

VIRGINIA RACING COMMISSION

October 2, 2018

STATE CORPORATION COMMISSION
TYLER BUILDING
COURTROOM A
1300 EAST MAIN STREET
RICHMOND, VA 23219

Commencing at 10:00 a.m.

COMMISSION MEMBERS:

D.G. Van Clief, Jr., Chairman
J. Sargeant Reynolds, Jr.
I. Clinton Miller

COMMISSION STAFF:

David S. Lermond, Jr., Executive Secretary
Kimberly C. Mackey, Office Administrator
Rhonda Davis, Pari-Mutuel Wagering and Licensing
Coordinator

ATTORNEY GENERAL'S OFFICE:

Robert N. Drewry, Esquire

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1 CHAIRMAN VAN CLIEF: Good morning, everybody.
2 It's ten o'clock and I would like to call to order
3 this meeting of the Virginia Racing Commission. I
4 would note initially that we have three out of four
5 serving commissioners present. That does constitute
6 a quorum, but I would further note that any action
7 we take today will require a unanimous vote of the
8 three of us for passage. I'm also going to make a
9 couple of changes in the order of our agenda and
10 I'll need a motion to do this.

11 I'd like to move the public comment period up in
12 advance of our new business so that we can be
13 informed by any commentary that any of you might
14 have before we get to the action items, and
15 particularly to the adoption of the Final Emergency
16 Regulations today, which is on our agenda
17 as new business, Item C.

18 I'm also anticipating at this point a closed
19 session which is not on the agenda, but I anticipate
20 we'll approve minutes, entertain our reports from
21 the Virginia Equine Alliance, as well as the
22 Virginia Gold Cup, and then in advance of
23 considering adoption of the Emergency Regulations
24 for HHR, we will go into a closed session. So those
25 are the changes we're anticipating.

1 with all of that, I call the meeting to order
2 and would ask for an approval motion for our July 31
3 meeting minutes or amendments, as the case may be.

4 COMMISSIONER MILLER: First of all, Mr.
5 Chairman, I move that we adopt the amendment to the
6 agenda.

7 COMMISSIONER REYNOLDS: I second.

8 CHAIRMAN VAN CLIEF: We have a motion and a
9 second. All in favor, please signify by saying aye.

10 NOTE: The Commission votes aye.

11 CHAIRMAN VAN CLIEF: That passes. Thank you
12 very much, sir. Now we have the approval of the
13 July 31 minutes. Move to approve any amendments.

14 COMMISSIONER REYNOLDS: Yes, sir.

15 COMMISSIONER MILLER: Second.

16 CHAIRMAN VAN CLIEF: All in favor of approval,
17 signify by saying aye.

18 NOTE: The Commission votes aye.

19 CHAIRMAN VAN CLIEF: Thank you very much. The
20 minutes are approved as is the change in agenda
21 order. That takes us to new business.

22 Mr. Hannum, I believe we have a -- Okay. We do
23 have a racing meeting in progress and we'd like to
24 tap in and see how things are going in Woodstock.

25 Yes. I'm sorry. I'm contradicting my own

1 change of order. Let's go ahead as I indicated and
2 do the public comment period right now. So if
3 anybody has got comments they'd like to make on any
4 business contemplated today, please put your hand in
5 the air, let us know, state your full name and we
6 will go on the record. We'd ask that you limit
7 comments to five minutes max. Thank you very much.

8 MR. HETZLER: Good morning, Commissioners. My
9 name is Josh Hetzler. I'm legislative counsel for
10 Family Foundation of Virginia. I'm here today to
11 bring to the attention of the Commission members a
12 matter of critical importance as we move forward and
13 decide on these regulations for historical horse
14 racing.

15 My comments are in regards to the nature of
16 pari-mutuel wagering itself, stressing the
17 importance of approving only those terminals which
18 are actually being considered pari-mutuel.

19 Historically and universally, pari-mutuel
20 wagering is distinguished by its three critical
21 components; all bettors who bet on a common event,
22 all bettors are sequestered in a common wagering
23 pool and all winning bettors are paid a common
24 price. The Virginia statutory definition of
25 pari-mutuel wagering is reflective of this scheme.

