throughout the year doesn't have a horse in his stable
2 at the time he goes back for his license, and under our
3 current rules you have to own a horse in order to get
4 an owner's license. But he, with this change, would be
5 allowed to come in and say "I'm a trainer and I intend
6 to own horses throughout the year of my licensure, so I
7 need a trainer's owner's license" and pay just a single
8 fee and not have to come back subsequently and also get
9 an owner's license.

10 And the change to the emergency license
11 issue affects both 101 and 102. This would be a change
12 to enhance the privacy of licensees. It would say that
13 in order to get an emergency license, you no longer
14 have to provide a Social Security number up front.
15 Now, you would obviously have to provide the Social
16 Security number when you get your full license once the
17 emergency license expires, but some licensees were
18 reluctant to have their Social Security number provided
19 to, for example, the trainer to be relayed to us. They
20 wanted to be able to not give it to them and then come
21 directly to us and give it to us subsequently.

22 I know at the last Commission meeting
23 there were some questions about is there a possibility
24 of odds manipulation going in here if somebody who is
25 not who they say they are tries to enter a horse.

1 We've looked at it. Odds manipulation is a separate
2 rule violation under the rules and we have methods of
3 detecting odds manipulation, so we think we have an
4 alternative method of getting at that issue.

5 CHAIRMAN SCHMIDT: Thank you, Mark.

6 Just for clarification, so there was
7 really no comment on any of these rules?

8 MR. FENNER: No, not much, no.

9 CHAIRMAN SCHMIDT: Okay. Great. Thank
10 you.

11 Do any Commissioners have any comments or
12 have any questions of Mr. Fenner laying out these
13 items? We've been through them three times now, the
14 rules committee, last meeting, and this meeting. I
15 think they're fairly straightforward and very, very
16 instructive.

17 Commissioners North or Aber, do you have
18 anything to add?

19 COMMISSIONER ABER: No.

20 CHAIRMAN SCHMIDT: Again, thank you for
21 working through those.

22 Any public comment?

23 We have one comment from Mr. Beech with
24 the Jockeys' Guild. Welcome. Regarding safety
25 equipment rules.

1 Yes, sir.

2 MR. BEECH: Mr. Chairman, Commissioners,
3 staff, my name is John Beech. I'm the regional manager
4 for the Jockeys' Guild, Incorporated.

5 I'd like to thank the rules committee and
6 staff for the time they spent to change this rule over
7 to come into compliance with the ARCI model rules.

8 CHAIRMAN SCHMIDT: Thank you, sir.

9 Any questions of Mr. Beech? No?

10 Appreciate that. Thank you, sir.

11 MR. BEECH: Thank you.

12 CHAIRMAN SCHMIDT: I think these have
13 been worked through pretty well. If there's no further
14 discussion, I'll certainly entertain a motion to -- I
15 think we're going to take them all at once -- to adopt
16 the Proposals VI-B-1 and B-2 through 8 as published in
17 the Texas Register.

18 MR. FENNER: On the B-1, that's the fee
19 related portion. We're not talking about the
20 historical racing related portion first.

21 CHAIRMAN SCHMIDT: I'm sorry. Right. To
22 adopt VI-B-1 and then VI-B-2 through 8 as published in
23 the Texas Register.

24 MR. FENNER: Okay.

25 CHAIRMAN SCHMIDT: Great.

1 Any further discussion?
2 I'll entertain a motion to approve those
3 rules.

4 COMMISSIONER STEEN: Motion.

5 CHAIRMAN SCHMIDT: A motion made by
6 Commissioner Steen.

7 COMMISSIONER MARTIN: Second.

8 CHAIRMAN SCHMIDT: Seconded by
9 Dr. Martin.

10 Any further discussion?
11 All those in favor signify by saying
12 aye.

13 COMMISSIONERS: Aye.

14 CHAIRMAN SCHMIDT: Anyone opposed?
15 Okay. Thank you, rules committee. Those
16 motions also carry.

17 Okay. We're here next to consider the
18 issues of historical racing. Just for background,
19 we've received over 1,300 written comments and petition
20 signatures, probably another 500 phone calls. If you
21 already commented, everyone understands your position.
22 We respect your position. We don't need to restate
23 it. I think what we'll do is we'll limit our talk to
24 about 30 minutes and each speaker to about two
25 minutes. But I appreciate all your comments very much

1 and your interest.

2 Mark, can you lay this out for us?

3 MR. FENNER: Yes, sir.

4 As I'm sure you're all aware, the status
5 of these rules, they were struck down by a Travis
6 County District Court on the basis that they exceeded
7 the Commission's authority. The Commission has not
8 appealed that decision. And therefore, you're in a
9 position where you cannot take action on these rules.
10 The purpose of the change is to eliminate the
11 confusion, particularly when there's an existing -- a
12 preexisting rule that has been amended to incorporate
13 references to historical racing, which that portion has
14 been invalidated.

15 The proposed amendments and repeals were
16 published in the June 26, 2015 edition of the Texas
17 Register. As the chairman mentioned, we've received
18 nearly 1300 public comments. The vast majority were in
19 opposition to the repeal. We did receive five comments
20 from legislators, four of which were separating the
21 issue of historical racing from the rulemaking
22 process.

23 We also received letters opposing repeal
24 from industry organizations, TGA, TTA, THP, and the
25 Jockeys' Guild, and a full legal brief on behalf of the

1 Thoroughbred HBPA. We received letters in opposition
2 from Sam Houston and from Gulf Greyhound.

3 We also received three letters supporting
4 the repeal. Those were from the Kickapoo Traditional
5 Tribe of Texas. There was a representative of the 300
6 organizations who are licensed to conduct charitable
7 bingo and Grey2K USA. And we provided that to you in
8 this compilation that looks like this. I believe you
9 received it a few weeks ago.

10 And again, this time 309.8 is in your
11 materials for proposed adoption, but now we're talking
12 about the historical racing portion of that rule.

13 So that's a summary of where we are.

14 CHAIRMAN SCHMIDT: Just for the record,
15 the Commission did not appeal the judge's decision
16 because we lack the funds to do so.

17 MR. FENNER: Yes. And the Attorney
18 General declined to represent us.

19 CHAIRMAN SCHMIDT: Right. Okay.

20 VICE-CHAIRMAN EDERER: Our present
21 sitting Attorney General.

22 MR. FENNER: Yes, sir.

23 CHAIRMAN SCHMIDT: Right.

24 So the Commission still believes fully
25 that the rules are legal and within existing law.

1 We've not accepted the judge's decision. We just don't
2 have the avenue to appeal, for the record.

3 Okay. Any public comment?

4 MS. BIJANSKY: Yes.

5 COMMISSIONER ABER: Mr. Fenner, can I
6 address you on that? The tracks are appealing, right?

7 MR. FENNER: Yes, sir.

8 COMMISSIONER ABER: The tracks and the
9 horsemen's -- some of the horsemen's associations are
10 appealing.

11 MR. FENNER: Yes, sir. Some of the
12 racetracks and the horsemen's organization, yes.

13 COMMISSIONER STEEN: Can you bring us up
14 to date on that or is that better done by the tracks
15 themselves?

16 MR. FENNER: Actually I think I would
17 prefer that the -- the participant, because I haven't
18 followed it all that closely within the last few
19 weeks.

20 COMMISSIONER STEEN: Okay.

21 MR. FENNER: Would you --

22 CHAIRMAN SCHMIDT: Let's work through as
23 many of these as we can. Andrea Young, Sam Houston
24 Race Park?

25 Andrea, welcome again.

1 MS. YOUNG: Thank you, Commissioners,
2 Chairman Schmidt.

3 I really do appreciate the opportunity to
4 speak to you this morning against the proposed repeal
5 of the historical racing rules. I am fairly certain
6 that should come as absolutely no surprise to any of
7 you before me here today that we are opposed to this
8 repeal. However, I am not sure you understand just how
9 critical your position is -- decision is today.

10 You are well aware of the devastating
11 statistics this industry has suffered, the thousands of
12 job losses, the closed family farms, and even shuttered
13 racetracks over the past decade. I've been up at this
14 podium too many times telling you the extremely sad
15 story of our current industry. It is those very
16 statistics that caused almost all of you before me to
17 pass the historical racing rules almost a year ago to
18 this day.

19 I am not going to belabor that point this
20 morning. What I am going to tell you is that today,
21 right now, is perhaps the most pivotal moment in this
22 industry's 25-year history. Some seven years ago I
23 walked into this industry with a lot of hope, hope to
24 make a positive change. We've had some successes along
25 the way, making it farther than many thought we would

1 have by now, and we've never stopped trying to make a
2 difference.

3 However, I'm here today to tell you that
4 if you repeal these rules today, you will absolutely,
5 without a shred of doubt in my mind, destroy the last
6 bit of hope that this industry has left.

7 This vote is not about me. This vote is
8 not just about Sam Houston Race Park. This is about
9 all of the people you see sitting behind me today.
10 It's about the horsemen and the horsewomen of this
11 state, hard working people that I've gotten to know
12 over these past seven years.

13 It's the grooms that stay on the backside
14 with the horses every night. It's about the exercise
15 rider that gets up at 5:00 in the morning. It's about
16 251 hard working people back at Sam Houston Race Park
17 today, and similar numbers at every racetrack across
18 this state. It's our accountant, it's our mutuel
19 clerk, and it's our stall superintendent.

20 For them, this is their job. It's their
21 mortgage. It's their car payment. They work hard.
22 And the idea that somehow they could lose their hope
23 and maybe even their livelihood if you determine to
24 repeal these rules today just doesn't seem fair.

