

TEXAS RACING COMMISSION

RULES COMMITTEE

MEETING

Tuesday,
Wednesday, August 10, 2022

Capitol Extension
Room E2.028
1100 Congress Avenue
Austin, Texas

MEMBERS PRESENT:

CONNIE McNABB
TIM KLEINSCHMIDT
ROBERT PATE

STAFF:

AMY FORDHAM COOK
VIRGINIA FIELDS

INVITED TESTIMONY:

MARSHA ROUNTREE
TRACY SHEFFIELD
DWIGHT BERUBE

ON THE RECORD REPORTING
(512) 450-0342

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P R O C E E D I N G S

(Recording began after start of meeting.)

DR. McNABB: -- Commission reviewed and approved working documents that allow us to be responsive to the industry and still be fully accountable.

In many ways, horseracing in Texas is at a crossroads. We find ourselves in the middle of a statutory and policy challenge with a federal entity, the Horseracing Integrity and Safety Authority, or HISA, which Congress empowered without state input, in an omnibus COVID bill at the end of 2020.

We're not here today to debate HISA, but we understand if it is not struck down by a court or amended by Congress, its long-term effect will include fundamental transformation of racing in Texas, particularly on the business model of Texans who facilitate this great sport, as well as those who participate and wager on the outcome of the races. The Texas Racing Commission fully supports the fundamental goals of HISA that HISA has been asked to achieve, but we are not statutorily enabled to allow our staff to be commandeered by a federal agency, nor collect fees and remit fees on their behalf.

Last month, the Texas Racing Commission took steps to protect Texas horseracing and to provide regulatory certainty within our state by denying the

1 export signal of thoroughbred races, which is the nexus
2 HISA has in Texas to assert their jurisdiction.

3 With or without HISA, Texas horseracing has a
4 bright future. We have developed a road map to bring in a
5 broad stakeholder input and have collaborative discussions
6 on how Texas is getting racing right, and identify ways we
7 can make it better than ever.

8 Over the next 18 months, this Committee will
9 hold additional meetings, not just here in Austin, but in
10 the communities that thrive and contribute to horseracing
11 in the state. In addition to the cities' racetracks, we
12 expect to go out to others supporting the industry as
13 well, places like College Station, home to Texas A&M
14 Veterinary Medical Diagnostic Laboratory, and others whose
15 agricultural and business activities contribute to this
16 great sport.

17 As you can see in the road map provided, the
18 goal is to write a whole new rule book. In the end, with
19 extensive public input, we will propose a new, modern
20 Texas Rules of Racing to take effect for the 2024 racing
21 season.

22 Today we are pleased to be joined by a lineup
23 of industry representatives who will provide their view of
24 where Texas horseracing is today and can be in the future
25 with a focus on the current and future rules to ensure

1 that the utmost integrity within the sport and the health
2 and safety of all racing participants is sustained.

3 Commissioner Kleinschmidt, do you have any
4 additional comments before we call our witnesses?

5 MR. KLEINSCHMIDT: I would just applaud the
6 industry's efforts in the face of what we've had here in
7 recent history with COVID and the economic woes that we
8 face in inflation. I know your industry has a great
9 challenge to face, and I appreciate the effort that you
10 all have put toward addressing that challenge and moving
11 forward to keep the industry successful in Texas. So
12 thank you for all of your efforts in doing so.

13 DR. McNABB: Great. Thank you, Commissioner
14 Kleinschmidt.

15 I'd like to invite forward the following
16 individuals -- and I think we have a few -- I think we
17 just have Marsha Rountree representing Texas Horsemen's
18 Partnership, Tracy Sheffield representing the Texas
19 Thoroughbred Association, and Dwight Berube representing
20 Penn Gaming.

21 As you begin your remarks, please state your
22 name and who you represent. Ms. Rountree, if you'll
23 begin, please.

24 MS. ROUNTREE: Yes, good morning. I'm Marsha
25 Rountree and I am the Executive Director of the Texas

1 Horsemens's Partnership. And we represent all the owners,
2 trainers, assistant trainers, and men and women who take
3 care of these horses every day.

4 We appreciate the opportunity to join the Texas
5 Racing Commission in review and revision of the rules of
6 racing. It's long overdue, and we're looking forward to
7 being part of that process.

8 If you've taken the considerable time to read
9 all of the HISA racetrack safety and proposed medication
10 rules, you've seen an example of what we probably
11 shouldn't do. The HISA rules appear to have been written
12 by people who have never operated a racetrack, cared for a
13 race animal, or ridden a racehorse at breakneck speed down
14 the stretch.

15 The rules are hard to understand, harder to
16 comply with, and are unnecessarily complicated. And this
17 is why it's best solution possible to allow the industry
18 stakeholders to participate in revising our Texas rules of
19 racing.

20 There are numerous sections and individual
21 rules that we're interested in taking a closer look at for
22 possible changes. The obvious rules are those that
23 pertain to the racetrack safety, safety and welfare for
24 the animals and the people that care for them, and the
25 integrity of the sport.

1 At the forefront of the integrity of racing is
2 the use of medication and other prohibited substances. We
3 can all agree that if we successfully deter and eliminate
4 cheating, our industry will benefit greatly. But some of
5 today's owners no longer want to invest in horses and are
6 increasingly frustrated when the ability to compete is
7 lost to cheaters. Patrons are frustrated when there's an
8 obvious dominance of certain trainers, and wagering is
9 adversely affected by this.

10 We have the ability to regulate our industry
11 without federal interference. There's no place in Texas
12 for those who succeed by cheating. We have the
13 opportunity to change that.

14 We're Texas. We can do it better. I'm
15 confident that we can and will develop rules and policies
16 that are better than the HISA rules at protecting Texas
17 racing and its participants.

18 As I mentioned earlier, racetrack's an issue
19 that's important to all of us. As a part of the rule
20 revisions, we would like to see stringent rules assure a
21 safe trip down the track for the horses and the riders.
22 So input from the riders, the trainers, and even
23 veterinarians can shed a lot of light on issues that the
24 rest of us might not be aware of.

25 I don't think this opportunity's ever really

1 been given when these rules were written and promulgated.

2 So I think it would be a really refreshing change to see
3 the people that really are on that track every day to help
4 us write rules for track safety. So we appreciate the
5 public input the Commission's offering here.

6 While on the subject of racetracks, the
7 horsemen would like to see more focus on what it means to
8 hold a Class 1 track license. Holding a Class 1 license
9 is not a right, but a very special privilege.

10 There are only three Class 1 licenses in Texas,
11 and each license holder should be held to very high
12 standards. It's a big state, and the fact that we only
13 have three makes it a real privilege to be the owner of
14 one of those licenses. The public spaces, the stable
15 area, and all aspects of the operations should be
16 maintained in excellent condition. We would like to see
17 these standards become part of the rules so that
18 violations have consequences.

19 It's a shame to utilize one of only three
20 licenses and not be required to maintain a first-class
21 facility. The public expects and deserves certain
22 standards, and the horsemen do, as well.

23 As we work through the rules and the revisions,
24 I'm sure that many other issues will be brought to light.

25 I have every confidence that the Agency and industry will

1 develop rules for Texas racing that make sense, that are
2 fair, and that keep our industry moving forward the way
3 that it should.

4 And thank you, Amy, Commissioner McNabb,
5 Commissioner Pate, Commissioner Kleinschmidt for the
6 opportunity to be part of this process.

7 DR. McNABB: Do you have any --

8 MR. KLEINSCHMIDT: No.

9 DR. McNABB: -- questions? I do appreciate
10 what you are saying, and message certainly received. We
11 are trying very hard to communicate, and we just got
12 started. And this is going to be a process, and we're
13 going to be moving around the state to make ourselves
14 accessible.

15 Amy and the staff are also going to great
16 lengths as they put out guidance that it's also being put
17 out in Spanish, as well as English. Because we do
18 recognize that we do have a large contingent of folks that
19 that is is their primary language. And if we're going to
20 be making rules that affect how they do business, we want
21 to make sure that everybody can understand them, know how
22 to do good, and avoid doing bad.