1 In consulting with leading experts in this
2 field, it is evident that the current providers of
3 historical racing terminals, however, do not follow
4 these rules for pari-mutuel wagering.

5 Instead, they practice an identical methodology
6 to a Bingo card or class two slot machine gambling.
7 Their betters are virtually all on different events
8 and different pools in a race to reach a requirement
9 of three winners and three races or player hitting
10 his so-called trifecta before any of the other
11 players actually win.

12 It's played first to win just like a Bingo game
13 and consolation prizes of one or two winners, all of
14 which have absolutely nothing to do with pari-mutuel
15 processes as practiced live and simulcast racing.

16 The consolation prize amounts are purely
17 arbitrary and have no connection to pari-mutuel pool
18 divisions. Their wagering has no connection to the
19 underlying pari-mutuel pools of their index-stored
20 races, so they're actually creating a type of
21 non-pari-mutuel pools that were never used in the
22 past, nor do they currently exist to be used on any
23 underlying live race.

24 The Commission should not overlook that the
25 original purveyor of historical racing lost its

1 patents in court because the material was ruled not
2 patentable since it's the same system, operating
3 system, for that of a class two slot machine that
4 last had been in the public domain for decades.

5 Race tracks are licensed to conduct pari-mutuel
6 wagering on its races and simulcast races; thus, if
7 the current providers of historical horse racing
8 terminals want to conduct wagering on historical
9 horse racing in a manner that it is currently
10 offering, the Racing Commission should deny those
11 requests because they're not in fact pari-mutuel.

12 The Commission should further consider that to
13 the extent that the current historical horse racing
14 terminals are not actually pari-mutuel, that any
15 action to approve such non-authorized terminal for
16 use in Virginia could be subject to a legal
17 challenge.

18 I do have some information to provide you all on
19 that, but I hope that the Commission will consider
20 these things as it looks over the regulations today.
21 I'm happy to provide these.

22 CHAIRMAN VAN CLIEF: Thank you, Mr. Hetzler. Is
23 there anyone else who would like to make a
24 statement? In the back.

25 MR. BERMAN: Good morning. For the record, my

1 name is Tad Berman. Today, I would like to address
2 the matter of live race days and purse money that
3 supports it. For Virginia to be able to grow live
4 race days, we need a critical supply of money to
5 only be spent on live racing here in the
6 Commonwealth. For the past four years since the VEA
7 was created, I've seen a number of things that have
8 happened regarding the use of that money in ways I
9 don't believe it was ever intended to be used for.

10 To begin with, we have spent millions of dollars
11 in purse money to run live race days in Maryland and
12 west Virginia. Virginia purse money was never meant
13 to be used to support live racing in another state.

14 I didn't cast my vote in 1988 to approve
15 pari-mutuel wagering or horse racing with the
16 knowledge that I would have to drive to Maryland to
17 see it. Now that racing will be returning to
18 Colonial Downs next year, this must stop immediately
19 and these funds need to be used to support live
20 racing here in the Commonwealth the way it was
21 intended to be.

22 Even more disturbing to me is the Virginia
23 Certified program. This program is nothing more
24 than a way for the VTA to pad the pockets of their
25 membership at the expense of the horsemen's purse

1 account. If you look at it from a cost benefit
2 standpoint, this benefit will cost us a fortune for
3 years to come.

4 At last count, we were already told there were
5 800 horses that had been certified and that number
6 is continuing to grow daily. The way this program
7 is structured, after the foals have satisfied their
8 requirement to reside in Virginia for six months,
9 they have absolutely no motivation to stay here or
10 even to ever come back to Virginia again for any
11 reason because they can collect their bonus checks
12 in as many as six other states in the Mid-Atlantic
13 region.

14 Depending on the horse, that means we can be
15 writing bonus checks to some of these horses for
16 three, four or even five years later down the road.

17 Worst of all, the moneys being used to pay
18 bonuses to these out-of-state horses competing at
19 out-of-state tracks is all coming out of the
20 Virginia horsemen's purse account.

21 At the end of the day, all this program amounts
22 to is what I like to call horsy welfare. It does
23 nothing to promote the breeding and racing business
24 in Virginia. What it does do is drain the purse
25 account for the exclusive benefit of a small

1 minority of members of the VTA.