25 And you know what? I agree. If you

1 repeal these rules, thousands of people will lose their
2 jobs. You will force ownership groups into very
3 difficult decisions. Thousands of jobs. And these are
4 your people, the people your job who it is to protect
5 when you protect this industry.

6 Who it is not? I don't know. Some of
7 the people behind me today, the lobbyists for
8 out-of-state casino interests for the Golden Nugget
9 like Tilman Fertitta or the Kickapoo Indian tribe who
10 are all in this room today who just announced they're
11 going to expand their casino to 3300 gaming positions
12 here in Texas, twice the size of the average Las Vegas
13 floor.

14 Commissioner Ederer, you chaired the
15 pari-mutuel advisory committee where this process
16 began. Commissioners Steen and Martin, you were there,
17 too. That we are sitting here having this discussion
18 at all after everything you gave to have a fair, open,
19 and transparent process is galling. To see what we all
20 worked hard on come apart because of something so
21 flimsy, so lacking substance, is galling. Simply put,
22 if you vote to repeal, you are letting our opponents,
23 the opponents of this entire industry, win.

24 We all knew last year that certain groups
25 would oppose these rules, not because they are slot

1 machines. They are not slot machines. But because
2 they are against this industry. Where is Senator
3 Nelson when yet another illegal eight-liner
4 establishment pops up across the street from Lone Star
5 Park?

6 I implore you, do not give in to these
7 bullies. They have a particular view of the world, a
8 view funded by people who do not care about this
9 industry, competitors who want to destroy it.

10 Now, you will hear people talk about LBB
11 this or that, Senator Nelson this or that. But ask any
12 single person behind me. There is not a shred of
13 legislation that supports the notion that a repeal is
14 required so that the Commission can get the last 10
15 percent of its funding. You ran an open and
16 transparent process. Senator Nelson is not. She is
17 running a back-door process built on intimidation and
18 fear. Again, I implore you not to give up to this
19 bullying.

20 Senator Nelson will even mention a letter
21 from a year ago signed by the Senate Republican
22 caucus. Senator Nelson and her comrades had every
23 chance to pass legislation earlier this year when they
24 were in session to unwind these rules. You know what?
25 They didn't. In fact, they didn't even introduce the

1 legislation. In your now infamous budget rider, there
2 is nothing written that even mentions the words
3 "historical racing". Nowhere does it say "Thou shall
4 repeal this rule."

5 Commissioners, you have spent a lot of
6 time on this issue. We have also spent a lot of
7 resources. We, just Sam Houston, have spent nearly one
8 million dollars to defend these rules in court and we
9 would like the opportunity to see that effort through
10 the courts in the appeal phase where the issue now
11 belongs. If you repeal these rules, nobody in the
12 industry will have a chance and they surely will not
13 have any hope.

14 Texans pride themselves on a strong
15 business climate, while a repeal of these rules would
16 be about as anti-Texan and anti-horse racing as it
17 comes in my book.

18 We understand, finally, that there is
19 risk. The entire industry understands the risks
20 associated with your vote today. Yet we are still
21 asking you not to repeal. I think that says
22 something. In our view, this is bad government. This
23 is behind-the-scenes, back-room dealing that Texans
24 despise.

25 The entire industry will come up behind

1 me today and tell you what it wants and we are prepared
2 to deal with the consequences. We are asking you to
3 give us a chance. We beg you not to repeal these
4 rules. What you did last summer was right. It was
5 innovative. Now let the Courts decide this issue. Do
6 not give in to these bullies. And please let us have
7 our hope.

8 Thank you. I'm happy to answer any
9 questions.

10 CHAIRMAN SCHMIDT: Thank you, Andrea.
11 Any questions of Ms. Young?

12 Okay. Thank you very much, Andrea.

13 Tommy Azopardi, Gulf Greyhound and Gulf
14 Coast Racing.

15 MR. AZOPARDI: Good morning again,
16 Mr. Chairman, Commissioners. My name is Tommy
17 Azopardi. As the chairman stated, I'm here
18 representing Gulf Coast Racing and Gulf Greyhound. I
19 would like to expand that. I know we've got
20 representatives from Gillespie County Fair here. My
21 clients represent that track and produce the races at
22 Gillespie as well.

23 I will yield to what you said,
24 Mr. Chairman, and not repeat what you already know and
25 what Andrea so articulately just pointed out. We are

1 in a hundred percent agreement with everything she
2 said. But it came to my attention that someone earlier
3 had mentioned that it looked like Sam Houston was the
4 only racetrack that was supportive of these rules
5 staying in place and letting the Courts determine
6 this.

7 I'm here today to tell you that Gillespie
8 County Fair, Gulf Coast Racing, the dog track in
9 Corpus, Gulf Greyhound, as well as Mr. LaMantia's
10 licenses in McAllen and Laredo all stand by the fact
11 that we would like to see these rules stay in place.
12 Allow us to let the Courts determine this. We, too,
13 have spent a lot of money, not nearly as much as Sam
14 Houston has in this process, but it's been sizeable and
15 we would like our day in court.

16 And I would answer any questions that you
17 may have.

18 CHAIRMAN SCHMIDT: Any questions of
19 Mr. Azopardi?

20 Thank you, Tommy.

21 MR. AZOPARDI: Thank you, Mr. Chairman,
22 Commissioners.

23 CHAIRMAN SCHMIDT: Andrea, I'm sorry. I
24 moved too quickly. Vice-Chair Ederer would like to --
25 a question of your attorney.

1 VICE-CHAIRMAN EDERER: I would prefer to
2 speak to your attorney at this time.

3 MS. YOUNG: Absolutely. Add it to the
4 bill.

5 VICE-CHAIRMAN EDERER: We've been through
6 a lot together, putting this together, getting us to
7 this point.

8 MR. OLDHAM: Yes, Commissioner.

9 VICE-CHAIRMAN EDERER: I have some
10 questions for you. And I don't know if you're going to
11 be able to answer them or not.

12 To begin with, as far as the LBB is
13 concerned, we don't know what the LBB is going to do.
14 We have -- they have threatened us and they have said
15 that they are going to withhold our funds. If the
16 funds are withheld, do you know what the repercussions
17 are?

18 MR. OLDHAM: I do not. I would have to
19 rely on your staff in terms of what the agency can and
20 can't do in that environment. I do know from other
21 agencies that there are situations where funds are
22 withheld for various reasons. It's usually clear that
23 some contingency did not occur and therefore those
24 funds are withheld and agencies have the ability to
25 move certain funds around to cover essential --

1 essential services and essential functions without
2 access to the funds that the LBB withholds.

3 This process was a little different, as
4 you heard, and I've never seen one that was quite like
5 this.

6 I'm Phillip Oldham. I'm an attorney for
7 Sam Houston Race Park.

8 MR. FENNER: Mr. Oldham is correct in
9 that typically agencies do have discretion to move
10 funds from one appropriation to another. And in fact,
11 in this circumstance they've kind of borrowed from the
12 big version of that as the criteria they've identified
13 are very similar to criteria they look at if you're
14 trying to move more than 20 percent of the funds from
15 one strategy to another.

16 But in this case, it's different because
17 you have to have room within the strategy where you're
18 moving funds to in order to move those monies in. I
19 mean, in this case, Strategy D.1.1 is being zero
20 funded. There is no capacity in which to move funds
21 into that strategy.

22 VICE-CHAIRMAN EDERER: So what happens?
23 Come September 1, they withhold our funds. What
24 happens?

25 MR. FENNER: We stop showing up for

1 work. Racetracks stop running.

2 VICE-CHAIRMAN EDERER: So Retama, who
3 would be running -- they're in the middle of their
4 Quarter Horse meet. It would be over.

5 MR. FENNER: Yes, sir.

6 VICE-CHAIRMAN EDERER: Is that correct?
7 They'd go dark.

8 MR. FENNER: Yes, sir.

9 VICE-CHAIRMAN EDERER: I think what -- of
10 course, that bothers me. That's our first hurdle. Our
11 second hurdle, we have three Commissioners, three new
12 potentials for appointment. Hopefully we can keep the
13 two that we have sitting with us now. But there's a
14 very real possibility that they will be replaced,
15 especially in light of the fact that they are voting
16 against what the Senators have said is approval. At
17 least they haven't passed. I don't know what they're
18 going to do today.

19 So we're going to have three new
20 Commissioners. What is to prevent those three new
21 Commissioners at the very next meeting bringing this up
22 again and throwing out the rules?

23 MR. OLDHAM: I think that any
24 Commission -- the sitting Commissioners at that point
25 in time can entertain any rule proposal they want. In

1 fact, the acts of one Commission cannot bind a
2 subsequent Commission.

3 So to answer your question, that's always
4 the situation. You can have new Commissioners come
5 onboard and the question is does that new Commission as
6 a body want to take a different approach. That would
7 go through the same process. Those Commissioners would
8 be educated on the issue as you have.

9 VICE-CHAIRMAN EDERER: Right.

10 MR. OLDHAM: And there's no guarantee
11 that the outcome would be any different.

12 VICE-CHAIRMAN EDERER: And these three
13 Commissioners that would be appointed will be appointed
14 now by the sitting governor. Is that correct?

15 MR. OLDHAM: That's correct.

16 VICE-CHAIRMAN EDERER: And it's my
17 understanding that his office has stated that he wants
18 us to pull down the rules.

19 MR. OLDHAM: I'm not aware of that.

20 VICE-CHAIRMAN EDERER: All right. Now,
21 next question. We get through this. We get through
22 the budget and we get through our Commissioners. The
23 appeal is now pending. How long will it take before
24 that appeal comes about?

25 MR. OLDHAM: So to -- first, to clarify

1 the earlier question, the appeal has been abated
2 pending the outcome of this -- of the Commission's
3 decision today.