23 MS. COOK: And I would add to that on the Texas
24 Rules of Racing, one page that we put up there is a place
25 for public comment where someone that goes to that page

1 can offer to give invited testimony. And then, we'll
2 receive that at the Commission. And so we're hoping to
3 really generate more people that want to come and talk.
4 And then, also, of course, they can reach out through any
5 of the normal communications channels.

6 But I want as much participation as possible
7 because I really want -- when we're at the end of the
8 process, I think, we all do that. Everyone who really had
9 some critical input from their diverse perspective is able
10 to give that.

11 So if there's anything we haven't done well on
12 that page, or any other communication channel you think we
13 should be using, I would love that feedback to make sure
14 we get maximum participation from all the stakeholders.
15 Thanks.

16 MS. ROUNTREE: It just makes sense that the
17 people that are using the track, that are living and
18 working in the stable area, that are there -- and they
19 have such a high stake. There's such a huge investment --
20 that they have an opinion and we listen to what they have
21 to say. Because we're not on that track every day, and we
22 might not see something, know something, or have a
23 suggestion that's going to make it better for everybody.

24 So the public comment section is really going
25 to be helpful, I think.

1 DR. McNABB: And again, your comments on rules
2 being written by another entity being difficult to
3 understand -- I don't sleep in a Holiday Inn Express every
4 night and I'm not a lawyer. And so I find them pretty
5 heavy going.

6 So, again, that's a lot of our emphasis, that
7 our rules for Texas are very clear so that when people
8 read the rule, they understand this is where the line is.
9 Don't cross it. And then, having things that are
10 procedures and not necessarily rules clean things up, so
11 as people go through, the rule book can actually be
12 something that is useful on all levels.

13 Anything else?

14 CHAIRMAN PATE: [inaudible] --

15 DR. McNABB: Absolutely.

16 CHAIRMAN PATE: It's not quite ready for prime
17 time yet, but I know that -- I believe Virginia's going to
18 be preparing -- we're going to have the rules laid out in
19 a way to demonstrate existing rules and what other
20 entities or organizations may have in the same rules in
21 the area, on any particular area.

22 It's going to be important, Marsha, for you and
23 these constituencies that you talked about to get copies
24 of those. They'll be published on the website. It's
25 going to be available.

1 And mark them up and say, "This should say
2 this," because that's the kind of input we need, so that
3 we can have a discussion about what it is we're trying to
4 accomplish by any particular rule or group of rules, okay?

5 So, look for that and -- I mean, just coming in and
6 telling us about something is very helpful. But actually
7 contributing to what the rule actually looks like is even
8 more helpful.

9 MS. ROUNTREE: We're excited to do that,
10 Chairman Pate. We're excited to be able to look at these
11 rules word by word, section by section and be able to look
12 at it. Because some of them are outdated and they're no
13 longer applicable to the industry as we've grown. And
14 some of them actually hindered us from growing.

15 So, it's very exciting to know that we can sit
16 down with a rule book and actually go through it and make
17 comments to the staff that maybe we should look at this
18 and change this word to this. We're very excited to be
19 able to be part of that process.

20 CHAIRMAN PATE: Great.

21 MS. ROUNTREE: And we will -- believe me, we
22 will take --

23 CHAIRMAN PATE: Okay.

24 MS. ROUNTREE: We will contribute.

25 DR. McNABB: But again, that's why this is

1 going to go on for so long -- because we want to give
2 sufficient time to really get the input. Everything will
3 pass the scrutiny to make sure that we are in line with
4 the Act. There's not going to be a rule published that --

5 CHAIRMAN PATE: Right.

6 DR. McNABB: -- you know, looking at the Racing
7 Act -- and that's what we've got the smart lawyers for.
8 This is exactly what the Act says. We're on track.

9 But again, when we have the procedures, those
10 are still going to be a written document available to
11 people. We just want to clean out a lot of the chaff
12 that's -- you know, right hand does this. Left hand does
13 that.

14 But what does trainer, what does the owner,
15 what does the track need to know? And have the rules be
16 very clear and in plain English.

17 MS. ROUNTREE: And I think our lawyers -- our
18 smart lawyers that we have are smart enough and they
19 will -- if it takes a paragraph, it will be done in a
20 paragraph, not forty pages.

21 DR. McNABB: Thank you.

22 MS. ROUNTREE: Our lawyers are smart enough to
23 condense it down to what we need to know, not just
24 legalese that just takes up pages. So we're excited about
25 that, too.

1 MS. COOK: Almost ready for prime time is that
2 once we sort of figure out the statutory framework, the
3 rule framework, the procedure manuals under these new
4 chapters is what Commissioner McNabb and we've been
5 talking about.

6 And then I'm going to take a step further.
7 We're going to hire a multimedia person. They start the
8 first of September. And in that interview, I asked that
9 individual, Can you make me educational videos?

10 So if I have a horse, and that horse is ordered
11 to be tested at the test barn or is first in the order of
12 finish, there will be an instruction video on, What do you
13 do? What does that mean? How does that work? Very
14 transparent on that whole process so there's no
15 misunderstanding on those kind of things.

16 And so I really think it's reaching through all
17 the communication channels, not just written statutes and
18 rules and procedure manuals that are translated. But also
19 videos, because we're dealing with a population from
20 septuagenarian down to whatever we're calling the current
21 generation. They communicate different ways.

22 And so I really want to make sure we're sort of
23 holistic in the way we go about this in terms of input.
24 And then publishing what the standards are for everyone.

25 DR. McNABB: Okay, great.

1 Ms. Sheffield, welcome.

2 MS. SHEFFIELD: Thank you.

3 DR. McNABB: You're the cheese at the end of
4 the maze. I'm glad you found us.

5 MS. SHEFFIELD: Very much so. Well, I'd like
6 to thank the Commission for the opportunity to speak
7 today, and I would like to thank Marsha for her remarks
8 because, basically, she just said almost everything I'm
9 going to say. I'm just going to add a little to it, but
10 what she said.

11 So, given the changes brought to horseracing
12 with -- oh, I forgot to introduce myself -- Tracy
13 Sheffield, and I'm President of the Texas Thoroughbred
14 Association.

15 FEMALE VOICE: Tracy, could you turn your mic
16 on, please?

17 MS. SHEFFIELD: Oh, is it --

18 DR. McNABB: There you go.

19 MS. SHEFFIELD: Okay. How's that?

20 MS. COOK: Perfect.

21 MS. SHEFFIELD: Okay. Given the changes
22 brought to horseracing with the advent of the Horseracing
23 Safety and Integrity Act, Texas has now been put in the
24 position to review and modify the rules of racing in the
25 state in order to allow the thoroughbred industry, and all

1 racing, to continue to flourish in the state.

2 The priority for the Texas Thoroughbred
3 Association is that thoroughbred racing continue unimpeded
4 in the state of Texas. Thoroughbred racing and breeding
5 has been on an upswing in recent years, as demonstrated by
6 the economic success of our recent sales. How the
7 Commission conducts its business in the future will
8 determine a large part if the thoroughbred industry in
9 Texas will continue to grow.

10 That thoroughbreds continue to run in Texas in
11 2023 is of utmost importance. To that end, it must make
12 financial sense for the tracks to hold thoroughbred meets.

13 The exporting of the signal creates the economic base to
14 hold a thoroughbred meet.

15 At the time, it made absolute sense to stop the
16 export for the July portion of the 2022 Lone Star Meet.

17 It allowed all the participants to finish the meet under
18 the rules of racing that were in place when the meet
19 began.

20 We are now faced with a set of challenges for
21 thoroughbred racing in Texas for 2023 that need to be
22 addressed by the Commission. It appears that a way
23 forward needs to be found for racing to operate under the
24 rules of HISA without violating state law or racing rules.

25 At this point, complying with HISA is

1 objectionable on many levels to most involved with
2 thoroughbred racing. That said, failure to comply can put
3 thoroughbred racing and the future of the Texas
4 thoroughbred industry in jeopardy.

5 I would ask that Commission rework the current
6 rules governing racing in Texas. The necessary goal of
7 amending the current laws and rules would be to allow
8 racing to continue with the export of signal from the
9 Class 1 tracks under a set of rules that would make
10 complying with HISA compatible with state law and racing
11 rules.

