BEFORE THE
TEXAS RACING COMMISSION
AUSTIN, TEXAS

COMMISSION MEETING

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

Commissioners:

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RONALD F. EDERER
MARGARET MARTIN
GLORIA HICKS
GARY P. ABER
ROBERT SCHMIDT
JOHN T. STEEN, III
VICTORIA NORTH
A. CYNTHIA LEON
CHAIRMAN PABLOS: Good morning.
The time is 10:30, Thursday, February 18th. And at this time I would like to call this meeting of the Texas Racing Commission to order.

Mary, will you please call roll?

MS. WELCH: Commissioner Gary Aber?

COMMISSIONER ABER: Here.

MS. WELCH: Commissioner Gloria Hicks?

COMMISSIONER HICKS: Here.

MS. WELCH: Commissioner Cynthia Leon?

COMMISSIONER LEON: Here.

MS. WELCH: Commissioner Margaret Martin?

COMMISSIONER MARTIN: Present.

MS. WELCH: Commissioner Victoria North?

COMMISSIONER NORTH: Here.

MS. WELCH: Commissioner Robert Schmidt?

COMMISSIONER SCHMIDT: Here.

MS. WELCH: Commissioner John Steen?

COMMISSIONER STEEN: Here.

MS. WELCH: Vice-Chairman Ron Ederer?

VICE-CHAIRMAN EDERER: Present.

MS. WELCH: Chairman Rolando Pablos?

CHAIRMAN PABLOS: Here.

Mary, do we have a quorum?
MS. WELCH: We do.

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

MR. FENNER: Yes, sir.

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

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

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

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

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

CHAIRMAN PABLOS: Thank you, Mark.

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

MR. FENNER: Yes, sir.

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

The Attorney General's office filed a writ for mandamus in the Corpus Christi Court of Appeals. While that was pending, the matter was transferred to a different judge within Cameron County, and so the 13th Court of Appeal remanded it back to the new district
judge to consider whether or not the restraining order should continue.

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

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

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

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

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

CHAIRMAN PABLOS: Okay, Mark. Thank you.

Commissioners, are there any technical or clarifying questions of Mark regarding this issue?
Okay. Hearing none, do we have anybody signed up for public comment on this item? Do we have any cards?

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

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

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

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

Rob, are you here?

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

Next, Mary Ruyle.

MS. RUYLE: Good morning, Commissioners.

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

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

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

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

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

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

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

December 21st, Ms. Hamilton emailed a meeting request form to me, which I completed and returned the next day. January 5th, I emailed Ms. Hamilton to follow up and was told that Mr. Patrick was traveling often and did not have any availability in Austin.
January 7th, I emailed Ms. Hamilton, advised her that if it suited Mr. Patrick, we could be available to meet in a location other than Austin.

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

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

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

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

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

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

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

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

In the last comment period that Mark advised you, 1,000 comments were received with only one in favor of repeal. Each time there has been a public comment period, the people have overwhelmingly been in support of keeping the historical racing rules. We feel it's your obligation to represent those people and vote accordingly.
I will be happy to answer any questions.

CHAIRMAN PABLOS: Commissioners, any questions?

Thank you.

MS. RUYLE: Thank you.

CHAIRMAN PABLOS: Next is Wesley Melcher.

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

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

The legislature is supposed to consider proposed laws and resolutions and also appropriate
funds. Appropriate. Not eliminate an entire agency.

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

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

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

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

As Mary mentioned in her letter -- or when she spoke, all of the different public comment periods have been in overwhelming favor of historical racing.
So how did we get from a 7:1 decision to a split decision with one abstention?

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

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

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

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

MR. MELCHER: I know, but --

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

MR. MELCHER: But --

VICE-CHAIRMAN EDERER: I mean, as far as I am concerned, you are Johnny-come-lately. You are just coming in here, and you have appeared once before. Don't go lecturing us.
MR. MELCHER: But --

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

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

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

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

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

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

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

Whereas today, we have two people that were not part of that initial process and politicians
that were also not part of that process that are enforcing their will and their opinions that were not educated, and so that's why I brought up the people's --

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

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

CHAIRMAN PABLOS: It sure sounds like it.

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

CHAIRMAN PABLOS: Very well. Thank you very much.

MR. MELCHER: Thank you.

CHAIRMAN PABLOS: Next is David Cabralas, please.

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

Of course you didn't take any action on February 9th. So I am here today to make good on that request and bring you up to date on what that lawsuit is
about and where it stands. I am the attorney representing the Texas Horsemen's Partnership.

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

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

MR. FENNER: Which was a different Agenda.

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

MR. FENNER: No.

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

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

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

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

The reason why we believe it is relevant is because that has been the method by which we believe
certain members of the legislature have tried to encourage or obtain a change in direction with this Commission with regard to the historical racing rule package.