4 VICE-CHAIRMAN EDERER: All right. Let's
5 assume that the Commission does not withdraw -- pull
6 down its rules.

7 MR. OLDHAM: Okay. So the rules stay in
8 place. There will be a process to get the court case
9 going again relatively quickly, I would assume, and
10 briefing deadlines will then be reinstated, which will
11 occur over a period of 60 days or so, and then the
12 Court will deliberate on that, which could take
13 awhile. I mean, there's no time limit per se on when
14 they have to make a decision.

15 VICE-CHAIRMAN EDERER: How long could it
16 take?

17 MR. OLDHAM: You know, my best guess
18 would be a decision would come down out of the Third
19 Court sometime in 2016. That would be my guess. It
20 could be earlier in 2016. It could be later in 2016.
21 And then at that point there's a potential for an
22 appeal to the Texas Supreme Court by whoever is
23 aggrieved by that decision.

24 VICE-CHAIRMAN EDERER: And we can assume
25 that that's going to happen.

1 MR. OLDHAM: But remember, the Supreme
2 Court is not a court of automatic jurisdiction. So the
3 Supreme Court could decide they don't want to hear the
4 case and that would be the end of it.

5 VICE-CHAIRMAN EDERER: But when the case
6 is sent to them, there's a period of time that they
7 will review.

8 MR. OLDHAM: Correct.

9 VICE-CHAIRMAN EDERER: How long will that
10 take?

11 MR. OLDHAM: That's a fairly -- there's a
12 fairly quick process for the initial review while they
13 consider whether to accept briefing on the writ. If
14 they take briefing on the writ, that extends the
15 process and it can be many months. The first part of
16 the process is pretty quick.

17 VICE-CHAIRMAN EDERER: Right. And of
18 course, this is if we win for the appeal to go
19 forward.

20 MR. OLDHAM: You mean if the -- if the
21 industry wins at the Third Court of Appeals?

22 VICE-CHAIRMAN EDERER: Exactly.

23 MR. OLDHAM: Yes. Then --

24 VICE-CHAIRMAN EDERER: That's if the
25 industry wins.

1 MR. OLDHAM: Then the other side might
2 appeal to the Texas Supreme Court and we would go
3 through that process.

4 VICE-CHAIRMAN EDERER: So from what
5 you've said, it's going to -- it will be -- we're
6 looking at a minimum 18 months.

7 MR. OLDHAM: I mean, assuming that the
8 Supreme Court grants briefing, I think yes. I think if
9 the Supreme Court were to not accept the writ on the
10 up-front process, it would be shorter than that.

11 VICE-CHAIRMAN EDERER: Okay. Now, that's
12 if we win that appeal.

13 MR. OLDHAM: Or I should say it could be
14 shorter than that. I don't know for sure.

15 VICE-CHAIRMAN EDERER: Now, do you
16 anticipate there will be more lawsuits filed at that
17 point in time?

18 MR. OLDHAM: Well, remember that the rule
19 that you all enacted does not actually specify any
20 terminals. And so that rule literally sets up merely a
21 process for the Commission to see whether there is a
22 terminal that would satisfy that rule. So I don't
23 think there would be subsequent lawsuits on the
24 existence of the rule. I think it would then turn back
25 to you, this Commission, to determine whether there is

1 a terminal out there that would be allowed under Texas
2 law; and if so, that approval could be challenged. And
3 that would be similar to what you've seen in
4 Kentucky --

5 VICE-CHAIRMAN EDERER: Right.

6 MR. OLDHAM: -- where terminals were then
7 approved and then subsequent suits filed. And some of
8 those are still ongoing. But the industry is running
9 those terminals simultaneously with that, with those
10 lawsuits.

11 VICE-CHAIRMAN EDERER: I understand. So
12 once we get through the Supreme Court, then it comes
13 back to us and terminals will have to come forward. At
14 the present time it's my understanding there's no such
15 terminal in existence.

16 MR. OLDHAM: I think there's been a lot
17 of debate about whether any of the existing terminals
18 would satisfy the Commission's rule. I think that's
19 accurate.

20 VICE-CHAIRMAN EDERER: So at this point
21 in time we don't even have a terminal that we could put
22 into a track.

23 MR. OLDHAM: I wouldn't say that I know
24 that for certain because I haven't been through the
25 process here, but I think there's a lot of questions

1 about that. There may be some existing titles and
2 certainly there are other developers out there who are
3 working on the issue. I mean, that's been ongoing.

4 VICE-CHAIRMAN EDERER: Right. So we
5 now -- we're to the point where we're going to be
6 almost a year and a half, two years minimum, down the
7 road at this point in time when terminals can be put
8 in.

9 MR. OLDHAM: I would think that it would
10 be in that time frame, yes, before this Commission
11 would be looking at specific technologies with an eye
12 towards installing -- or approving the installation of
13 those at facilities.

14 VICE-CHAIRMAN EDERER: Right. So the
15 industry is plugging along. All right. Now all of a
16 sudden there's something -- we've got two years we're
17 talking about. The Senate is going to come back during
18 that period of time. That's another hurdle that we
19 will have.

20 MR. OLDHAM: Well, the Senate, as we all
21 know, is just one side. But, yes, I mean, there will
22 be another legislative session that would have to be
23 contended with between now and then.

24 VICE-CHAIRMAN EDERER: Right. You say
25 the Senate is one side, but we have -- not one Senator

1 has expressed support for historical racing that I'm
2 aware of.

3 MR. OLDHAM: I mean, I believe there was
4 a letter from Senator Hinojosa in the original rule
5 packet and certainly we've talked to a number of
6 Senators who are in favor.

7 VICE-CHAIRMAN EDERER: Can you tell me
8 those names?

9 MR. OLDHAM: I'm not sure that I'm at
10 liberty to disclose. But I know Senator Hinojosa sent
11 a letter to the Commission. That's public.

12 VICE-CHAIRMAN EDERER: Now, as far as
13 State Representatives are concerned, you indicate that
14 you have strength in the House. Well, we have five
15 letters. I also received a phone call from the fellow
16 in Bryan, the State Rep in Bryan, and I did not catch
17 his name. But I received a phone call yesterday. I
18 tried to call him back. We missed each other. I tried
19 to call him this morning. And so I know he's in
20 support because he made it clear.

21 So we know that we have two State Reps
22 who are definitely in support. The others that
23 submitted the letter are not necessarily in support.
24 They don't like what the LLB is doing -- or LBB --
25 yeah, LBB is doing, but they haven't specifically come

1 out in support.

2 So where is your strength, is what I'm
3 saying, in the House to give us any indication that
4 we're going to survive?

5 MR. OLDHAM: Well, and let me be clear.
6 I probably can't presume to say whether we're strong or
7 not strong or the agency is strong in any particular
8 place. But I think you do have some objective evidence
9 that you can look at. One is the House budget never --
10 this was never even an issue in the House budget and
11 the House did not attempt in any way to withhold funds
12 and you did receive letters from House members who are
13 on the LBB.

14 And I think the other aspect of that is
15 there was no legislative proposal on historical racing,
16 so I think we're all guessing a bit as to where the
17 bodies might or might not be. If we had a piece of
18 legislation proposed that was debated in the House and
19 Senate next time, we'd have a better sense and that
20 would be a more objective evaluation of that and more
21 transparent and all of the things that I think you've
22 heard.

23 VICE-CHAIRMAN EDERER: And of course,
24 other legislation could be proposed, such as the ADW's
25 and other things.

1 Now, another question. All right. Now,
2 we're, minimum, two and a half years down the road, I
3 would say, before we're getting any of these machines
4 in the tracks. All right. Now, from what Andrea just
5 testified to and she -- very eloquently and very well
6 spoken. But she said that the industry is dying and, I
7 mean, it's going to die. If we don't withdraw these --
8 if we do withdraw the rules, the industry is going to
9 die and that thousands of people are going to lose
10 their jobs. We've got two and a half years minimum.
11 They're going to have to survive somehow. And they've
12 survived for a long time before we ever put the rules
13 in effect. Is that correct?

14 MR. OLDHAM: There was a lot in that
15 question.

16 Let me say the following. I don't -- I'm
17 not an expert on track operations and what goes on. I
18 will say that to keep good people in these positions
19 requires people to believe that the industry has some
20 chance of surviving long term. That's true in my
21 business. It's true in anybody's business.

22 So I think what you're hearing is this
23 will deal a blow to the industry that will make it
24 difficult for them to continue to have success even
25 within their current operations. And I think that's

1 what's trying -- they're trying to communicate.

2 VICE-CHAIRMAN EDERER: And I don't know
3 that you'll be able to answer this question and I hate
4 to keep putting you on the spot, but we've lived
5 together for two years on this thing.

6 MR. OLDHAM: I consider you a friend.

7 VICE-CHAIRMAN EDERER: I consider you to
8 be, you know, a true expert in this area.

9 Now, if -- and I don't know if you can
10 answer this. Let's say it all goes into effect and two
11 years from now, two and a half years from now, we get
12 some machines in the track, everything is running. And
13 we may get some lawsuits then, but we still may be able
14 to keep running while the lawsuits are pending. And I
15 understand there is some good track record. I mean,
16 Kentucky has said it's okay and they've given their
17 blessing and this type of thing.

18 But what impact are these machines really
19 going to have on the track? Now, we're talking about
20 historical racing. It's an oddball thing in these
21 machines. It's not like a slot.

22 MR. OLDHAM: No, it's not.

23 VICE-CHAIRMAN EDERER: And it's going to
24 be difficult to actually operate initially.

25 And so we've got this historical racing

1 machine. What kind of impact do you really -- like I
2 said, I don't know that you'll be able to answer this.
3 What impact do you think that it will have on racing
4 and on the tracks?