12 In creating the rules needed to continue
13 thoroughbred racing, they need to be done so that --
14 complying without violating state law. Additionally, when
15 adjusting any laws or rules, there is the risk of
16 unintended consequences.

17 It is to be hoped that the Racing Commission
18 will consider the use of focus groups, and I'd like to see
19 owners, breeders, trainers, and jockeys when creating and
20 amending rules. As Marsha said, you don't know what
21 you're talking about unless you've been on the back of a
22 horse going 30 miles an hour on the back stretch.

23 Additionally, I would like the Racing
24 Commission to address the funding of HISA. Implementation
25 of HISA will be expensive. Passing the costs directly to

1 horsemen is not a viable solution.

2 Another solution must be found, and it needs to
3 include some sort of support from the state. Thank you.

4 DR. McNABB: Okay. Appreciate your comments.
5 This is a challenge.

6 MS. SHEFFIELD: It is.

7 DR. McNABB: And you're involved in some very
8 important conversations, and I think there's more to be
9 had -- certainly more to be had.

10 MR. KLEINSCHMIDT: You know, as far as the
11 State support -- of course, we've got a session coming up
12 here pretty quickly. And so it's going to be important
13 for your industry to step up and request some of that help
14 out there. It might be a good session for it.

15 From what I'm hearing, the money coffers are
16 not as dire as they have been in years past. So it might
17 be a good session to step up and ask for some help there,
18 even if it's limited help for a limited number of time.
19 Even if they sunset it and go, Okay, we'll give you X
20 dollars for the next four, six, 10 years or whatever.

21 It's probably a good time to plan on stepping
22 forward to make some requests there for some temporary
23 industry support. We're in transition time. We're
24 dealing with HISA, and we either will or we won't deal
25 with HISA in the long run, depending on what the courts

1 do.

2 But we need some help in the meantime. And so
3 it's probably time to step forward with the legislature
4 and make an industry request for some kind of support and
5 make it clear to them, Well, hey, we consider this to be
6 temporary -- you know, kind of a situation.

7 So, I would encourage you to look at doing
8 that. It's one thing if the Agency moves forward. To
9 seek that kind of support -- it's a whole other program if
10 you folks come forward and make those requests.

11 MS. SHEFFIELD: Thank you. In the horsemen's
12 groups that I deal with, I said I would be here today.
13 And I said, Is there anything you want me to bring up?
14 And that was the major thing that came out -- funding.

15 MR. KLEINSCHMIDT: Yeah.

16 MS. SHEFFIELD: They said, We can't afford it.
17 If you slap more fees on us, we don't survive. So, that
18 was what they said.

19 CHAIRMAN PATE: I know you've been at our
20 recent meetings as we've been talking about the
21 reorganization -- what I call the reorganization of the
22 Commission -- in order for it to execute its plan. And
23 what we're talking about is a substantial change in which
24 the Commission is funded.

25 And so we're looking -- and we'll have our

1 meeting on the 24th coming up -- we have a plan that's
2 laid out, what we want to do and how we want to do it.
3 And then we have to go and ask for legislative
4 appropriation.

5 Currently, as you're aware, the way things are
6 set up, the tracks pay. There's a reimbursement program.

7 And then other participants pay. We get some fees and
8 that kind of thing, and somehow all that goes together and
9 pays for what we do.

10 It's occurred to us -- and you will look at our
11 plan, and I think you will find when you come on the 24th,
12 you will see we think that creates an unnecessary tension
13 between the tracks, the horsemen, and the Texas Racing
14 Commission. It's important for the Racing Commission, as
15 a service to Texas, to provide the kind of regulatory
16 support -- which you all need -- to conduct safe, fair
17 races. And that's what we're advocating.

18 So we're advocating a totally different way of
19 funding the Commission, which is by a direct
20 appropriating -- part of the general appropriation. So
21 that's going forward. And we need to go in there with
22 industry support of that.

23 I will say I don't know what our position would
24 be in terms of HISA. It would be wonderful if there was a
25 way to harmonize what HISA requires with what the Texas

1 Racing Act requires, and so forth. But they are -- I
2 don't know -- oil and water, but it's not even that close.

3 I mean, we are required to do certain things,
4 as I'm sure you all are aware that HISA doesn't allow
5 pari-mutuel wagering. It's just the way it is the way the
6 statute's written. And whether the legislature or the
7 elected leaders think that what we ought to do is become
8 an agency of a federal government or not, I don't know.

9 That's for them to decide. Somehow, I don't
10 think that's what they would want. And so, I don't know
11 what the solution is.

12 And we're hoping, as you all are aware -- I
13 know there's been some discussion with Amy, Dwight with
14 scheduling races with the next thoroughbred meets and
15 those kinds of things -- hopefully to buy a bit more time
16 so that we can see that, perhaps, we get some more
17 definite resolution out of the courts. As you all aware,
18 in Louisiana -- at least one district judge in Louisiana
19 said, Man, this rulemaking is crazy -- my paraphrase -- by
20 the FTC, and this whole relationship. And it is.

21 And then, we've had a new piece of litigation
22 filed here in the state, which is significant. And if you
23 haven't read that petition, I suggest you get a copy of it
24 and read it because it is excellent -- in my opinion, an
25 excellent piece of legal work.

1 So, maybe we'll get some resolution there. I
2 don't know. But the hope of getting those two resolved so
3 that somehow Texas harmonizes with that federal law is --
4 that's a much more difficult task, it seems to me.

5 But it's something that we have -- in my
6 conversations with Amy and with other Commissioners -- I
7 mean, we understand it's out there. I mean, we've engaged
8 with HISA. We invited them down.

9 They came -- Lisa and John Roach came down.
10 You all were there. Many of you all were at the luncheon
11 to meet them and talk to them.

12 And it's just what they're trying to do in
13 implementing that federal statute just simply doesn't fit
14 what we're required to do under the Texas Racing Act. So
15 we'll just see how that goes, but it is certainly
16 something that's in process. And we're concerned about
17 it.

18 My understanding is that the revenue loss to
19 Lone Star for the cutting off of the export of the signal
20 for the last 14 days of their race, which began July 1st,
21 and then, ran for 14 days -- when HISA became active and
22 we had the export order go out, I think it cost them
23 something in the neighborhood of \$1 million. I mean, I
24 don't have the exact numbers, but that's my information.

25 So I get it. I mean, it's important to the

1 tracks, undoubtedly. But I didn't write the HISA
2 legislation. I didn't write the Texas Racing Act.

3 We're here trying to figure out it all works.
4 And I can tell you this -- we're going to do whatever
5 Texas law allows us to do. I think that's probably the
6 best way for me to say it.

7 Those are my thoughts.

8 DR. McNABB: Thank you, Judge. Just what I
9 would offer -- and I just got back from an ARCI meeting.
10 And so, kind of the everybody get together, and some of it
11 is formal meeting. And then, some of it -- yeah.

12 So we're all trying to find a path forward.
13 What I would suggest is -- you know, it's not the answer
14 to everything, but trying to get the Racing Commission to
15 do something -- now, we are appointed by the Governor with
16 legislative oversight. But we're a teeny, tiny agency.

17 I'd say that if you wanted to get the attention
18 of legislators to do anything that has to do with dipping
19 in the money, it gets down to how many dollars, how many
20 people. So if you take a look at what is the economic
21 impact, and make sure that your State representative and
22 your State senator, and your federal Congressman, and your
23 senator -- and what does racing bring to Texas in terms of
24 jobs?

25 A racehorse eats a lot more dollars every day

1 than a 10-year-old cow having her last calf. So what does
2 this mean to business and agriculture and the economy of
3 Texas? Because you might have -- there's a lot of people
4 who represent us, and they're well-intentioned. But if
5 they don't have a connection with racing -- and a lot of
6 people have zero.

7 We've long since separated ourselves from
8 horses unless you're in the business. Other people are in
9 it up to their eyes. They can't imagine people that are
10 not.

11 But every person who's elected understands
12 numbers of jobs. They understand dollars. What drives
13 this industry and what is the economic impact?