2 Lastly, I would like to know how much remains of
3 the money from the horseman's purse account that the
4 VA HBPA unilaterally claimed as their own in 2015.
5 That money was never intended to be at the disposal
6 of the VA HBPA so they could spend it on whatever
7 they want. It was meant to provide purses for live
8 racing here in Virginia.

9 Last time we heard Mr. Petramalo told us there
10 was still three to four million dollars in that
11 account. I would like to know how much remains of
12 that purse money and have it used to help pay purses
13 for the upcoming 15 day live race meet in 2019.

14 After all, that is how it was meant to be used
15 all along. Now that we are going to have live
16 racing returning to Virginia, using that money for
17 its intended purpose is the right and honorable
18 thing to do.

19 As we move ahead, I do not want to hear
20 complaints from the VEA or the HBPA that we don't
21 have enough purse money to run a 15 day live race
22 meet that Virginia has been promised in the newly
23 proposed rules and regulations. Any suggestion that
24 there isn't enough purse money left available to
25 accomplish that goal is simply bogus and without

1 merit.

2 As a race fan, I want to watch live racing here
3 at home, not out-of-state, and as such, I want to
4 see Virginia purse money used to support Virginia
5 racing, not Maryland or West Virginia racing.

6 All things considered, I'm tired of seeing
7 Virginia purse money used for the benefit of a
8 select few individuals, especially when you consider
9 that every penny spent that we discuss here comes
10 out of the pockets of ordinary race fans like me,
11 who expect and deserve live racing here at home,
12 instead of supporting live racing in another state
13 for the Virginia Certified program, whose only
14 purpose is to subsidize the incomes of a small
15 minority of the VEA's own membership. That is not
16 how the purse account was intended to be used and
17 this continuing pilferage of Virginia purse money
18 should cease immediately. Thank you.

19 CHAIRMAN VAN CLIEF: Thank you, Mr. Berman. Any
20 further comment? Mr. Hannum.

21 MR. HANNUM: Thank you, Commissioners. Just
22 thinking about where we have come since --

23 CHAIRMAN VAN CLIEF: Excuse me. Your name for
24 the record.

25 MR. HANNUM: Thank you. Jeb Hannum of the

1 Virginia Equine Alliance. For the Commissioners, I
2 was thinking back to December 2017 when the VEA
3 issued the Virginia horse racing industry strategic
4 planning committee report to the Racing Commission.

5 As you remember, we laid out five goals for the
6 industry, and specifically two of which were to grow
7 industry revenue and secondly to develop regionally
8 and nationally recognized racing venues. So I think
9 it's important to note that less than one year after
10 the report was issued, we are poised to have some of
11 those key goals achieved; specifically, additional
12 revenue source for the revenue through the HHR
13 machines.

14 Colonial Downs is being revitalized and will
15 host racing next year, and our new partners, the
16 Colonial Downs Group, are committed to building out
17 the full complement of SWFs.

18 There were a number of recommendations in that
19 report, but those three were particularly important
20 for the health and longterm viability of the
21 industry. So I just wanted to point that out and to
22 also say that the VEA appreciates very much the
23 speed at which the Commission developed the
24 Emergency Regulations for the HHR, and now that this
25 process is coming to an end, we look forward to the

1 year ahead working with the Commission, the Colonial
2 Downs Group and to continue to grow racing and the
3 breeding industry. So thank you very much.

4 CHAIRMAN VAN CLIEF: Thank you, Mr. Hannum.
5 Anyone else?

6 MR. STEVENS: Good morning, Mr. Chairman,
7 members of the Commission. My name is Brent
8 Stevens. I'm one of the investors and a member of
9 the Colonial Downs Group. Jeb, thank you for those
10 comments. I certainly appreciate and feel all that.

11 I want to say to all of you how honored we are
12 to be here at this moment and we truly feel the
13 enormity of what we're doing here today. I'd like
14 to thank the Virginia Racing Commission and staff
15 for all of your leadership and all of the time and
16 effort you have expended to get us to this moment.
17 We really feel like we are on the steps of
18 revitalizing an industry that is so precious and so
19 vital to the Commonwealth and of its citizenry and I
20 want you to understand that we take this very, very
21 seriously.