5 MR. OLDHAM: Again, I will defer the
6 primary answer to that to the track operators who have
7 looked at that issue in more detail. However, we do
8 know that comments were filed initially last August
9 that it was a substantial impact. And there's no
10 reason to believe in a market the size of Texas that
11 that can't be navigated.

12 It may be -- there may be, as you know,
13 some issues with getting everything set up in
14 compliance with the Texas law and the Texas rules; but,
15 you know, this is pari-mutuel wagering on a horse race,
16 the character of which doesn't change just because it
17 happened in the past. And I think you've said that on
18 a number of occasions.

19 And I really want to commend the horse
20 organizations for submitting the legal brief from
21 former Justice Brister, a very noted conservative
22 jurist, who has said, I believe -- or has filed a brief
23 to the effect that this is lawful under State law under
24 your jurisdiction.

25 VICE-CHAIRMAN EDERER: Well, and I

1 certainly agree with him. I feel, as you do, that we
2 were right in our decision, that we do have the
3 authority to go forward and we do believe that the
4 judge is wrong in her decision. I'm sorry that we are
5 not appealing. I wish that we could have appealed, but
6 our hands are tied.

7 So I guess my problem is that I'm having
8 a real difficult time going through the scenario and
9 seeing that ultimately it will help the industry
10 because the industry could be destroyed at the
11 beginning if, in fact, our funds are withheld, which I
12 doubt they'll do, but they could, and if they do, they
13 destroy it. That's one thing.

14 Second, if we go forward and we say we're
15 going to stand with our rules, we're sticking a stick
16 in the eye of the Senate because we're saying "We're
17 not going to pay attention to you. We're going to go
18 ahead and we're going to go forward with our rules. We
19 think we're right," which we do think we're right.

20 But what kind of agitation is that going
21 to cause us in the future? You know, what kind of
22 repercussions is it going to be politically? I know
23 it's a hard question for you to answer, but this is
24 what I'm wrestling with. Are we going to destroy the
25 industry and really hurt things by going forward with

1 the rules? Is it in the best interest to go forward?

2 I don't know.

3 MR. OLDHAM: Well, I don't envy --

4 VICE-CHAIRMAN EDERER: Can you --

5 MR. OLDHAM: -- that position. I do
6 think that it's notable, as Andrea said, that the
7 industry is so united and knows the risks and they have
8 a position that I think they've articulated and maybe
9 will articulate even more.

10 You know, the political side, I find
11 it -- I find it difficult to believe that folks will,
12 in essence, throw this agency and the industry into
13 complete turmoil. I agree with you on that. But I
14 understand that that's the issue you've got to weigh.

15 VICE-CHAIRMAN EDERER: Sure. You know,
16 there's been talk they're going to stick us under the
17 Lottery Commission and the Senate wants to do that and,
18 of course, there's all kinds of things that could
19 happen. And that's what really concerns me is what is
20 best for the industry, what is best to keep it going.

21 I mean, I've heard some stupid comments
22 that have been made that have said "Are you for us or
23 are you against us?" None of us are for you or against
24 you. We're for the industry. And of course we're for
25 the horse racing industry. And I don't like those kind

1 of comments.

2 One thing I take objection to the judge's
3 brief is here he's telling us that this is what your
4 duty is. We know what our duty is. We've been here a
5 long time. So those things are a little objection.
6 But throw that out. Be that as it may, it's what is
7 best for the industry. And we're all really wrestling
8 with this and have for some time, for about two years
9 for you and I.

10 But anyway, I'm sorry I put you on the
11 spot, but I really -- and I appreciate your answers.
12 And maybe some of the other folks that are going to be
13 coming up will be able to address some of these
14 questions.

15 MR. OLDHAM: Well, I appreciate the
16 opportunity to talk obviously and I do think that it's
17 important to do what's best for the industry.

18 Thank you.

19 VICE-CHAIRMAN EDERER: Thank you.

20 CHAIRMAN SCHMIDT: Thank you.

21 COMMISSIONER MARTIN: I have one comment
22 and one question. You know, the comment is I think we
23 all knew this was going to be a long road when we got
24 involved in it last year and we knew there was going to
25 be appeals and that sort of thing.

1 You know, one thing in talking to the
2 horsemen and people say, well, what -- you know, what
3 will historical racing do? Is that going to save the
4 industry? No, it won't save the industry. But I think
5 it will give hope to the industry and that's what a lot
6 of people lack right now. And I think that hope would
7 bring horses back to Texas instead of seeing them
8 leave.

9 The question I have for Sam Houston --
10 and I think it's already been asked. But are you
11 willing to take that risk of shutting down September
12 1st versus repealing these rules?

13 MS. YOUNG: I don't know if I needed to
14 walk back up here to say it; but, yes, we're willing to
15 take that risk.

16 COMMISSIONER MARTIN: Thank you.

17 VICE-CHAIRMAN EDERER: You're willing to
18 take that risk. Are the other tracks willing? Retama
19 is running. You're not running.

20 MS. YOUNG: Yeah, but we're going to
21 run -- you know, on behalf of Valley Race Park, there's
22 one more. I'm willing to take that risk. I think
23 Tommy Azopardi --

24 VICE-CHAIRMAN EDERER: You're ready to
25 shut down.

1 MS. YOUNG: Yeah.

2 VICE-CHAIRMAN EDERER: Is Retama ready to
3 shut down?

4 MS. YOUNG: You'd have to ask them.

5 VICE-CHAIRMAN EDERER: Are they present?

6 MS. YOUNG: I don't know.

7 COMMISSIONER ABER: Andrea, could I ask
8 you a question?

9 MS. YOUNG: You may.

10 COMMISSIONER ABER: Could you tell me the
11 figures at Kentucky and Arkansas? I believe they
12 supposedly grossed 35 million dollars last month --
13 Kentucky did -- on historical racing.

14 MS. YOUNG: Yeah, Kentucky Downs did have
15 a record month. I think they've been running
16 historical racing for a couple of years now and they
17 did have a record month last month. I don't remember
18 the gross amounts, to be honest. But, you know,
19 they're developing games with the Breeders' Cup. I
20 mean, they're getting more and more innovative. And
21 it's been great for that industry.

22 COMMISSIONER ABER: And Arkansas?

23 MS. YOUNG: Arkansas is very similar.
24 And I think Kentucky has a couple of new additional
25 locations coming online in the next probably six

1 months, Red Mile and Keeneland.

2 Any other questions?

3 VICE-CHAIRMAN EDERER: Not right now.

4 CHAIRMAN SCHMIDT: I think I will call
5 Marsha.

6 Marsha Rountree?

7 I'm going to be a little stricter with
8 the two-minute limit now.

9 MS. ROUNTREE: Good morning again. I'm
10 going to take my two minutes. There really isn't
11 anything that I'm going to go over here that Andrea did
12 not state so eloquently except that I think it needs to
13 be heard again.

14 You know, I've testified on the subject
15 of historical racing enough times that I'm sure you
16 know our position on the matter. But there's still
17 just this one thing. There are 4,000 men and women who
18 are members of our horsemen's organization. They are
19 licensed owners and trainers. That number was over
20 10,000 at one time. And I can tell you, without an
21 additional source of purse money, the next time I come
22 before you that number will be much smaller.

23 And, Commissioner Ederer, I understand
24 what you're saying. The process could take a long
25 time. Is it going to make a difference? Are those

1 horsemen that are leaving the state now going to stay
2 if you don't withdraw these rules? Many of them will.
3 I talk to them every single day and they're all asking
4 me, as executive director of the horsemen's
5 organization, "What are we supposed to do? Is there
6 any hope at all? Should we sell our farm? Should we
7 leave? Or is there enough hope that we should stay?"

8 Horsemen are stubborn people. They go
9 through a lot. They don't have it easy. And they're
10 willing to stay the course.

11 And while 4,000 people may not seem like
12 a lot, look around this room. For every one of those
13 4,000 licensed horsemen, they have families, they have
14 employees, jockeys, exercise riders, feed dealers,
15 veterinarians, farmers, and a whole host of other
16 businesses who depend on those 4,000 people. That
17 4,000 of our members who will be impacted by your
18 decision today grows into tens of thousands of people
19 who are involved in the support of horse racing in
20 Texas.

21 We've been told that repealing the rules
22 on historical racing is necessary in order for the
23 Racing Commission to receive the balance of its
24 funding. But we don't know who exactly is that first
25 person that ever said this. And it's nowhere in

1 writing. Anything that happens in government that I
2 know, it's usually in writing if it's a mandate.

3 And I've been told that the owners who
4 our organization represent will be okay if those rules
5 are repealed. I mean, after all, owners of racehorses
6 are all wealthy people who can afford to send their
7 horses to another state.

8 I'll probably be okay. Mary Ruyle and
9 Rob Werstler will probably be okay. Jan Haynes,
10 Dr. Tommy Hays, they'll be okay. But look around this
11 room behind me at the faces of the people who took the
12 time to come here today and think about all the people
13 who are not here today, people who can't afford to
14 leave their work or the care of their horses, people
15 who are doing every single thing they can to hang on to
16 their jobs in an industry that they count on to provide
17 for their families. These are the people who will not
18 be okay if you repeal these rules.

19 This issue has become a political
20 football. It's taken on all the characteristics of a
21 soap opera: Power, greed, political corruption,
22 blackmail, this and that. And none of it is
23 necessary.

24 This Commission passed rules allowing
25 historic racing terminals within the enclosure of a

1 licensed racetrack. We've got all these legal opinions
2 that have agreed with and supported your authority to
3 do so. And I believe that you believe that that's the
4 case.