14 And so, if we lose racing, what's the economic
15 impact? Or if -- I think Texas is still very much an
16 unrealized, great place for racing given our -- not
17 summer -- our other months when we brag to all of our
18 Yankee friends how wonderful it is down here -- that
19 there's opportunities that we still haven't realized yet.

20
21 But as you're trying to get things for the
22 legislature to be of help -- and certainly, we are here to
23 be part of that system. But when it really gets to down
24 to it, every single elected official understands jobs and
25 they understand dollars. And so being able to verbalize

1 that economic impact across the board never hurts.

2 MS. SHEFFIELD: I do have a question. Is there
3 somewhere -- has anyone worked out in the Racing Act what
4 is in direct conflict with HISA? I know how paying the
5 purse money is in conflict. Do we have a list of what is
6 in conflict and what --

7 CHAIRMAN PATE: Well, it's the entire Act. But
8 there's a particular rule -- I will refer you, for
9 example, to Section 2023.002, Regulation Supervision of
10 Wagering at Race Meetings, A:

11 The Commission shall regulate and supervise
12 each race meeting in this state that involves wagering on
13 the result of horseracing or greyhound racing. Each
14 person and thing relating to the operation of a race
15 meeting is subject to regulation and supervision by the
16 Commission.

17 I don't think that the Act can be any more
18 direct, okay? It's totally clear. And one of the points
19 that I made, I think, in my remarks -- I think it was at
20 our last Commission meeting -- is there isn't one word in
21 the HISA Act concerning pari-mutuel wagering.

22 There's absolutely no preemption of Texas law
23 with respect to wagering. So, I mean, you can't look to
24 the Act and say, Oh, well, you know, they're federal law.
25 Then, we've got to do it. No, that's not how it works.

1 So, that's a for instance right there.

2 So, then, you can tack on to it every other
3 rule we have, okay? All right.

4 MS. SHEFFIELD: Thank you.

5 MS. ROUNTREE: I would like to say, Chairman
6 Pate, that we believe you're absolutely correct -- the
7 things that are going to be happening in the next
8 session -- and Commissioner Kleinschmidt. We have an
9 opportunity to educate our legislators. We have an
10 opportunity to maybe ask for some things to help our
11 industry, even temporarily.

12 We're engaged. We have a -- I believe we have
13 a couple of our industry lobbyists are here today. So,
14 they're engaged now. They're working now.

15 They're meeting with legislators and other
16 industry lobbyists. So, we're already engaged. We see
17 the opportunities and the challenges in the session. So
18 we're plugged in.

19 MS. COOK: And just for everyone's benefit, the
20 document that is handed out is a Horse Integrity and
21 Safety Act fact sheet. It's available on the Texas Racing
22 Commission publications page under "Fact Sheet." So for
23 those are watching online or in the audience, that's
24 available for download on the web page.

25 Thank you. Or there's a few more copies in the

1 room. Thank you.

2 DR. McNABB: Every state that came to this
3 meeting -- everyone is struggling trying to get through
4 all the parts and pieces, as is HISA, as they implement
5 things. And then, they say, Never mind. We're going to
6 change that. So, this is -- they're trying to fly a plane
7 while they still haven't got the wings completely bolted
8 on yet.

9 So, it's a very fluid situation. And again,
10 they answer to federal legislators. So, you know, if
11 you've got some strong thoughts, we've got some great
12 folks at Congress and Senate.

13 MS. COOK: And one more thing -- thank you for
14 the focus group recommendation. We'll absolutely do that,
15 and I'll reach back out to you to kind of help set some of
16 that up to all of you, and just try to create not just
17 Rules Committee meetings with these agendas, but maybe
18 some additional focus groups maybe with the staff to just
19 sit down and go through.

20 Virginia's created the start of a draft of Rule
21 302 -- the new Rule 302. But we wanted to really make
22 this meeting sort of an open forum on the whole rule set.

23 And they'll all be opened formally at the next Commission
24 meeting next week so that way any part of the rules is up
25 for discussion at any meeting, and just keep doing that.

1 So thank you for that recommendation, Tracy. I
2 appreciate that.

3 DR. McNABB: Is there anything else?

4 MS. SHEFFIELD: No --

5 DR. McNABB: Thank you very much. We
6 appreciate you being here. We appreciate what you're
7 saying, and message received.

8 CHAIRMAN PATE: Thank you.

9 DR. McNABB: It's an adventure.

10 Mr. Berube?

11 MR. BERUBE: Good morning. My name is Dwight
12 Berube, and I'm the General Manager of PM Texas,
13 representing Sam Houston Race Park, Valley Race Park,
14 Manor Downs, and Penn Entertainment.

15 The name Penn Entertainment is probably new to
16 all of you. That's their new, recently rebranded name for
17 Penn National Gaming -- Penn Entertainment.

18 I want to take this opportunity to thank the
19 Texas Racing Commission, specifically Chairman Pate and
20 Commissioner McNabb -- I don't want to leave you out,
21 either, Commissioner Kleinschmidt -- and also, Executive
22 Director Amy Cook for initiating this complete review of
23 the Texas Rules of Racing.

24 This will be a massive and challenging effort
25 for the Commission and the industry, which is expected to

1 take over a year to complete. PM Texas and Penn
2 Entertainment are pleased to participate in this effort,
3 and we plan to offer meaningful suggestions and feedback
4 throughout the process.

5 Through the years, the industry has recommended
6 numerous rule changes to the Commission, and many of those
7 rule changes that were recommended have been adopted. But
8 this is the first time we've had the opportunity to review
9 the rules in their entirety.

10 The Texas Rules of Racing were written over 30
11 years ago. Since that time, much has changed in our
12 world, particularly with the advancements in technology.
13 We need to examine what opportunities might exist with
14 these new technologies.

15 Also, since the rules were initially written,
16 we've all gained nearly 30 years of working experience in
17 the Texas racing industry, which allows all of us greater
18 insight than ever before. The Horse Industry Escrow
19 Account has been a savior to the industry, and enhanced
20 related rules are surely in order.

21 There's no greater issue facing the industry
22 than maintaining this benefit. In our current
23 environment, the Horse Industry Escrow Account is the only
24 opportunity we have for growth in the national racing
25 scene.

1 Fitness to be licensed hearings are necessary
2 by the Commission for serious rule violators, including,
3 but not limited to, medication violations and race
4 manipulations. Many of these violators should not be
5 granted licenses in the first place. This is critical to
6 preserve the integrity of our sport.

7 These are just some of the items we believe
8 should be addressed in the rule review. Additionally, we
9 sometimes find that certain rules that are current can be
10 vague and ambiguous to the reader and subject to
11 interpretation. It's important that throughout this
12 effort we remove such ambiguities.

13 And in closing, PM Texas believes significant
14 progress benefitting racing in the great state of Texas
15 can be made with this full rule review, and we will
16 participate fully and enthusiastically in this effort.
17 Thank you for allowing me to speak today.

18 DR. McNABB: Thank you very much. Chair?

19 CHAIRMAN PATE: I'd just like to say thanks for
20 coming, and we really appreciate the willingness to
21 participate -- you, and also, Lone Star Park. I think,
22 because of the efforts of Amy, there's just been increased
23 communication on all levels, and we hope that that
24 continues through this rulemaking process.

25 There are going to be some areas that, perhaps,

1 we're going to reach a disagreement on or have a view as a
2 regulator different from the view of the track or the
3 horsemen, for example. But that doesn't mean we're not
4 going to communicate and talk about it and try to get the
5 best we can get done.

6 So, but I really appreciate you coming here
7 today, Dwight.

8 DR. McNABB: And so you know, I mean, it's not
9 just those you see up here. The staff is working very
10 hard on this. I mean, in addition to all the work it
11 takes just to do the day-to-day and maintain things.

12 But the staff is very passionate about this
13 because they're there on the front lines. And so they
14 very much want to have good, clean, clear rules. So, just
15 like the focus groups there, we've got our folks.

16 As we're looking at things, they're saying,
17 Yeah, that has always bothered me, and so forth. So,
18 again, we've got -- the staff is in this and it's a full
19 Agency effort.