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

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

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

We do not think that a committee of the
legislature -- and we believe we have precedent -- is allowed to have had an ad-hoc veto over decisions that you make over substantive policy. So for that reason, we believe the attempt to use Rider 7 and withhold funding for that purpose is unconstitutional.

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

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

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

The way an agency operates in Texas is
they submit a voucher to the Comptroller. The Comptroller has a series of things that it has to do in order to determine whether that voucher is appropriate.

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

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

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

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

We -- we disputed that. We won on the plea to the jurisdiction of the district court. The
Attorney General's office, on behalf of their client, has now appealed that decision on -- on an expedited basis and has invoked a mandatory stay, which is their right under the statute to do when we are fighting over a plea to the jurisdiction.

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

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

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

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

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

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

That effort, which, as you know, those of you who are lawyers, that was an extraordinary effort. Temporary relief from a Court of Appeals is a very difficult thing to obtain, and we were unsuccessful in getting that.
CHAIRMAN PABLOS: Correct me if I am wrong, but did you argue that we are being coerced?

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

CHAIRMAN PABLOS: Commissioners, any questions?

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

MR. CABRALAS: Thank you.

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

VICE-CHAIRMAN EDERER: Somebody raised it.

CHAIRMAN PABLOS: Oh, yes.

Two more, actually. John Boegner.

MR. BOEGNER: "Boegner."

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

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

I appreciate this opportunity to talk to you commissioners today. I just have three little points -- high points that I wanted to highlight out,
and he was just talking about one of them.

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

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

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

A lot of this money is sent straight out from a paycheck straight to the casino. Well, that's a fast-track. So that's seven times. The State would be
under the burden of an economic impact of $7 million a
day, which would be $2.5 billion a year. That's --
that's a lot more money than people think about. I
mean, it gets to be something then.

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

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

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

CHAIRMAN PABLOS: Thank you.

Commissioners, any questions?
Thank you, sir. I appreciate it.

COMMISSIONER SCHMIDT: Thank you.

MR. BOEGNER: You are welcome.
CHAIRMAN PABLOS: Andrea Young.

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

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

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

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

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

What that does, in my view, and in many's view, is it acknowledges that there is leadership in the legislature. They have said they want an opportunity to address this issue. But there are also 181 members of
the legislature, and they have not taken action on this issue.

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

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

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

Should that decision go against our request to either consider you not repeal these rules or that you not consider what I would call "Option C," changing the effective date, it's my and I believe the
industry's sincere hope that those in statewide leadership that have expressed a desire to help this industry find solutions, through their public statements time and time again, will stay true to their word, that they will meet with the industry and proactively support legislation during the 2017 session that gives both the tracks and the horsemen in this state a fighting chance to compete against our neighbor states.

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

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

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

I know that you've studied this issue carefully and thoughtfully. Our greatest hope, my greatest hope, is that those in statewide leadership who have delegated these issues pertaining to pari-mutuel
wagering to you will do the same when given the opportunity. I am happy to answer any questions you have.

CHAIRMAN PABLOS: Commissioners, any questions?

VICE-CHAIRMAN EDERER: Excuse me.

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

MS. YOUNG: Absolutely.

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

MS. YOUNG: Absolutely.

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

MS. YOUNG: Correct.

VICE-CHAIRMAN EDERER: So it seems to me that the amendment is giving the legislature exactly
what they are asking for but it's also preserving the historical racing rule and giving -- giving us a shot, giving the horsemen a little hope?

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

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

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

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

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

CHAIRMAN PABLOS: Any other questions or comments, Commissioners?

Commissioner Schmidt?

COMMISSIONER SCHMIDT: I have one question. Andrea, I actually watched the simulcast. I think you have done a terrific job in a trying time. If we were to repeal and we accept the status quo, just -- are you at liberty to say when the last time your track was profitable? I know there is -- I know you are
partially owned by a public company. I don't know --

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

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

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

CHAIRMAN PABLOS: Any other questions,
Commissioners?

Okay. Thank you.

MS. YOUNG: Thank you.

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

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

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

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

Is there a second?

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

CHAIRMAN PABLOS: Adopt the proposals.

COMMISSIONER MARTIN: To have it continue on this discussion.

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

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

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

COMMISSIONER MARTIN: To repeal.

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

MR. FENNER: Yes.

CHAIRMAN PABLOS: So what would that motion be like?

MR. FENNER: A motion to adopt the
proposals of Agenda Items through II(A)1 through II(A)14 as published in the Texas Register.

CHAIRMAN PABLOS: Okay.

Is there a second?

COMMISSIONER LEON: Second.

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

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

Any comments, Commissioners? Any discussion?