5 An entire legislative session passed
6 without one single bill being proposed to make
7 historical racing illegal in this state. During the
8 public comment period you didn't receive a single
9 letter from a member of the Legislature supporting a
10 repeal. There were no conditions placed by the LBB on
11 the remaining funds. All of this, all of this began as
12 a result of one Senator's threats.

13 Commissioner Schmidt -- Chairman Schmidt,
14 you know more of that than anybody. You're the one who
15 had to stand there and take it on our behalf. And we
16 appreciate that.

17 One Senator. Repeal the rules or you
18 won't get funded. Is that even legal?

19 Without the balance of funding, this
20 agency might close for a few days. It might close for
21 a week. But I don't think there's anybody in this room
22 that believes that it will be permanent.

23 But I can tell you, without at least the
24 hope of historical racing, an entire industry will
25 continue to die, Commissioner Ederer, and at a much

1 faster pace. We're on life support and you're holding
2 the plug in your hands. When that happens, this agency
3 will close permanently. There won't be an industry to
4 regulate. It's not scare tactics, dramatization, or
5 threats. It's just a sad fact.

6 So again, I ask you on behalf of the
7 horsemen of Texas to vote no on the repeal of the rules
8 which allow historical racing. Please stand firm on
9 what you believed was within your authority to do when
10 you approved these rules last year. Allow us to have
11 the opportunity to appeal this case. And the industry
12 does understand and we are prepared to deal with the
13 consequences when you vote no on repealing these
14 rules.

15 VICE-CHAIRMAN EDERER: All right. You're
16 telling us that the industry is ready to shut down
17 September 1st.

18 MS. ROUNTREE: We are willing to stand
19 beside you, support you in the decision that you make,
20 and we are prepared to handle the consequences, yes,
21 sir.

22 VICE-CHAIRMAN EDERER: Don't worry about
23 standing beside us. We're --

24 MS. ROUNTREE: I understand that. But
25 the industry is prepared to deal with the

1 consequences. Yes, we are.

2 COMMISSIONER MARTIN: You're willing to
3 take the risk.

4 MS. ROUNTREE: Yes, sir.

5 CHAIRMAN SCHMIDT: Thank you,
6 Ms. Rountree.

7 Kay Helzer?

8 MS. HELZER: Good morning,
9 Commissioners. My name is Kay Helzer. I am currently
10 serving as president of the Texas Quarter Horse
11 Association. I'm also a director for the American
12 Quarter Horse Association.

13 My family has been running Thoroughbreds
14 and Quarter Horses for over 45 years. I hate to give
15 away my age, but I think I just did. We've had
16 commercial -- have either had or -- had in the past or
17 currently have commercial breeding operations in Texas,
18 Oklahoma, and New Mexico. We are currently
19 consolidating the bulk of our operations right now in
20 Oklahoma just due to the purse structures and the
21 strength of the accredited bred programs in those
22 states.

23 As I stand here today, I just want to say
24 that we understand the difficult position you're in
25 today. We also understand the risks associated with

1 your decision today. And we want you to know that we,
2 as the Texas Quarter Horse Association, stand united
3 with the vast majority of these people back here behind
4 me today to ask you not to repeal the historical racing
5 rules.

6 Thank you.

7 CHAIRMAN SCHMIDT: Thank you, ma'am.

8 Theo Scales, Lockhart, Texas?

9 Mr. Scales, are you here?

10 MR. SCALES: Good morning, Commissioners,
11 ladies and gentlemen. I'm an old Baptist preacher, so
12 I'm going to have to watch my watch and not get carried
13 away.

14 My name is Theophilus Scales, Jr. I
15 speak on behalf of myself, my life partner Charlie
16 Adams, my kids. And I think that I actually -- we
17 actually more represent what Texas Thoroughbred and
18 Quarter Horse people look like.

19 I'm in a uniform that says Metro. I
20 drive buses in this city. That's how I pay my horse
21 bills. I was at work this morning. When I leave here,
22 I'm going back to work. That's how I make a living.
23 And I'm at a place where it's almost like I can't
24 figure out why I should keep doing this here. It's
25 fiscally irresponsible for me to keep doing this with

1 no hope.

2 And, Commissioner Ederer, you asked about
3 that. That's what we need. I don't think there's any
4 more optimistic group of people on the planet than
5 horse people. A friend of mine, Bob Pickard, made a
6 comment about a man who said if you want to live
7 forever, keep a yearling in your barn, because that's
8 how we are. We just -- just give us just a little bit
9 of hope that -- this makes no sense, but, you know, I
10 think we can make it. Just a little bit of hope.

11 And I can tell you, for me and my family,
12 that we're prepared to stand flatfooted and firm with
13 the Commission. We believe that you had the -- you
14 were within your realm of responsibility and legal
15 authority to implement the rules and we'll stand right
16 by you. We'll call it a strike. We'll call it
17 whatever we want to have it. But please, ma'am,
18 please, sir, don't take our hope. All we ask for is
19 just a little bit of hope.

20 If we lose in court, give us the chance
21 to lose in court. But don't rob us, don't deny us, the
22 opportunity to fight. And what we're wanting to do --
23 what I want to do is fight. I want to stand up and I
24 want to tell this Senator -- I want to tell anybody
25 that will listen. There's nothing like the great State

1 of Texas. There's nothing like racing horses in
2 Texas. I want to raise horses in Texas. I want to
3 make my money in Texas. I want to buy feed in Texas.
4 And I want to watch them run in Texas live and not on
5 TV.

6 So we have to have an opportunity, a way
7 of making a living, and this will give us a chance.
8 And I don't care how low the numbers are. They can't
9 be as low as what they are now. We have a -- give us
10 that hope. That would be my plea.

11 I think you guys have done an incredible
12 job. Thank you for your efforts. Thank you to the
13 tracks, to Andrea and Retama and everybody that's
14 here. We're here because we want a chance. And if you
15 guys will give us a chance, I think you'll be -- I
16 don't know if you'll be surprised, but I think we'll
17 win. I really do. I think we absolutely have
18 everything in place to win. And this is Texas. We can
19 sure support a little old machine here in Texas. And
20 that's all I would ask.

21 CHAIRMAN SCHMIDT: Thank you,
22 Mr. Scales. Appreciate it.

23 VICE-CHAIRMAN EDERER: Congratulations on
24 keeping the weight off.

25 MR. SCALES: Thank you very much.

1 VICE-CHAIRMAN EDERER: It's been a long
2 time. You're looking good.

3 MR. SCALES: It's three years, 104
4 pounds.

5 VICE-CHAIRMAN EDERER: That's terrific.

6 MR. SCALES: Thank you very much.

7 CHAIRMAN SCHMIDT: Jan Haynes?

8 MS. HAYNES: I had this all nice, neat,
9 written out and what I was going to say and then,
10 Commissioner Ederer, all your comments, I kind of just
11 scratched through a lot of stuff.

12 Chairman, Commissioners, staff, my name
13 is Jan Haynes, president of the Thoroughbred HBPA, and
14 I'm here today to oppose the repeal of the HRT rules.

15 The comments you all received over the
16 last two months should tell you something, over 1300
17 public comments opposing the repeal and one public
18 comment in favor of the repeal. Everyone in this room
19 knows that the opposition of HRT's comes from
20 out-of-state casino interests, bingo parlors, and the
21 Kickapoo casino in Eagle Pass who do not want the
22 competition and don't care about horse racing in
23 Texas. If you vote to repeal these rules, you are
24 voting in favor of those interests over the interests
25 of the horse racing industry you're supposed to

1 regulate and protect, pure and simple.

2 The Thoroughbred HBPA's position was
3 clearly stated in the brief by Scott Brister who was a
4 conservative member of the Texas Supreme Court for six
5 years. He states that the Legislature unquestionably
6 delegated the strict regulation of horse and greyhound
7 racing to the Commission and not to anyone else. That
8 strict regulation is supposed to cover pari-mutuel
9 wagering in connection with horse racing, which, by
10 definition, would include historical racing. The only
11 difference between live and historical races is when
12 the race took place. Nothing in the act makes that
13 difference legally significant.

14 We are aware of the threat of defunding
15 by the LBB, but your duty to protect the economic
16 health of horse racing and breeding in Texas cannot be
17 avoided or delegated to anyone else. Your duty is to
18 oversee and protect the state's economy as it relates
19 to horse racing and breeding.

20 Kentucky horsemen lost every court battle
21 they faced regarding HRT's until they reached the
22 Kentucky Supreme Court, but the Racing Commission stood
23 with them every step of the way. We are asking you to
24 do the same thing here today.

25 I understand the pressure being put on

1 you by a few legislators, but I ask that you be bold
2 and stand with us today. If you vote to repeal these
3 rules, you will deal our industry the biggest setback
4 since 1937 when then-governor James Allred ushered a
5 bill through the Texas Legislature that repealed
6 pari-mutuel wagering on horse and greyhound races in
7 Texas. It took us 50 years to overcome that. Your
8 vote to repeal could be that devastating.

9 I ask you to think about what you want
10 your legacy to be. Do you want to be remembered as the
11 Commission who shut the door on Texas racing, the group
12 that finally gave in to out-of-state interests and
13 bingo that have had it in for our industry for years?
14 I think that every single one of you has it in your
15 heart and spine to stand up for the family-owned horse
16 farms and businesses across the state that you are
17 sworn to protect. Please let us have our day in court
18 and don't repeal these rules.

19 And I would like to add, we do support
20 what Marsha said. The horsemen are willing to take the
21 risk. We Thoroughbreds, we are, as you know, having
22 our meet at Retama. And last week I did call Steve
23 Ross. I said, "Look, on September 1" -- because we
24 only run on the weekends -- "if the Commission shuts
25 down for a few days, can we add these days back at the

1 end?" You know, and he said "I don't see why not."