20 MS. COOK: I would just like to say I really
21 think one of the things having -- it will be nine months
22 next week, by the way -- nine months in this job. But I
23 think it was the first week in the job that I talked to
24 Judge Pate about the fact that the statute requires some
25 clarity between the Commission, Commissioners, and the

1 Executive Director.

2 And as it devolved into the rules, there's a
3 lot of places in the rules where it's really not clear.
4 And for this position in particular, and some of the
5 challenges that you had with who filled the position and
6 sort of some of the way they did the job, it's really
7 important to me as we go through this and write procedural
8 safeguards and delineation of responsibilities is in place
9 so that the Commissioners that set the rules of racing are
10 the ones that make that decision. And the staff is in
11 support of that and carries that out.

12 And there's not a need -- there's real clarity
13 around the roles and responsibilities with respect to the
14 Agency and the Commission. I think that's really
15 important to me because we do spend a lot of time in the
16 office going, Does this mean the Executive Director or
17 does it mean the Commission when it's really not clear?

18 And I would default to, I'm going to let the
19 Commissioners tell me whether it comes back to the Agency
20 or not because I think that's the right way to do the job.

21 But I think that's really going to help everyone in terms
22 of determination of decision-making roles and, really,
23 where those lie.

24 I think that will really benefit the industry,
25 and it will also benefit the Agency staff to have that

1 kind of clarity and really protect everyone from the
2 decision being made at a level where it really shouldn't
3 rest.

4 So, thanks for saying that, Dwight, because I'm
5 all on board with clarifying some things that are really
6 ambiguous that do also prevent us from doing some of the
7 things that Marsha and Tracy brought up. Really important
8 for us to be able to pursue those that aren't following
9 the rules, but we find ourselves almost at a hard stop in
10 some places because the language isn't clear about our
11 jurisdiction or our ability to pursue that.

12 So it's a great opportunity to work together to
13 get that right for Texas. Thanks.

14 DR. McNABB: Okay. All right. Any other
15 comments? Any [inaudible]?

16 Okay, great. All right. Thank you very much.

17 We'll proceed with the meeting. You can -- if you're
18 comfortable there, you're welcome. Or make yourself
19 comfortable in the other seats -- whatever you'd like.

20 We'll move to the next section, discussion and
21 possible action on specific proposals of the Texas Rules
22 of Racing 1.16 TAC §303.102, Greyhound Rules. We will now
23 discuss possible action on 16 Texas Administrative Code,
24 Subsection 303.102, Greyhound Rules.

25 And we do have Kevin Vickers has signed up to

1 comment on this. So, Mr. Vickers, welcome.

2 MR. VICKERS: I don't know where you guys want
3 me to sit --

4 DR. McNABB: I don't want to give you the boot,
5 but I --

6 MR. BERUBE: That's quite all right.

7 DR. McNABB: Yeah, he can't have your name. He
8 can have your microphone.

9 Welcome, Mr. Vickers.

10 MR. VICKERS: Thank you. I think I'd prefer to
11 stay Dwight, but that's all right.

12 My name is Kevin Vickers. I'm an attorney with
13 the law firm Brady & Peavey. I'm here on behalf of the
14 Texas Greyhound Association today following up on the
15 conversations, frankly, that have been had with staff and
16 before the Commission over the past, approximately a year.

17 The primary purpose is to answer any questions
18 that the Commissioners have today about the proposed rule
19 change that, of course, you have in your packet. But I
20 also want to emphasize the urgency here. This is unlike
21 the broader scope of rule review that you guys are
22 undertaking. That's very much needed.

23 I agree with everyone else's comments. This is
24 a discreet issue that doesn't need to wait for a year, a
25 year plus analysis.

1 To give you some of the background -- and
2 particularly for Commissioner Kleinschmidt, this may be
3 for your benefit because I don't think you were able to
4 attend the October and December meetings that were held at
5 the end of last year, 2021. Whereas, I know Commissioner
6 McNabb and Chairman Pate were there.

7 To give you some of the background, TGA is a
8 special association that represents kennel owners,
9 Greyhound owners, breeders, trainers in Texas. It's
10 charged under statute with special rights and
11 responsibilities. It is an entity that is baked into the
12 Texas Racing Act.

13 Amongst those responsibilities that the Texas
14 Racing Act puts on the TGA is the receipt of monies from
15 wagers made on interstate, cross-species simulcast at
16 Texas horse tracks. So when someone goes to a Texas horse
17 track and wagers on a greyhound race that's occurring
18 outside of Texas, some of those funds from those wagers go
19 to the TGA to hold in trust. And the statute provides
20 that those funds are to be used as purses at racetracks in
21 this state.

22 And that's the extent of the statutory
23 prescription around the use of the funds. Again, purses
24 at racetracks in this state. So, back in -- and forgive
25 me. A step back -- as I think you all know, there's been

1 no live greyhound racing that's occurred in Texas since
2 February of 2020.

3 There are race dates set for August of 2020, as
4 well as August of 2021. Those have come and gone. The
5 races didn't occur. The race dates set for two weeks from
6 now at the end of August -- those races will not occur.

7 In light of the fact that no races have
8 occurred, the TGA, on behalf of all the kennel owners,
9 greyhound owners, trainers, and breeders that it
10 represents, proposed that the portion of funds that have
11 accumulated in this interstate, cross-species simulcast
12 escrow account since the last race, February 2020 -- so,
13 since February 2020 and beyond -- that those portions of
14 funds be allocated as supplemental purses to the greyhound
15 owners and kennel owners that participated in the last
16 live race that was run.

17 The statute doesn't prohibit supplemental
18 purses. The statute only prescribes that the funds are to
19 be used for purses at races in the state. That proposal
20 was made by TGA back in September of last year.

21 The Commission considered it, talked about it
22 at their October meeting. It was postponed at that time.

23 Commissioner Miller was at that meeting. He said that in
24 light of the role of the Agency, to support the industry,
25 that he really wanted to see from the TGA a specific

1 allocation -- a proposal that had a specific allocation of
2 those funds.

3 So, following up on that, TGA refined its
4 proposal and specified that it believed that it would be
5 most beneficial to keep on life support the greyhound --
6 these poor folks in the greyhound industry -- these kennel
7 owners, these dog owners, these trainers and breeders --
8 keep on life support with an allocation that would divide
9 half of the total funds to the kennel owners that
10 participated in the last race, and half of the total funds
11 to the greyhound owners that participated in the last
12 race.

13 That was discussed at the Commission's December
14 meeting and at that time, it was again postponed while we
15 wait on the Attorney General's Office Opinion Committee to
16 issue an opinion about their view of the statute and rules
17 here. The opinion -- you guys may all know this, and so,
18 forgive me if I'm just telling you what you already
19 know -- but the Opinion Committee deadline for that
20 opinion was May 31st.

21 On May 31st, the chair of the Opinion Committee
22 sent a letter to the Commission that said, Sorry, but we
23 blew the deadline. We'll get you an opinion as soon as
24 possible. And we're almost two and a half months later
25 here, still no opinion from the AG's Office.

1 So in the meantime, TGA proposes that this rule
2 change be made, not to bind anyone's hands for the future
3 and in no way to lock down future Commission decision
4 making -- or for that matter, to require the allocation
5 that TGA support. But just to give clarity in the rules
6 around the principles of fairness that such an allocation
7 might advance.

8 And namely, because what we're dealing with
9 here -- the practical matter is the core of the greyhound
10 industry dying before our eyes while no live racing is
11 occurring. What is a mechanism for supporting that with
12 this pot of funds that can be implemented as a practical
13 matter and as fair as an equitable matter?

14 And they believe -- TGA's board supports this.
15 TGA's membership supports this. They believe that
16 spreading it 50/50 to the kennel owners and the greyhound
17 owners that participated in the last race is a fair
18 mechanism.

19 And so this rule change that we're proposing
20 would only have that level of specificity. Again, it
21 wouldn't bind the Commission in any way. It uses the word
22 "may" intentionally.