22 I'd like to thank Debbie Easter and all the
23 members of the Virginia Equine Alliance and say that
24 we are very much looking forward to building
25 something that we'll all be very, very proud of.

1 As the owner of Colonial Downs, we feel the
2 weight of this privilege and the enormity that it
3 puts on our shoulders to deliver and we are very,
4 very proud to be one of the leaders to bring horse
5 racing back to the Commonwealth of Virginia and we
6 will make you proud. Thank you.

7 CHAIRMAN VAN CLIEF: Thank you very much. We're
8 glad to have you here. Anyone else? No one else.
9 If not, that will conclude our public comment period
10 and now we will go to new business.

11 Mr. Hannum, would you give us a report on the
12 activities in Woodstock.

13 MR. HANNUM: Great. Thank you, Mr. Chairman.
14 So we are now in our third season at Woodstock with
15 the Shenandoah Downs harness meet. I think that the
16 meet would be noted for one thing that stands out
17 and that's rain. We've really battled Mother
18 Nature. It has been difficult on the track and for
19 the horsemen, but in true sort of spirit of the
20 harness horsemen, they've knuckled down and put on
21 some really good racing over the last three
22 weekends.

23 I've got some numbers that I'll share which are
24 interesting. Now that we're in our third season, we
25 can start to track things a little bit.

1 I've compared our opening weekend this year to
2 the corresponding weekend last year. We've adjusted
3 our schedules a little bit, so the opening weekend
4 last year and the opening weekend the first year
5 were not necessarily on the same point in the
6 calendar.

7 Saturday, September 15th, our overall handle for
8 the day was \$15,544 and that was a two percent
9 increase from the same Saturday a year ago. The
10 next Sunday, the 16th, which was a miserable, cold,
11 wet day, handle was a little over 5,000, which was
12 three percent less than the corresponding year.

13 The following weekend handle was tracked fairly
14 similarly. This past weekend when we had really a
15 nice weekend finally, we had a great day on
16 Saturday. We don't count attendance officially, but
17 I think it probably was our highest attended day if
18 not one of the most highly attended days. Handle
19 was 17,962, which was just a shade over what it was
20 the previous year.

21 Then encouragingly on the 30th of September,
22 Sunday, where handle and attendance are usually a
23 little bit lighter, we did 13,000 in handle and
24 attendance was very robust. So it was a great
25 weekend and I think reflective of the support that

1 we can get when the weather cooperates.

2 Saturday was also noted for the appearance of
3 Foiled Again. Foiled Again is a grand harness
4 horse. He's 14 years old. He's won over \$7.5
5 million and he won his 104th race on Saturday at
6 Shenandoah Downs and he's sort of doing his final
7 kind of tour of the country and we were really lucky
8 to get him to come to Shenandoah Downs.

9 So credit to the VHHA and Darryl Wood and
10 everyone for helping to make that happen. It was a
11 really exciting race and just great to see that
12 energy and enthusiasm for the highest earning
13 harness horse in history.

14 The VHHA and Mike Pearson have been working hard
15 to get government officials out to the track. Local
16 delegate Todd Gilbert has been out. We are pleased
17 that Commissioner Miller has been able to come on a
18 number of occasions and the Secretary of Agriculture
19 was out at the track a couple of weeks ago.

20 So we're looking forward to the weather
21 cooperating. We will have a full analysis of handle
22 and attendance after the meet is over and it's nice
23 because now we'll have three seasons which we can
24 track and compare to.

25 So we're still sort of finding our way out at

1 woodstock and toying with different things. I think
2 there still will need to be infrastructure
3 improvements long term. Most of the horses are in
4 temporary barns right now, which is fine when the
5 weather cooperates, but not so good with all the
6 rain we've had. So these are things that are on our
7 mind and we'll discuss and share with the Commission
8 after the meet.

9 So I'll pause there and take any questions.

10 CHAIRMAN VAN CLIEF: Any questions for
11 Mr. Hannum? Thank you very much.

12 MR. HANNUM: Thank you.

13 CHAIRMAN VAN CLIEF: I appreciate it. Next up,
14 we have been asked to approve a new simulcast
15 arrangement which is entertained by Virginia Gold
16 Cup. Could I call on their chairman, Dr. Allison,
17 for a brief report.