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

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

It actually puts on hold the Racing
Commission. It gives -- excuse me, the historic racing -- it gives the legislature the opportunity to do what they say they want to do; and that is, to help the industry, to address historic racing, and to go forward.

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

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

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

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

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

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

COMMISSIONER LEON: Clarification on this vote?

VICE-CHAIRMAN EDERER: Yes. The first
vote would be to amend or not to amend, whether it was brought or not.

    MR. FENNER: To effectively repeal the historical racing?

    VICE-CHAIRMAN EDERER: Correct.

    CHAIRMAN PABLOS: Commissioners, any other comments?

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

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

    VICE CHAIRMAN EDERER: No.

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

    The gentleman earlier today said we have to abide by our laws, the Texas Racing Act, which in effect says we shall regulate and supervise every race meeting. We have race dates that we have authorized for 2016, so it's our obligation to be there for the industry when it races.
And if the agency is shut down, then we are going to be in contravention of that -- of that obligation, and so obviously my desire is to keep this agency open.

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

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

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

I also have to tell you that I have heard from many silent stakeholders, many members from the Horsemen's Partnership who have approached me in confidence and have told me that they are not in
agreement with the way the Partnership is handling this issue.

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

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

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

Now, the challenge is going to be going from there to figure out, well, how it is that we can help the industry, and there is no question that everybody up on this dais wants to help the industry. But we are faced with this issue that we have to address.
And so, you know, the concern that I have regarding, you know, our obligation in the industry by keeping the agency open and providing regulation, our duty to the employees, our duty to some of the industry stakeholders who are very concerned about March 1 coming.

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

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

This controversy that we have here in front of us has created a lot of rancor and acrimony that I think needs to go away. And so I look to you, Commissioners, to vote to repeal today, not as a way of hurting the industry but as a way of helping the industry, by having an agency opened that will allow racing to occur, that will give us that certainty that we need.
Nobody here wants to hurt the industry, but we are in this situation that we just happen to find ourselves in, and it's a difficult decision that we have to make.

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

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

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

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

That's how I feel. That's my opinion.

And so I hope that today we have a unanimous vote to repeal.

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

CHAIRMAN PABLOS: Yes, sir.

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

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

And we have discussed this before, we have been bullied every which way there is, and we need not to repeal these rules. If we need to go on with an
amendment, we can go on with an amendment. But if we 
repeal these rules, that's the end of it.

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

CHAIRMAN PABLOS: Dr. Aber, how do you --

[APPLAUSE].

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

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

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

So you better start looking at your 
legislators.

CHAIRMAN PABLOS: Commissioners, any other 
comments?

Thank you, Doctor.

COMMISSIONER SCHMIDT: I appreciate your
thoughtful remarks. I would just also add that I don't think the Commission is voting to shut down anything. We aren't shutting down anything. We are trying to help the horsemen.

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

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

CHAIRMAN PABLOS: Anyone else?

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

CHAIRMAN PABLOS: I have not.

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

Do you know that he has?

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

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

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

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

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

CHAIRMAN PABLOS: Dr. Schmidt -- the
history with this is Dr. Schmidt brought this to me during the last meeting, and I agreed to post it.

COMMISSIONER SCHMIDT: Yes. Right.

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

COMMISSIONER SCHMIDT: I appreciate your willingness, sir.

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

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

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

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

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

CHAIRMAN PABLOS: Commissioners, any questions?
Okay. Then I will bring this up for a vote.

Mary, will you please take a vote?

MS. WELCH: Commissioner Gary Aber?

COMMISSIONER ABER: No.

MS. WELCH: Commissioner Gloria Hicks?

COMMISSIONER HICKS: No.

MS. WELCH: Commissioner Cynthia Leon?

COMMISSIONER LEON: Yes.

MS. WELCH: Commissioner Margaret Martin?

COMMISSIONER MARTIN: Yes.

MS. WELCH: Commissioner Victoria North?

COMMISSIONER NORTH: Yes.

MS. WELCH: Commissioner Robert Schmidt?

COMMISSIONER SCHMIDT: No.

MS. WELCH: Commissioner John Steen?

COMMISSIONER STEEN: Yes.

MS. WELCH: Vice-Chairman Ron Ederer?

VICE-CHAIRMAN EDERER: No.

MS. WELCH: Chairman Rolando Pablos?

CHAIRMAN PABLOS: Yes.

MS. WELCH: There are five ayes, four nays.

CHAIRMAN PABLOS: Thank you.

Mark, there is five ayes and four nays.
What is the result?

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

CHAIRMAN PABLOs: Thank you, Commissioners.

The next item is now moot.

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

Thank you, Commissioners.

(Meeting adjourned at 11:20 a.m.).
REPORTER'S CERTIFICATE

THE STATE OF TEXAS  )
COUNTY OF TRAVIS   )

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

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

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