23 The TGA may propose such an allocation. The
24 Commission may approve such an allocation. The goal here
25 is simply just to make a bad situation slightly less worse

1 ultimately.

2 That's the ultimate goal. The short-term goal
3 is to move the ball a little bit forward while --
4 unfortunately, I suppose, while we wait on the AG's
5 Opinion Committee to give their analysis.

6 And really, it would be a very, very small step
7 in the right direction from TGA's point of view in which
8 we could take a larger step. But today, all we have in
9 front of us is this opportunity for a small step.

10 What we'd like to see, obviously, is the
11 Chairman or the Rules Committee -- whatever mechanism is
12 appropriate -- propose this rule change to the full
13 Commission as soon as possible. And ultimately,
14 obviously, we'll appear before the full Commission and
15 discuss it then. But we'd like to see it become part of
16 the rules.

17 In terms of the relationship with this rule
18 change to your overall broader project of looking at all
19 the rules of racing, this can be baked into that. I mean,
20 this change can be implemented. And, of course, there are
21 lots of rules in racing dealing with greyhound racing, as
22 well, that arguably need tweaks. But that's not on the
23 table today.

24 CHAIRMAN PATE: All right.

25 MR. VICKERS: With that, I mean, I'm here for

1 any questions about the status of things, about the
2 underlying statutory provisions, the current rule
3 language, the proposed rule language.

4 DR. McNABB: Okay. Virginia, can you speak to
5 the status of our question to the OAG?

6 MS. FIELDS: Yes, Commissioner. Mr. Vickers is
7 right. There's not been a response from the OAG, and no
8 real timeline on when to expect that response.

9 CHAIRMAN PATE: But just for clarity, the
10 answer to the question posed to the Attorney General would
11 be determinative of whether or not under our existing
12 statute we can make the distribution, which they're
13 requesting, correct?

14 MS. FIELDS: Yes, yes.

15 CHAIRMAN PATE: Okay.

16 MR. VICKERS: And Commissioner Pate, I mean,
17 obviously, I think, as you've heard from me in the past
18 and as you'll go, and as we've written in communications
19 to Commission and to AG's Office, we strongly believe that
20 the existing statutory authority does that.

21 Regardless, though, this rule, again, isn't
22 made to tie to the Commission's hands -- this proposal.
23 No, it's made to take us a little half step further while
24 we wait, see what happens. Then, we won't need -- if
25 there's any argument that the statute allows it, but the

1 current existing rule language is ambiguous or
2 prohibitory, this fixes the current rule language
3 argument.

4 I don't believe that's the case. I believe the
5 current language allows --

6 CHAIRMAN PATE: It fixes the rule, but it
7 doesn't fix the statute, does it?

8 MR. VICKERS: I'm sorry?

9 CHAIRMAN PATE: It fixes the rule, but doesn't
10 fix the statute.

11 MR. VICKERS: It doesn't change the statute, of
12 course. Yes.

13 CHAIRMAN PATE: Okay.

14 MR. VICKERS: But assuming the AG's Opinion
15 Committee says it --

16 CHAIRMAN PATE: Can I --

17 MR. VICKERS: -- rules one step further down
18 the road.

19 CHAIRMAN PATE: Can I ask a broader question?
20 How many states is there active dog racing going on now?

21 MR. VICKERS: To my knowledge --

22 FEMALE VOICE: Three. I mean, two. I'm sorry.

23 CHAIRMAN PATE: What are they?

24 FEMALE VOICE: Two states.

25 MR. VICKERS: I believe it's Florida and West

1 Virginia, but you guys correct me.

2 MALE VOICE: Arkansas and West Virginia.

3 MR. VICKERS: Florida is --

4 MALE VOICE: Arkansas will close probably
5 about -- at least, by the end of this year.

6 CHAIRMAN PATE: Closed completely --

7 MR. VICKERS: Will close.

8 CHAIRMAN PATE: And then --

9 MALE VOICE: Will be one state left.

10 CHAIRMAN PATE: And it'll be Florida?

11 MALE VOICE: No, it will be West Virginia.

12 CHAIRMAN PATE: West Virginia?

13 MALE VOICE: Yes, sir. Florida is completely
14 closed.

15 CHAIRMAN PATE: Does your client, the Texas
16 Greyhound Association -- do they anticipate greyhound
17 racing ever occurring again in Texas?

18 MR. VICKERS: They're hopeful. I mean --

19 CHAIRMAN PATE: I mean, what are they -- are
20 they looking for a change in PETA? Or are they -- you
21 know, the public perception of dog racing? Or is there
22 something that's prohibiting it that's market-wide?

23 Is there something -- I mean, what's the
24 reason?

25 MR. VICKERS: Well, it's a little bit beyond my

1 purview, but my understanding is the fundamental reason is
2 the condition of the tracks in Texas aren't running and
3 that the racetrack associations aren't interested in --
4 don't see it as economically worthwhile to do that. Now,
5 but I'm not with the racetrack associations, so I hate to
6 put words in their mouth.

7 But the fact of the matter is that there are
8 members of the Texas Greyhound Association that were ready
9 to run in, for example, August 2021 -- a year ago. A
10 gentleman named Mr. John Dalton testified in front of the
11 Commission last December, and he said that he had, at that
12 time, about 60 greyhounds on his farm near Elgin.

13 He's been in the industry for 30 years. He was
14 ready for August 2021. But that meet didn't happen, and
15 he had to lay off staff. He had to close down his actual
16 training program -- the training track that he has at his
17 farm there -- because of the operational costs there.

18 And so, I guess, in answer to your question --
19 does the TGA expect there to be racing? I don't know. I
20 suspect that different members of the TGA and different
21 board members may have slightly different views.

22 I think everybody is pessimistic --

23 CHAIRMAN PATE: Yeah.

24 MR. VICKERS: -- frankly.

25 CHAIRMAN PATE: I'd appreciate it if you would

1 pass that question up to your board and ask for the board
2 to really send something to the Commission on whether they
3 think there's foreseeable viability. And also, what the
4 hindrances are.

5 The other thing I wanted to ask is, you heard
6 some of the comments from Ms. Rountree and Ms. Sheffield
7 concerning the horse tracks. And there was some comment
8 concerning hopefully enabling creation of some rules that
9 would -- and the way I'm reading it, Marsha, I may be
10 wrong -- the way I heard you kind of say, are there some
11 standards out there we ought to have to make sure the
12 tracks under a certain condition and so forth?

13 I mean, is your organization going to be
14 proposing some rules like that as we do this rule review
15 concerning the dog tracks themselves and getting them race
16 ready, or dealing with their license or something?

17 MR. VICKERS: Yeah, it's possible, but TGA has
18 to operate through votes of its board. It's the way its
19 bylaws are set up. It's structurally a nonprofit
20 corporation under Texas Business Organizations Code. And
21 then, of course, as I mentioned, has these
22 responsibilities under Texas Racing Act.

23 So, today, I don't know because it will -- I
24 can't make any decisions. The TGA board has to make
25 decisions about whether they want to allocate resources to

1 trying to be deeply involved -- frankly, hire attorneys to
2 work on those rules. And it's sort of related to the
3 systemic problem of all these individual TGA members that
4 have hemorrhaged money keeping greyhounds fed while no
5 racing's going on.

6 You know, TGA doesn't have unlimited
7 administrative funds to -- so, I don't know. I know that,
8 from talking to some TGA board members, there's certainly
9 an interest in that. Whether or not there'll be the
10 resources to do a lot of substantial work on that, I'm not
11 sure.

12 CHAIRMAN PATE: Okay. Well, I would like to
13 know something about, at least, what they believe to be
14 the future of dog racing generally, and particularly, in
15 Texas. I think it'd be helpful as we go down the
16 rulemaking trail.

17 MR. VICKERS: Yeah, fair enough. Fair enough.

18 MR. KLEINSCHMIDT: Yes, I think we've possibly
19 got one more complication to the issue, also. And then, I
20 think very recently, the National Greyhound Association
21 has made a request for the Commission to consider
22 disbursement of some of those funds to nonresident owners.

23 And I know you probably haven't had an
24 opportunity to look at that kind of an issue. And I know
25 it probably didn't go to the AG's Office, either.