18 DR. ALLISON: Yes. Mr. Chairman, the Virginia
19 Gold Cup races are very honored to be invited to the
20 XpressBet platform of simulcast of our races. I
21 wanted to have it noted that our races are the first
22 sanctioned jump meet to have such an invitation.

23 I'm also pleased to say that XpressBet has an
24 exclusive arrangement with the betting shops in
25 England and Australia and we will have our races in

1 front of a lot of knowledgeable jumping fans, so
2 this is a great thing for Virginia horsemen to be in
3 such a privileged position.

4 CHAIRMAN VAN CLIEF: Thank you, Dr. Allison.
5 For my fellow commissioners, in Tab Two of your
6 handout today, you will find a letter from
7 co-chairman, Dr. Griffin, of the Gold Cup requested
8 that we approve the amount just described by Dr.
9 Allison. Before we do that, are there any questions
10 for Dr. Allison? I've got one.

11 I imagine but don't know that the greatest
12 significance in this arrangement will be the
13 exponentially expanded audience that you're going to
14 enjoy. Do you have a sense of how many horse racing
15 fans you will be going to?

16 DR. ALLISON: Well, we don't, but we do know
17 that their platform is an international one and
18 concentrates on international leads as well as
19 national.

20 CHAIRMAN VAN CLIEF: Sounds like good exposure.
21 I'm happy to make a motion we approve the simulcast
22 arrangement you've reached.

23 COMMISSIONER REYNOLDS: I'll second.

24 CHAIRMAN VAN CLIEF: All in favor, please
25 signify by saying aye.

1 NOTE: The Commission votes aye.

2 CHAIRMAN VAN CLIEF: Motion passes. Good luck
3 with your enterprise.

4 DR. ALLISON: Thank you, sir.

5 CHAIRMAN VAN CLIEF: That brings us up to the
6 adoption of Final Emergency Regulations of
7 historical horse racing. As I indicated previously,
8 we are going to go into what I hope will be a brief
9 closed session.

10 I would like to move that the Virginia Racing
11 Commission convene a closed meeting under the
12 Virginia Freedom of Information Act to discuss the
13 Regulatory Process for the purpose of obtaining
14 legal advice, a matter lawfully exempted from open
15 meeting requirements under Section 2.2-3711(a)(8) of
16 the Virginia Code.

17 The following non-members will be in attendance
18 to aid in the discussion, and those include
19 representatives from the Attorney General's office:
20 Stephen Cobb and Robert Drewry, as well as our
21 executive secretary, David Lermond. Do I have a
22 second?

23 COMMISSIONER MILLER: Second.

24 CHAIRMAN VAN CLIEF: Thank you. All in favor,
25 please signify by saying aye.

1 NOTE: The Commission votes aye.

2 CHAIRMAN VAN CLIEF: Motion carries. We're in
3 closed session. We're going to exit by the back
4 door. We have a conference room down the hall. We
5 will make it as quick as we can. Thank you.

6 NOTE: The Commission is in closed session
7 from 10:26 a.m. until 10:55 a.m.

8 CHAIRMAN VAN CLIEF: Okay, everybody. Thank you
9 for your patience. I would like to move that the
10 Virginia Racing Commission's closed meeting pursuant
11 to Section 2.2-3711(a)(8) be adjourned and that the
12 Commission return immediately to open session and;
13 WHEREAS, the Virginia Racing Commission has convened
14 a closed meeting on this date pursuant to an
15 affirmative recorded vote and in accordance with the
16 provision of the Virginia Freedom of Information
17 Act; and WHEREAS Section 2.2-3712(D) of the Code of
18 Virginia requires a certification by this Commission
19 that such closed meeting was conducted in conformity
20 with Virginia law; NOW THEREFORE, BE IT RESOLVED,
21 that the Virginia Racing Commission hereby certifies
22 that, to the best of each Commissioner's knowledge,
23 only public business matters lawfully exempted from
24 open meeting requirements by Virginia laws were
25 discussed in the closed meeting to which this

1 certification resolution applies, and only such
2 public business matters as were identified in the
3 motion convening the closed meeting were heard,
4 discussed or considered by the Virginia Racing
5 Commission.