2 Hope is a powerful thing. And right now
3 that's all we have. There is no Plan B. And the
4 horsemen know that. This is it. This is all we have.
5 We've got to have these rules to survive to have our
6 day in court.

7 And, Commissioner Ederer, you brought up
8 about the Senate and what may or may not happen in the
9 next session. We can't focus on that. You know, we
10 don't know. But I think it was a positive thing that
11 that Senate caucus letter didn't resurface or they, you
12 know, add -- you know, submit something yesterday when
13 they could have. So I don't think that she has the
14 support that she once had, you know.

15 Horsemen have -- they've e-mailed their
16 Senators and Representative. They've called. They've
17 gone to see them. They've made them understand how
18 strong -- how important the horse industry is to
19 Texas. And I think that it has been a wake-up call for
20 some of these guys at the capitol dome.

21 Thank you. Do you have any questions?

22 CHAIRMAN SCHMIDT: Thank you, Jan.

23 VICE-CHAIRMAN EDERER: I will say one
24 thing. As far as publicity is concerned, I've never
25 seen the industry get as much publicity as we're

1 getting. Good, bad, or indifferent, we're getting a
2 lot. So somebody may be waking up and paying a little
3 attention to the plight of the industry because it is.

4 MS. HAYNES: I mean, we're all together
5 on this.

6 COMMISSIONER MARTIN: That's the comment
7 I'd like to make is in the five-plus years that I've
8 been on here, I have not seen the Quarter Horses and
9 Thoroughbreds as united as they are about this.

10 VICE-CHAIRMAN EDERER: They're still not
11 completely united, but they're doing better.

12 MS. HAYNES: Sure we are.

13 Thank you.

14 CHAIRMAN SCHMIDT: A couple more.
15 Michael Danapas from Tyler?

16 MR. DANAPAS: My name is Mike Danapas.
17 Howdy, you guys. Some of them know me but have never
18 seen me before. I'm the newest member on the TTHBPA
19 board. A lot of things to say to address way more than
20 we have time for, most things you've heard.

21 When you -- horsemen are about hope.
22 You've heard that. We're used to long-term things.
23 When you start planning a baby, like when I first
24 started -- I've only been in this 10 years. You start
25 considering breeding a year at least before you do it.

1 I took two years before I planned my first one. Then
2 that mare has that baby for 11 months and 11 days if
3 you're lucky. Mine all go a lot longer. Then you've
4 got to raise that baby until it can go to training,
5 which is a year and a half, two years. It goes to
6 training. It may be there six months. You know, if it
7 shin bucks, it will be gone a little while longer, 90
8 days, 120 days. It takes a long time to breed the
9 Kentucky Derby winner, the Triple Crown winner.

10 At a time when we should be looking at
11 positive things, we're stuck in the mud on fools'
12 errands, things that are not in writing, threats from
13 people who are not invested in this industry.

14 And what you're down to here -- I'm an
15 outsider. I'm from Florida. I didn't get involved.
16 I'm a new guy. I'm coming here from that perspective.
17 I put -- this is what I want to do the rest of my
18 life. And I don't want to leave Texas. I don't want
19 to send my horses out of Texas. I want to be here. I
20 want to spend my money here.

21 Now, because the industry is like it is,
22 if I have a horse that's good enough to race somewhere
23 else, it's going to go somewhere else right now because
24 I'm still trying to build my farm. I'm still trying to
25 spend money here. I'm not going to quit, no matter

1 what decision you guys make. I would love to see my
2 horses run here. When I first started, my first two
3 horses, I missed one race. It didn't matter if they
4 ran in Louisiana. It didn't matter if they ran in
5 Oklahoma. I was there for every single race. I'm
6 fully invested.

7 Now, being about hope, being about
8 long-term strategy and decisions, I have talked to a
9 bunch of people since I got onto the board. I'm trying
10 to meet more people. I've talked to a lot of people.
11 And every one of them I've talked to has said we're
12 here no matter what happens as far as we live here and
13 we're dedicated to Texas. But we can't take another
14 beating. We have to have hope. We're here to support
15 you. Good things have happened because of this. And I
16 have to thank Senator Nelson for uniting us because
17 that's what's happened now.

18 Okay. Things have boiled down to we're
19 down to the rock bottom. We're down to the core.
20 We're down to the mom and pop, the people who this is
21 their life, this is what they want to do. And now
22 we're united. Things can be positive. You want to
23 know, here's a -- you need to -- you need to help
24 activate us and bring us into the opportunity to talk
25 about things.

1 You want to talk about a machine that
2 doesn't exist yet for a rule that's written that you're
3 talking about repealing because of confusion. We are
4 not confused about the rule. The people that it
5 affects are not confused about it. A few Senators
6 saying they're confused about it means nothing. The
7 machines are not going to show up at tracks overnight.
8 It doesn't exist yet. There is no risk. There's no
9 risk at this point in time, really not at all, because
10 if you don't keep the rules as they are, more people
11 will leave the state and eventually you won't have a
12 job to govern here.

13 So we're asking you to think long term,
14 to go in with us fully, because we are. And let's make
15 something positive here. Let's find a Texas company to
16 build a machine in Texas that fits our needs. Now,
17 what Senator won't go for more jobs in Texas? I mean,
18 we haven't begun to participate and we need you to
19 allow us the chance, give us our day in court, hold on
20 to this for a little while longer.

21 I have met people from out of state who
22 have said "I'm disappointed because I heard that the
23 rule was passed and I moved -- I sent horses here from
24 Florida, I sent horses here from New York, because we
25 had hope. We thought something was going to happen."

1 And now they're disappointed because they
2 hear -- they hear that the rules might be repealed.
3 And it's way more important than this one vote today.
4 Put it off. We're here with you. Nothing is going to
5 change overnight all of a sudden. Give us our day in
6 court.

7 VICE-CHAIRMAN EDERER: Thank you very
8 much.

9 MR. DANAPAS: Thank you.

10 CHAIRMAN SCHMIDT: Rob Werstler?

11 Rob, good to see you again.

12 VICE-CHAIRMAN EDERER: Question, Rob.

13 MR. WERSTLER: Yes, it's true we have the
14 same barber, yes.

15 VICE-CHAIRMAN EDERER: I wondered how you
16 did that.

17 Are the Quarter Horsemen ready to quit?

18 MR. WERSTLER: Absolutely. We don't have
19 any quit in us.

20 VICE-CHAIRMAN EDERER: You're ready to
21 turn around and say, all right, if that's the way it
22 is, we'll sit back and wait a year, a year and a half
23 possibly?

24 MR. WERSTLER: We don't think that's
25 going to happen, Commissioner.

1 VICE-CHAIRMAN EDERER: But if it did.

2 MR. WERSTLER: We started -- a year ago
3 we started down this road with you all.

4 VICE-CHAIRMAN EDERER: Almost two years.

5 MR. WERSTLER: Almost two years. But
6 since the rules have been in -- you passed the rules,
7 it's been a year. So, yeah, two years we went down the
8 road with you. And why quit now? Why give up now? I
9 mean, let's see this thing through to the end.

10 VICE-CHAIRMAN EDERER: My problem is:
11 Will we be able to see it through to the end? Are they
12 going to cut our legs off by putting new Commissioners
13 in? Is the Senate going to act? And then we've got a
14 nice little hurdle. That's winning the appeal. That
15 ain't going to -- that's not an automatic, you know,
16 even though I feel that not only our attorneys and
17 myself -- I've looked into it, but I know they've spent
18 an awful lot of money on attorneys and I have a lot of
19 respect for them and I think we're on firm ground.
20 But --

21 MR. WERSTLER: We deal with long shots
22 every day. That's what our whole industry is based
23 on. Every race there's one horse that's favored and
24 then the rest of them mostly are long shots. A lot of
25 times they win.

1 So, yes, we're -- we're here for the long
2 haul. We don't feel that's going to happen.

3 VICE-CHAIRMAN EDERER: Okay. Sorry. Go
4 ahead, if you have something else you want to say.

5 MR. WERSTLER: No. Actually, you know,
6 it's all been said.

7 The one thing that has dawned on me,
8 though, watching this whole process, we understand the
9 tough situation that you're in. You were threatened by
10 certain Senators that you'd be defunded if you didn't
11 repeal these rules. Basically, if you think about it,
12 they're going to cause you to defund yourselves
13 because, as Andrea has stated and a lot of people
14 before me, we would be kidding ourselves if we didn't
15 think the racetracks were going to apply for fewer race
16 days.

17 Right now we have 20-day meets. They're
18 too small as it is. But if they cut those, that's
19 going to cut into your budget because, after all,
20 they're the lion's share of your funding. So if they
21 start cutting race days, that's going to cut your
22 funding. If they cut race days, we would also be
23 kidding ourselves to think that the Texas horsemen and
24 women wouldn't -- this wouldn't serve as the last straw
25 for them to leave Texas. If they leave, they take

1 their horses with them, the Texas horse racing and
2 breeding industry cannot survive and neither can this
3 agency because you won't have any funding.

4 VICE-CHAIRMAN EDERER: Who knows whether
5 that would be a good thing or not as far as the agency
6 surviving? That's not really significant. We don't
7 care about that. And that's not an issue for us.

8 But the horsemen, I think, are going to
9 leave no matter what and I think we're going to see a
10 lot of horsemen leaving because we've got a two-year
11 run here. There's going to be a lot of people who are
12 going to have to leave.

13 MR. WERSTLER: Well, they're still here.
14 And I can tell you this for a fact. The only reason
15 Texas horse racing survived -- if Oklahoma, Louisiana,
16 New Mexico, California were facing the hurdles that
17 we've faced over the last 15 years, they would have
18 been finished. They would have already taken up stakes
19 and gone to another state.