1 MR. VICKERS: Yeah.

2 MR. KLEINSCHMIDT: And so, I don't know.
3 That's sort of new matter for me. And I don't mean to put
4 anybody under the microscope, because it's difficult to
5 reach out there and giving other than a thought, as
6 opposed to an opinion that's definitive on that issue.

7 But we do have that request, right?

8 MS. FIELDS: And as part of the AG's request,
9 they ask other parties that are interested in the decision
10 making by the Committee to submit any information or
11 opinions relative to the question before the AG. And I do
12 believe that the national did so because part of the
13 AG's --

14 MR. KLEINSCHMIDT: Okay.

15 MS. FIELDS: -- conglomerate in the overall
16 decision should be.

17 MR. KLEINSCHMIDT: Good. Hopefully.

18 MR. VICKERS: Well, and let me say this about
19 that. I mean, as you guys know, in many different
20 respects, the Texas Racing Act focuses on the health of
21 racing -- horseracing and greyhound racing -- in Texas.
22 And to the extent that the NGA has a different view of how
23 these funds should be used -- in the respect that they
24 have no role here.

25 And the statute specifies that the TGA is the

1 authority that holds these monies. The current rule
2 specifies that the TGA is the authority that is to make
3 the allocation proposal to the Commission for how these
4 funds are to be distributed. And then, of course, the
5 Commission can approve or disapprove.

6 MR. KLEINSCHMIDT: It seems to have a
7 Texas-bred approach, as opposed to nonresident.

8 MR. VICKERS: Absolutely. And not only that,
9 but here's a key point that has been hammered at previous
10 Commission meetings, but it's worth emphasizing again.
11 The Texas Racing Act and the current Texas Rules of Racing
12 require that there be Texas-bred greyhounds that
13 participate in greyhound racing here.

14 So the rules themselves require 20 percent of
15 each kennel's greyhounds to be Texas-bred greyhounds,
16 meaning that they have to be whelped in Texas and reside
17 in Texas for, I believe, the first six months of their
18 life, and be owned by a -- initially, at this time -- be
19 owned by a person who has been a Texas resident for at
20 least three years.

21 This is all showing the emphasis on the health
22 of the Texas racing industry, and not necessarily others
23 who participate -- and more specifically, Texas residents
24 within the Texas racing industry and not, more broadly,
25 those who sometimes participate in the Texas racing

1 industry. I mean, the valuable contributions that they
2 make -- not to be belittled -- but that is not the focus
3 of the Texas Racing Act.

4 MR. KLEINSCHMIDT: Well, I suspect if we look
5 at the legislative intent of any of the -- the background
6 work, too, you're not going to see any intent to probably
7 benefit a non Texas entity.

8 MR. VICKERS: You might say that about a lot of
9 statutes that serve Texas.

10 DR. McNABB: Do we have -- I don't want to cut
11 you off, but I think at this time, everything that you've
12 brought -- we see you. We value what you're bringing.

13 This is not the body that approves it, right?
14 We're working on things.

15 MR. VICKERS: Of course.

16 DR. McNABB: I think that you make valuable
17 points. But also, until we have the OAG to tell us if we,
18 indeed, have the authority to disburse those funds -- and
19 then, plus, with an objection from the National Greyhound
20 Association -- I'd have to look at Counsel.

21 It feels to me like I'm stuck on high dead
22 center. But tell me the way forward. Number one, we have
23 to wait for OAG before we can disburse funds?

24 MS. FIELDS: At least, that was the
25 Commission's last decision was to table to matter -- the

1 rule proposal until such time as OAG made a decision. So
2 absent a decision by the Commission that would go
3 otherwise on it, we can present the rule proposal on the
4 Agenda and move forward that way. But technically, the
5 last decision that was made by the Commission was to table
6 it and wait on the OAG opinion. So --

7 MR. VICKERS: And I want to emphasize that
8 there is a distinction between the allocation proposal
9 that TGA has made back in September of last year, and
10 then, refined in response to Commissioner Miller's request
11 for the [inaudible] refinement. That refinement was made
12 in November of last year.

13 There's a distinction between the allocation
14 proposal and this rule amendment proposal. And the reason
15 that this rule amendment proposal is written with what
16 I'll call soft language -- the maze -- is precisely to
17 avoid tying the Commission's hands.

18 This rule proposal could move forward, could
19 get adopted by the Commission even if the AG's Opinion
20 Committee continues to, unfortunately, not produce the
21 opinion that has been requested. And nonetheless, the
22 allocation -- the actual allocation in the allocation
23 proposal would not have to be approved by the Commission.

24 This rule proposal could be in place. This
25 doesn't bind the Commission's hand to actually approve the

1 allocation. We could wait on the opinion from the AG's
2 Opinion Committee. If the AG's Opinion Committee were to
3 say the statute flatly prohibits this, I suspect that the
4 Commission would not approve TGA's allocation proposal.

5 Nonetheless, the rule language here could be on
6 the rule books. We may, at that time, want to go forward
7 and maybe clean it up a little bit to reflect what the
8 AG's Opinion Committee says.

9 But because we're at the -- I mean, time is of
10 the essence here in the sense of this relates to what Mr.
11 Dalton, the breeder and dog owner, mentioned before -- and
12 others have mentioned. They've all hemorrhaged money.
13 They've all had to lay off staff.

14 They are struggling to survive. Several folks
15 that I've talked to anecdotally are basically like, I'm
16 done. I'm done in the greyhound industry. They don't
17 necessarily want to be. In fact, they very much don't.

18 CHAIRMAN PATE: But what you're proposing isn't
19 going to get any money distributed until the Attorney
20 General's opinion comes out.

21 MR. VICKERS: Absolutely, sir.

22 CHAIRMAN PATE: Okay.

23 MR. VICKERS: Absolutely. And so -- but the
24 reason that, nonetheless, we're proposing it now, and
25 nonetheless, we'd like the Commission to act on it sooner

1 rather than later -- as soon as possible -- is because it
2 provides clarification in the rule about what's fair,
3 right?

4 And so, it just gives us, TGA -- as well as any
5 other stakeholders out there -- notice, basically, that an
6 allocation -- and here's the key sentence kind of buried
7 in the middle -- sorry to bury the lede, but -- that such
8 a proposal must specify that one-half of the purse money
9 subject to the proposal shall be allocated among the
10 kennel owners, and the other half shall be allocated among
11 the greyhound owners.

12 CHAIRMAN PATE: See, I don't know if that's
13 fair or not. I mean, you're asking the Commission to make
14 a determination of a rule that says that's fair. I don't
15 know if it's fair.

16 MR. VICKERS: Well, it is always the case -- it
17 has always been the case since the original, the current
18 rule language was adopted in the past -- that the
19 Commission would make a decision about whether or not they
20 would approve TGA's proposed allocation.

21 In the past, what TGA has done with these funds
22 has proposed to allocate these funds and what the
23 Commission has approved. It's like, okay, take these
24 cross-species, interstate simulcast funds and assign them
25 to X, Y, or Z race track -- or a third, third, third --

1 for them to be used as part of the purse pot for future
2 races. And that worked well because there were future
3 races occurring.

4 Now, we're in this unfortunately long -- now
5 two year plus -- holding period where whether or not there
6 will be future races is uncertain at best. And thus, that
7 sort of proposal doesn't work. It doesn't make sense.

8 The only alternative to a proposal along the
9 nature of what TGA has here is -- there's only two
10 alternatives. One, wait and pray that racing occurs at a
11 racetrack. If that were to actually happen -- a greyhound
12 racetrack were to get in shape to run, TGA would make
13 another allocation proposal and say, Okay -- well,
14 probably the TGA board would say, Okay, well, put all the
15 money towards that race.

16 There will be purse money for that race. When
17 will that be? We don't know.

18 So the other option besides TGA's ultimate
19 allocation proposal is just have that money sit in escrow
20 for -- what -- in perpetuity, I suppose. I mean --

21 CHAIRMAN PATE: Or the legislature -- if we had
22 some input on what the future of dog racing is, the
23 legislature could change the statute. I mean, they could
24 do away with it. I mean, I don't know.