6 I believe we need a second for that motion.

7 COMMISSIONER MILLER: I second.

8 CHAIRMAN VAN CLIEF: Thank you. I believe we
9 need a roll call vote.

10 COMMISSIONER MILLER: Aye.

11 CHAIRMAN VAN CLIEF: Commissioner Miller votes
12 aye.

13 COMMISSIONER REYNOLDS: Aye.

14 CHAIRMAN VAN CLIEF: Aye. Motion passes. Thank
15 you.

16 We are back in open session and we have one item
17 left, which is the adoption of Final Emergency
18 Regulations for historical horse racing. I'd like
19 to provide a bit of an introduction and a bit of
20 context for this.

21 When Governor Northam signed House Bill 1609
22 into law this past April 9th, it started the clock
23 ticking. We were given 180 days to develop, approve
24 and promulgate the regulations that are in front of
25 us. That 180 day clock ends on October 9th, so

1 consideration this morning is of the utmost
2 importance.

3 On that date, we were also issued an executive
4 directive from the Governor issued to this
5 Commission which has had a profound influence on
6 both the process of developing these regs and the
7 work product that we have in front of us, and that's
8 under Tab Three for my fellow commissioners in their
9 books today.

10 I'm going to take just a minute. It's a bit,
11 probably, a review for most of you in this room, but
12 what I would like to do is try to paraphrase the
13 Governor's executive directive which he issued
14 concurrent at the time he signed the bill into law.

15 I'm picking and choosing here a little bit, but
16 I think it's a good review.

17 COMMISSIONER MILLER: Mr. Chairman, I apologize.
18 I left my glasses in that room. I have to go get
19 them because I can't read.

20 CHAIRMAN VAN CLIEF: Okay.

21 MR. LERMOND: I'll get them.

22 COMMISSIONER MILLER: I'm sorry. It comes with
23 age.

24 CHAIRMAN VAN CLIEF: I'll talk a little bit and
25 then we can read again. I'd like to provide a

1 little review and some context, because again, I
2 think this directive was absolutely fundamental to
3 the whole process that we've been undergoing for the
4 last several months.

5 The Governor says, I'm hoping this legislation,
6 that being House Bill 1609, will reinvigorate the
7 horse industry and allow Thoroughbred racing to
8 return to Virginia. The signing of this legislation
9 begins an important process regarding the regulation
10 of historic horse racing.

11 Machines can allow for multiple simultaneous
12 bets and for numerous bets in a very short period of
13 time. This is a significant departure from the type
14 of pari-mutuel wagering that has taken place in
15 Virginia to date. House Bill 1609 empowers the
16 Virginia Racing Commission to craft regulations to
17 conduct historic horse racing.

18 The Administrative Process Act requires that
19 I -- this is the Governor speaking -- approve any
20 regulations promulgated by the Virginia Racing
21 Commission before they become effective.

22 He goes on to say that I hereby provide the
23 following directives to the Commission.

24 Placement of reasonable limitations on the
25 proliferation of gaming in Virginia through historic

1 horse racing machines in order to ensure the safety
2 and welfare of the people of the Commonwealth of
3 Virginia.

4 The Commission shall also consider the local
5 community opinions in determining whether to allow
6 historic horse racing in a given locality, shall
7 consider ensuring due attention is paid to gambling
8 addiction, education, prevention and treatment in
9 the conduct of historic horse racing and shall
10 consider establishment of a maximum number of
11 historic horse racing machines at a racetrack and a
12 maximum number of historic horse racing machines at
13 a satellite facility, as well as provisions related
14 to the physical size of the satellite facility.

15 The Commission and its staff shall maximize for
16 public engagement, comment and public review --
17 we've been through two full postings of the draft
18 regulations; one on this Commission's website, one
19 on a state government town hall. We've entertained
20 a full meeting of commentary from the public so
21 we've checked that box.