20 But Texans are proud to race horses in
21 Texas and they're stubborn and they're hanging in here
22 until -- you know what? It will probably be -- the
23 racetracks will be shut down and we won't race for six
24 months before they even leave because that's how
25 determined they are to make Texas horse racing and

1 breeding great.

2 And for the record, Rob Werstler
3 representing the Texas Quarter Horse Association, and
4 we would urge you, plead with you, to vote against
5 repealing these historical racing rules.

6 COMMISSIONER MARTIN: And you're willing
7 to take the risk also?

8 MR. WERSTLER: Yes, sir.

9 CHAIRMAN SCHMIDT: Thank you, Rob.
10 Thanks, Rob.

11 I think everything that has been said has
12 been said. I think we'll appreciate everyone coming
13 down. We'll ask Elaine Clee from Anderson, Texas, to
14 have the last word.

15 Ms. Clee?

16 MS. CLEE: Yes. Could I speak from here,
17 please?

18 CHAIRMAN SCHMIDT: Sure.

19 MS. CLEE: Thank you.

20 I've been in the horse business for about
21 40-plus years, mostly with Quarter Horses and showing
22 horses and et cetera. I've been running Thoroughbreds
23 for about six years. I don't have very many of them.
24 I do have a lot of facilities I've built for my
25 horses. I belong to a small group called Dare to Dream

1 Racing and all I'm asking is you allow us to continue
2 to dare to dream.

3 Thank you.

4 VICE-CHAIRMAN EDERER: The head of the
5 jockey association, you had a comment?

6 MR. BEECH: I'll wait until I'm called
7 on. I didn't know if my card --

8 VICE-CHAIRMAN EDERER: I think we've
9 already gone through the gamut, haven't we?

10 CHAIRMAN SCHMIDT: We've gone through
11 most.

12 VICE-CHAIRMAN EDERER: I'm sorry. I
13 thought we were finished.

14 CHAIRMAN SCHMIDT: We were going to limit
15 it because we're kind of going over things. I just
16 wanted to let the Commission debate a little bit.

17 MR. BEECH: Could I just make one
18 statement?

19 CHAIRMAN SCHMIDT: Sure.

20 VICE-CHAIRMAN EDERER: Representing the
21 jockeys, right?

22 MR. BEECH: Yes. My name is John Beech.
23 I'm the regional manager for the Jockeys' Guild.

24 We've heard all the testimony today and
25 it's all true about the historical horse racing. And

1 the only thing I would say is that we're opposed to the
2 repeal of the rules for historical horse racing.

3 Thank you.

4 VICE-CHAIRMAN EDERER: Knowing the
5 possible consequences.

6 MR. BEECH: If it comes, it comes.

7 COMMISSIONER EDERER: Okay. Thank you.

8 MR. BEECH: Thank you.

9 CHAIRMAN SCHMIDT: We have one other.
10 Mr. Barnstone, did you -- I was confused because it --

11 MR. BARNSTONE: I did say maybe,
12 Mr. Chairman, but I thought that maybe I would be
13 duplicative, but I'm really the only one speaking in
14 favor of the rules, so I kind of feel like the bunny in
15 the greyhound track.

16 CHAIRMAN SCHMIDT: Go ahead.

17 MR. BARNSTONE: My name is Anatole
18 Barnstone and I represent American Legion Department of
19 Texas --

20 VICE-CHAIRMAN EDERER: You represent
21 who?

22 MR. BARNSTONE: American Legion
23 Department of Texas and the 25 other charities that
24 filed suit last year to stand up for what we think is
25 an important democratic principle, which is that

1 gambling policy, what kind of gambling is allowed and
2 what kind of gambling is not allowed, is made by a
3 Legislature. It's not made here. And I did speak with
4 you all a year ago right here, about exactly a year
5 ago, about the Racing Commission not having the
6 authority to pass these rules on their own. And here
7 we are again.

8 Mr. Chairman, as you know, the charities
9 won that case. And I was surprised to read in the
10 Houston Chronicle last week that the Texas Department
11 of Public Safety received and dismissed a criminal
12 complaint against one of those elected officials,
13 Senator Jane Nelson of the Senate Finance -- chairman
14 of the Senate Finance Committee, because she refused to
15 rubber stamp your decision to put gambling devices in
16 racetracks.

17 That complaint I think was filed by Jan
18 Haynes of the Thoroughbred HBPA. I think that's really
19 outside the bounds. Senator Nelson was doing her job
20 to stand up for the right of the Legislature to set
21 gambling policy. That's what she was elected to do.
22 And this is what it comes to is that she's being
23 intimidated. She's being threatened with jail.

24 CHAIRMAN SCHMIDT: Go ahead and finish
25 your remarks, sir.

1 MR. BARNSTONE: I've never had a criminal
2 complaint filed against me, but she apparently has, for
3 doing nothing other than doing her job. So if they --
4 the audience disagrees with the characterization of
5 intimidation. I don't know a better word for it.

6 So thank you, Mr. Chairman. So that's --
7 and I believe that's really shameful.

8 Let me tell you also what this vote is
9 not about. It's not about whether racetracks will be
10 able to run gambling devices. That issue was decided,
11 as you know, Mr. Chairman, in the Travis County
12 District Court. And the Texas Racing Commission did
13 not appeal, so that issue is over.

14 To the folks in the audience who were
15 told -- who honestly thought that you could put
16 gambling devices in racetracks without legislative
17 approval and you believed that, I'm sorry, you made a
18 bad bet. Thousands of people come to the racetrack
19 every day and, you know, someone is going to tell them,
20 "Hey, I've got a sure thing," and they make the bet
21 and they're wrong and someone else has their money and
22 all you have is this worthless piece of paper.

23 So at this point the best decision, we
24 urge, is that you just tear up your ticket and you
25 think about the next race because the Legislature, as

1 you know, will meet in two years and not all of those
2 15 Senators that signed that letter opposing the rules
3 are morally opposed to gambling. They just didn't want
4 someone else pretending to do their job.

5 Democracy is a good thing, Mr. Chairman,
6 and we urge the repeal of these rules.

7 Thank you.

8 CHAIRMAN SCHMIDT: Mr. Barnstone, I did
9 want to just bring up -- I wasn't going to bring this
10 up, but you brought it up. Okay? I did have the
11 opportunity to testify before the Senate Finance
12 Committee. I'm not sure if you were there.

13 MR. BARNSTONE: I saw you on live feed.

14 CHAIRMAN SCHMIDT: Right. It wasn't my
15 intention to bring it up. But just for the record,
16 when we talk about shameful activities, I anticipated
17 we would have a meaningful discussion about whether
18 this constituted a new form of technology or a change
19 in policy. To me, that was the Oprah Winfrey Show.
20 And so I think that was shameful. So that's my
21 perspective. I don't think the Racing Commission had a
22 fair hearing about this. But that was just in response
23 to your concerns.

24 Are there any other questions?

25 COMMISSIONER MARTIN: Mr. Chairman?

1 CHAIRMAN SCHMIDT: Yes, sir.

2 COMMISSIONER MARTIN: I would like to
3 make a motion to withdraw the rule proposal to repeal
4 the historical racing rules.

5 CHAIRMAN SCHMIDT: Okay.

6 COMMISSIONER ABER: I second it.

7 CHAIRMAN SCHMIDT: Okay. There's a
8 motion made and seconded to withdraw the proposal.

9 Any other comments?

10 MS. LEON: I want a clarification. Are
11 we voting to repeal the --

12 CHAIRMAN SCHMIDT: If you vote in favor
13 of this, you're voting not to repeal.

14 VICE-CHAIRMAN EDERER: Yes. An aye vote
15 is not to repeal. Is that right?

16 MR. FENNER: Yes, an aye vote will be a
17 vote to not repeal, to withdraw these proposals.

18 MS. LEON: Okay. An aye vote would be
19 not to repeal.

20 MR. FENNER: Huh?

21 MS. LEON: An aye vote would be not to
22 repeal.

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

24 MS. LEON: Okay. I wanted to clarify
25 that.

1 CHAIRMAN SCHMIDT: So a vote in favor
2 would be to not repeal.

3 Any further comment?

4 COMMISSIONER HICKS: Is it possible for
5 us to table this until they have their day in court and
6 then look at it again? I'm just asking is this a
7 possibility.

8 CHAIRMAN SCHMIDT: I think we considered
9 tabling it. I think the real issue is the funding for
10 the Commission. And I think we can table it and the
11 funding for the Commission may or may not be tabled.
12 That's the real concern.

13 COMMISSIONER HICKS: So it's like
14 blackmail or a hostage situation.

15 CHAIRMAN SCHMIDT: It is blackmail or
16 hostage, yes, ma'am.

17 COMMISSIONER HICKS: That's terrible.

18 CHAIRMAN SCHMIDT: I don't think we can
19 table it. I don't think the issue itself is solved by
20 tabling it.

21 Any further comments by anyone?

22 COMMISSIONER ABER: Well, I think we
23 should vote aye on that.

24 And, Mr. Fenner, if I could talk to you a
25 little while. You know these rules, the act, better

1 than anybody.

2 MR. FENNER: Yes, sir.

3 COMMISSIONER ABER: You know, what --
4 when you said that we could do this, why couldn't you
5 handle the appeal?

6 MR. FENNER: We are represented by the
7 Attorney General's office --

8 COMMISSIONER ABER: I know.

9 MR. FENNER: -- in court. That's --
10 that's their responsibility under the statute.

11 COMMISSIONER ABER: And they can back out
12 any time?

13 CHAIRMAN SCHMIDT: Yes, sir.

14 COMMISSIONER ABER: But your opinion was
15 we had the right to do this.

16 MR. FENNER: My opinion is still the
17 same, that you do have the right to do this. However,
18 this is not a legal question anymore. This is a
19 political question.