25 MR. VICKERS: Yes, sir. Yeah. No, and I --

1 CHAIRMAN PATE: I mean, that's actually a
2 legislative fix that we need. We don't need to have
3 monies accumulating in accounts for things that aren't
4 going to occur.

5 MR. VICKERS: Agree. And I suspect the
6 legislature may look at this. But, you know, who can
7 control -- as Commissioner Kleinschmidt knows -- I mean,
8 we're talking to 181 different people plus the Governor's
9 Office. I mean --

10 MR. KLEINSCHMIDT: Can somebody remind how much
11 money we're talking about?

12 CHAIRMAN PATE: A couple million.

13 DR. McNABB: A couple million.

14 MR. KLEINSCHMIDT: A couple million? Okay.

15 MR. VICKERS: Yes, sir. I believe as of --
16 well, is it as of January, I think it was -- or rather,
17 end of December, it was at about \$1.3 million.

18 MR. KLEINSCHMIDT: Okay.

19 MR. VICKERS: My numbers may be a little off,
20 though. But --

21 DR. McNABB: We do have -- I don't want to cut
22 you off, but also, Mr. Watt has asked to speak. But I
23 don't want to cut you off. Are you good?

24 MR. VICKERS: I mean, again, I just want to
25 emphasize the urgency here because -- and Commissioner

1 Pate's point -- Commissioner McNabb, in response to your
2 point, this does not actually get the money -- this rule
3 change would not actually get what TGA ultimately wants,
4 which is the allocation of this money --

5 DR. McNABB: Right.

6 MR. VICKERS: -- to the kennel owners and dog
7 owners that participate.

8 But it does take a small step forward by
9 clarifying the rule language that if the AG's Opinion
10 Committee says, Statute, thumbs up. No problem there,
11 then, the rule will clearly say, No problem. And we'll
12 have the specificity about some level of fairness, which
13 the Commission necessarily is going to have to opine a
14 little bit about what may be fair and what's in the best
15 interest with the advantage of having the insight of the
16 TGA, an entity that is set up to represent the interests
17 of those that are the main stakeholders -- maybe all the
18 real stakeholders here, for what that's worth.

19 DR. McNABB: All right. Thank you.

20 MS. FIELDS: And if I may, everyone -- and this
21 is Virginia Fields, General Counsel -- we might work on
22 tweaking the proposal, just because the AG tends to refer
23 within the proposed language the old Act section, which is
24 6.091, and that would be referred to the Chapter 2028.
25 But that would need to be tweaked before any actual

1 proposal of the rule.

2 DR. McNABB: We appreciate this coming forward
3 and certainly it's worthy of giving a very solid look at
4 how does this fit into what we need to as a rules
5 committee. A lot of it is spinning on the head of a pin.

6 MS. COOK: And I think a process step that's
7 important to clarify is just because we're taking 18
8 months to review all the rules, specific proposals are
9 absolutely welcome at the meetings. And there will be,
10 I'm certain, other instances where we want to fix the
11 existing rules well before we do a full repeal and
12 replace.

13 So, your request to have this looked at is
14 absolutely appropriate from anybody because there will
15 probably be a couple of rules that the Commission staff is
16 also looking at to just adjust to make it better as we go
17 forward, so you don't have to wait until the end of the
18 rule review. So, I wanted to be clear about that.

19 So anyone is welcome to submit a rule proposal
20 to bring to the Rules Committee. And we've actually got
21 another one already submitted for the next meeting from
22 another party. So I just want to make that clear that
23 you're not stopped from asking to change a specific rule
24 in the existing rules while we're going through this
25 review.

1 Thanks.

2 DR. McNABB: Okay. Thank you very much.

3 Mr. Paul Watt? Thank you for coming today.

4 MR. WATT: Good morning. I'm Paul Watt. Been
5 around way too long. But I just thought I could explain
6 maybe to you all what's happened in the dog business, not
7 just in Texas, but in the United States.

8 I've been doing this 50 years. I've been a
9 kennel operator since '71. I've always had my own farm.
10 Bred and raised 100 to 150 dogs a year.

11 I'm retired now, thank goodness. But the dog
12 business as of now -- we have three tracks running. West
13 Memphis will close the end of December. It will be a full
14 casino, which will leave us two in West Virginia.

15 And they own the other one in West Virginia,
16 which I'm sure it will follow pretty quick. It's a casino
17 anyway.

18 But everybody has quit raising dogs. To run a
19 short meet like we've been running the last few years, it
20 takes 600 dogs to open that dog track because we need
21 about 350 active. And that's for a very short meet. The
22 dogs are not there.

23 The people that are raising dogs now -- a few
24 of the kennel operators in Kansas and West Virginia will
25 keep on until they close, but they own kennels. So

1 they're going to run their own dogs.

2 I, personally, from experience -- and
3 realistically, you will never see another dog race in
4 Texas. Once this is closed, it's done. You also have the
5 GREY2K problem with the fewer tracks you have, they don't
6 have but just that to concentrate on.

7 And when we get down to two tracks, they're not
8 going to stay open long. There won't be enough dogs. And
9 it's just a fact.

10 Nobody in Texas is going to spend \$25 million
11 to build a new dog track. It's not feasible. It's not --
12 I just wanted to get up and kind of explain the realistic
13 part.

14 And the dogs are not here. I mean, we can --
15 instead of having maybe 30 breedings a month -- 35, we're
16 down to maybe one every other month. And they're going to
17 raise them and send them to Tijuana.

18 So you can't get a dog -- you cannot raise a
19 dog -- if I wanted to raise a litter of dogs, you're not
20 going to get them in at those other two tracks because
21 they're going to own all their own dogs. That's just
22 business.

23 But I guess -- and if you've got any questions,
24 I'm been coming here 30 years and this is first time I've
25 ever talked. I just thought it would be nice as a dog

1 person to explain the realistic -- what's happening here.

2 And we have no problem with the horse tracks
3 doing what they do. It's -- our business is just -- it's
4 gone.

5 DR. McNABB: Well, we do appreciate your
6 insight, and thank you for everything you've done. Thank
7 you, sir.

8 Okay. Are there any other folks? Let me get
9 back on my schedule. Okay. All right.

10 For public comment, at this time we will now
11 welcome public comment on these matters. If you haven't
12 turned in your comment card, please do so at any time.

13 Here we are. We're all ears. But you'll be
14 seeing us again and again and again over the next 18
15 months, and we're looking forward to it. Anyone else have
16 anything?

17 (No response.)

18 DR. McNABB: Okay. The next opportunity for
19 public comment is the Texas Racing Commission meeting
20 scheduled for Wednesday, August 24, 2022, at 10:00 a.m.
21 here in the Capitol Extension Room E2.026. Details will
22 be published on our Agency website prior to the meeting.

23 We will also have another public meeting on
24 rules review to be scheduled at some point during the week
25 of September 12th. Thank you for attending today's

1 meeting.

2 That's the 13th, is that meeting?

3 MS. COOK: Yes, ma'am. The next meeting is at
4 the Race Barn in Fredericksburg, Texas, hosted by the
5 lovely Sally Briggs. Thank you, Sally. It's starting at
6 4:00 p.m. for those folks who work during the day so that
7 we can have public comment and conversation in a more
8 evening, more informal setting on the rules.

9 DR. McNABB: Okay. Before I close,
10 Commissioner Kleinschmidt?

11 MR. KLEINSCHMIDT: No comments. Thank you.

12 DR. McNABB: Chairman?

13 CHAIRMAN PATE: Thank you for taking over this
14 job, Commissioner McNabb. I appreciate it.

15 DR. McNABB: Well, thank you. I do my best.
16 Okay. The time is now 1143 hours. With all business
17 concluded, we are now adjourned. Thank you very much.

18 (Whereupon, at 11:43 a.m., the meeting was
19 adjourned.)

20 I certify that the foregoing is a correct
21 transcript from the electronic sound recording of the
22 proceedings in the above-entitled matter.

23 /s/ Laurel H. Stoddard

10/26/2022

24 Certified Electronic Transcriber

Date

25 No. CET-120