22 The Commission and staff shall actively engage
23 interested parties in public meetings. We did that.

24 The Commission shall work to keep the Secretaries
25 of Commerce, Trade and Finance, the office of the

1 Governor and members of the General Assembly
2 informed regarding the process.

3 I know that we've done that in addition to our
4 own secretary, Secretary of Agriculture, and I know
5 the stakeholders have been engaging in those kinds
6 of conversations as well throughout this process.

7 So we've been through an exhaustive process of
8 drafting the regulations which we're going to vote
9 on here in a few minutes.

10 COMMISSIONER REYNOLDS: Mr. Chairman?

11 CHAIRMAN VAN CLIEF: Yes.

12 COMMISSIONER REYNOLDS: would it be appropriate
13 to enter into the record the entire executive
14 directive? You paraphrased it very well, but would
15 it be appropriate to enter the entire directive from
16 the Governor into the --

17 CHAIRMAN VAN CLIEF: Yes, Commissioner. I thank
18 you for that suggestion. I think it would, and as
19 much as this has been so instrumental in the whole
20 process, so I will send this around and we'll enter
21 this into the record with today's deliberation.

22 I'd ask any of my fellow commissioners if they
23 have any comments before we go further.

24 COMMISSIONER MILLER: Mr. Chairman, if I may.
25 I'll try to keep my comments as concise as possible.

1 As you recall, we had a public hearing. We had
2 a comment period and we had additional comment and
3 an extended comment period relating to these rules
4 and regulations we're about to adopt.

5 First of all, I point out these are temporary
6 regulations and for everyone to understand these
7 regulations are temporary regulations and will only
8 be in effect for 18 months with a possible extension
9 period of six months, if necessary.

10 So we're dealing with temporary regs regarding a
11 very important industry that's hoping to implement a
12 program here in Virginia.

13 At these public hearings and in all of the
14 communications that the Commission received, at
15 least that I received, and all commissioners
16 received the same communications, the overwhelming,
17 overwhelming majority of those opinions expressed
18 addressed two particular items that are really not
19 in concert with the Governor's directives.

20 Number one, the 3,000 maximum limitation on
21 machines in Virginia. Secondly, the determination
22 that the number of machines in any particular site
23 would be governed by the population of the
24 jurisdiction in which the machines are to be placed.

25 It's my strong belief that the 3,000

1 limitation -- that we should listen to the people
2 that came for the public hearing. We should pay
3 attention more readily to the comments expressed by
4 the citizenry.

5 Now true, there are a great many people who
6 agree with the 3,000 maximum and many of those
7 people thought that 3,000 may be even too much, but
8 the overwhelming majority of the comments and
9 commentary that we received stated that the 3,000
10 limitation may inhibit the growth of the instant
11 horse racing program in Virginia.

12 They pointed out the problems that took place
13 when pari-mutuel wagering was first put into effect
14 in Virginia; that more leeway was needed at that
15 time to help implement the program of pari-mutuel
16 wagering in general in order to meet the marketplace
17 in order to justify the investment and in order to
18 encourage more investment.

19 So we've been warned by many people that the
20 3,000 limitation may be an inhibitor to the success
21 of the program. I believe that and I believe also
22 that putting a population requirement in the
23 localities where these machines are placed, to say
24 for instance Vinton, because I think they presented
25 a very strong argument.

1 Vinton voted years ago to get involved in
2 pari-mutuel wagering with the idea that Vinton was
3 going to serve the Roanoke valley, the City of
4 Roanoke, a huge market area. That made it
5 financially feasible for Vinton to do it. That made
6 it politically popular for Vinton to do it. It made
7 business sense for Vinton to do that. But to say to
8 Vinton that you can only have so many machines based
9 on the population of the town of Vinton just doesn't
10 make economic sense.

11 To say to Martinsville that you have to depend
12 on the population of Martinsville to support a
13 program with such a huge investment required doesn't
14 make sense because Martinsville, their market area
15 includes Highpoint, North Carolina, Winston-Salem,
16 North Carolina and points south for it to be an
17 appropriate program.