20 COMMISSIONER ABER: Isn't that sad?

21 CHAIRMAN SCHMIDT: Right. I think if we
22 vote to repeal them, we kill the industry; and I think
23 if we vote to not repeal them and the industry -- and
24 the Racing Commission closes, we've killed them as
25 well. I think we heard everyone speak to this.

1 It's -- but I will tell you that once the industry
2 closes, it's devastating. It doesn't bounce back.
3 People find other forms of entertainment.

4 COMMISSIONER MARTIN: I just think we've
5 heard from the horse people that they want to go down
6 fighting instead of die a slow death.

7 CHAIRMAN SCHMIDT: Any other comments?

8 VICE-CHAIRMAN EDERER: Call the
9 question.

10 CHAIRMAN SCHMIDT: Okay. Everyone
11 spoke.

12 Okay. I think we will call the
13 question.

14 There's a motion to deny.

15 COMMISSIONER MARTIN: A motion to
16 withdraw the rule proposal to repeal historical racing
17 rules.

18 CHAIRMAN SCHMIDT: Yes. Made and
19 seconded. Made by Dr. Martin, seconded by
20 Dr. Ederer -- or Dr. Aber. I'm sorry.

21 Okay. Okay. Can we have a roll call
22 vote?

23 MS. WELCH: Commissioner Gary Aber?

24 COMMISSIONER ABER: Aye.

25 MS. WELCH: Commissioner Ron Ederer?

1 VICE-CHAIRMAN EDERER: Aye.

2 MS. WELCH: Commissioner Gloria Hicks?

3 COMMISSIONER HICKS: Aye.

4 MS. WELCH: Commissioner Cynthia Leon?

5 MS. LEON: No.

6 MS. WELCH: Commissioner Michael Martin?

7 COMMISSIONER MARTIN: Aye.

8 MS. WELCH: Commissioner Victoria North?

9 MS. NORTH: Abstain.

10 MS. WELCH: Chairman Robert Schmidt?

11 CHAIRMAN SCHMIDT: No.

12 MS. WELCH: Commissioner John Steen?

13 COMMISSIONER STEEN: No.

14 CHAIRMAN SCHMIDT: Okay. The motion

15 to --

16 MR. FENNER: The motion fails.

17 CHAIRMAN SCHMIDT: The motion fails. The

18 motion fails. Okay. So the rules remain in effect.

19 MR. FENNER: No, no. No. The issue is

20 still to be resolved because the motion was to withdraw

21 the proposal. The proposal is still on the table.

22 MS. LEON: So we have to have a separate

23 motion?

24 MR. FENNER: That motion has failed, so

25 the Commission still needs to decide what they want to

1 do with it.

2 COMMISSIONER ABER: What was the vote on
3 it?

4 MR. FENNER: It was four, three, and one
5 abstention. Four in favor of withdrawing, three
6 votes --

7 (Inaudible discussion)

8 COMMISSIONER ABER: Do you have the total
9 for each one?

10 MS. WELCH: Yes, I do. I have the
11 total.

12 COMMISSIONER ABER: What did each one of
13 us -- could you reread --

14 MS. WELCH: Of course. Commissioner Gary
15 Aber, yes; Commissioner Ron Ederer, yes; Commissioner
16 Gloria Hicks, yes; Commissioner Cynthia Leon, no;
17 Commissioner Michael Martin, yes; Commissioner Victoria
18 North, abstain; Chairman Robert Schmidt, no;
19 Commissioner John Steen, no.

20 CHAIRMAN SCHMIDT: Mark, just for -- I'm
21 a physician, not a Robert's Rule of Order person.

22 MR. FENNER: Yes, sir.

23 CHAIRMAN SCHMIDT: If we had a new
24 motion --

25 MR. FENNER: Yes, sir.

1 CHAIRMAN SCHMIDT: -- to approve the
2 repeal --

3 MR. FENNER: Yes, sir.

4 CHAIRMAN SCHMIDT: -- that was defeated
5 hypothetically --

6 MR. FENNER: Okay.

7 CHAIRMAN SCHMIDT: -- based on the vote
8 we've just seen, then is the issue resolved?

9 MR. FENNER: It doesn't resolve it so
10 much, but no one can keep you here until you make a
11 decision.

12 CHAIRMAN SCHMIDT: Then the rules stand.

13 MR. FENNER: The rules -- yes, the rules
14 would stand.

15 CHAIRMAN SCHMIDT: The rules don't stand
16 now.

17 MR. FENNER: Well, no. The rules stand
18 right now because they were -- the motion to withdraw
19 the proposal failed. If you were to make a motion to
20 go ahead and adopt the repeal --

21 CHAIRMAN SCHMIDT: But I was saying -- I
22 may have misunderstood you. I thought that was
23 unsatisfactory.

24 MR. FENNER: The Commission made no
25 decision.

1 COMMISSIONER MARTIN: Because we didn't
2 have a majority?

3 MR. FENNER: You did not have a majority
4 of those present.

5 CHAIRMAN SCHMIDT: Which means that the
6 rules stand.

7 MR. FENNER: That is correct. At this
8 point the rules stand, yes.

9 CHAIRMAN SCHMIDT: Okay. I think the
10 rules --

11 MR. FENNER: Is there any further motion
12 is the question.

13 COMMISSIONER ABER: Could you turn around
14 and then make the motion --

15 VICE-CHAIRMAN EDERER: If there's no
16 further motions, the rules will stand.

17 MS. LEON: So if you move to propose to
18 repeal, we will probably come up with the same vote. I
19 mean, I don't see anybody changing their vote at this
20 point. I don't know. Do you want to go on record just
21 restating the motion in terms of to approve the repeal
22 of historic racing? Do you want to do it that way and
23 then the vote could be the same?

24 CHAIRMAN SCHMIDT: I think the Commission
25 has made their decision. I think the Commission has

1 made their decision.

2 So in answer to your -- I apologize
3 for -- I apologize. The Commission has voted four to
4 three to one and so the rules remain in effect.
5 They're not repealed.

6 MS. LEON: I'd like to redo the motion
7 and just go on record again the way -- you know, the
8 motion to -- I can't?

9 VICE-CHAIRMAN EDERER: You can, yes, of
10 course.

11 MS. LEON: Okay.

12 VICE-CHAIRMAN EDERER: Sure. Yes.

13 MS. LEON: To approve the proposal for
14 repealing the historic racing under 309.8 as stated.
15 No?

16 MR. FENNER: That's not quite it.

17 MS. LEON: Give me the language.

18 MR. FENNER: Here's the motion.

19 MS. LEON: To adopt the proposals in
20 Agenda Items VI.B.9 through 22 as published in the
21 Texas Register with the correction to Rule 309.8, which
22 is the repeal --

23 MR. FENNER: Yes.

24 MS. LEON: -- of historic racing.

25 COMMISSIONER ABER: So you're making a

1 proposal to repeal the rules?

2 MR. FENNER: Yes.

3 MS. LEON: Correct.

4 CHAIRMAN SCHMIDT: Right. So in this
5 case --

6 MS. LEON: But I did it in the language
7 that the lawyers will understand.

8 CHAIRMAN SCHMIDT: So in this case, a no
9 vote would be no repeal.

10 MS. LEON: Right.

11 CHAIRMAN SCHMIDT: In this case, a no
12 vote would be no repeal.

13 MS. LEON: And a yes would say repeal.

14 CHAIRMAN SCHMIDT: Okay.

15 MS. LEON: I'm just stating it a
16 different way.

17 VICE-CHAIRMAN EDERER: That clarifies
18 it.

19 CHAIRMAN SCHMIDT: Okay. Is there a
20 second?

21 MS. LEON: I make that motion. I don't
22 know if there will be a second.

23 CHAIRMAN SCHMIDT: I think we've had one
24 vote. Out of courtesy, I'll second it. Okay? But I
25 think we've had one vote already.

1 Any further discussion?

2 Okay. So just for clarification, a yes
3 vote is in favor of repeal of the rules.

4 MR. FENNER: Yes, sir.

5 CHAIRMAN SCHMIDT: And a no vote is
6 against repeal of the rules. Okay?

7 Okay. Call the vote.

8 MS. WELCH: Commissioner Gary Aber?

9 COMMISSIONER ABER: No.

10 MS. WELCH: Commissioner Ron Ederer?

11 VICE-CHAIRMAN EDERER: No.

12 MS. WELCH: Commissioner Gloria Hicks?

13 COMMISSIONER HICKS: No.

14 MS. WELCH: Commissioner Cynthia Leon?

15 MS. LEON: Yes.

16 MS. WELCH: Commissioner Michael Martin?

17 COMMISSIONER MARTIN: No.

18 MS. WELCH: Commissioner Victoria North?

19 MS. NORTH: Abstain.

20 MS. WELCH: Chairman Robert Schmidt?

21 CHAIRMAN SCHMIDT: Yes.

22 MS. WELCH: Commissioner John Steen?

23 COMMISSIONER STEEN: Yes.

24 CHAIRMAN SCHMIDT: Okay. The motion is
25 defeated. So the rules stand.

1 Okay. There will be no executive
2 session.

3 Tentatively our next meeting will be
4 October 13th.

5 It's 12:33 and we stand adjourned.

6 (Proceedings concluded at 12:33 p.m.)

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1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

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4 I, SHERRI SANTMAN FISHER, a Certified Shorthand
5 Reporter in and for the State of Texas, do hereby
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