18 So for those reasons among others which I'm not
19 going to take the time to enunciate here today, but
20 for those reasons, I strongly oppose or disagree --
21 I have to disagree. I don't oppose. But I disagree
22 with the observations set forth in the Governor's
23 directive, but everyone has to understand that the
24 legislature in their wisdom, when they passed this
25 legislation, they put an inhibitor and

1 inhibitating -- is that a word -- a clause in the
2 legislation to require that this Commission pass
3 regulations to govern this new facet of the
4 industry. We have to adopt regulations within 180
5 days of the passage of the legislation. That 180
6 days is up Sunday, this Sunday.

7 So even though I disagree with the regulations
8 that are before us right now, if you follow Justice
9 Scalia's judicial guidance and you look at the
10 statute and its four corners and its back pages and
11 its front pages and every part of the statute, you
12 do what the statute says and nothing more.

13 The statute says that we can have, oh, yes. You
14 can have an instant horse racing program in
15 Virginia, but you must adopt a regulatory regime
16 relating to that instant horse racing within 180
17 days of the passage of this act.

18 So they put a provision in the code itself that
19 in my opinion would destroy the entire legislation
20 if we don't pass these regulations because this is
21 the only meeting we're going to have.

22 If we don't do it today, the legislation would
23 fail and Debbie Easter and Jeb Hannum and everyone
24 else and Dr. Allison would have to walk the halls of
25 the legislature again at the next sessions of the

1 General Assembly and try to implement instant horse
2 racing in Virginia and I don't think we want to go
3 there.

4 That's no fun. I can tell you from having been
5 a former legislator. It's not fun on the
6 legislative side. It's also not fun, I'm sure, on
7 the business people's side to have to go and try to
8 put the past legislation again that you thought you
9 had in your grasp.

10 For that reason, I'm wimping out. I'm going to
11 support these regulations today, voting for them
12 just the way they are, although I strongly disagree
13 with those particular provisions I pointed out.

14 But I do want to tell everyone concerned that
15 sometime soon, and it has to be within, it has to be
16 at least started, implementation has to start within
17 approximately sixty days. Well, not approximately.
18 within in sixty days of today.

19 MR. LERMOND: October 9th.

20 COMMISSIONER MILLER: Within sixty days of
21 October 9th, there has to be an implementation of
22 what we call permanent regulations relating to
23 instant horse racing in Virginia. So the process
24 will begin to adopt permanent regulations, and it's
25 my hope, although I will be tending my flock in the

1 Shenandoah valley and I won't be here, it's my hope
2 that people will come forward and try to point out
3 the problems with those two particular areas and a
4 myriad of other things. I'm not going to take the
5 time to get into the other things that I think we
6 need to address, but those two particular things;
7 that 3,000 limitation, whatever limitation.

8 I don't disagree 3,000 might be a good starting
9 point, but my problem with the 3,000 limitation is
10 that the Commission or someone doesn't have the
11 ability to modify it and to go beyond the 3,000 if
12 the market determines that that's where you should
13 go. That's my objection; not to the 3,000 to begin
14 with.

15 I sort of agree with the Governor somewhat in
16 that you ought to start slow, but you ought to have
17 the ability to grow without going back and
18 re-legislating. That was my point about that.

19 I'm hoping that in the permanent regs, people
20 will come forward and try to amend that provision
21 that if you do have a limitation, that at least you
22 have this Commission upon the meeting of certain
23 conditions and upon the meeting of things in the
24 market. If the market says you could grow and you
25 should grow in order for the industry to survive and

1 to protect the investment of the people that are
2 involved this industry, that you ought to be able to
3 do that.

4 And that the town of Vinton and Martinsville,
5 the people there need the hope that they can go out
6 to their marketplace and have a successful program
7 in their area, and you may be able to do that
8 through some changes to be made in the future
9 hopefully in the permanent regs. So with that, I'm
10 ready to vote.

11 CHAIRMAN VAN CLIEF: Thank you very much for
12 those thoughtful comments, Commissioner Miller.
13 That then brings us to the point where we need to
14 consider, and again they're under Tab Three in your
15 meeting materials, approval and adoption of the
16 Final Emergency Regulations for historical horse
17 racing as set forth in front of you.

18 I'll make a motion that we approve these
19 regulations before us.

20 COMMISSIONER REYNOLDS: I'll make a second.

21 CHAIRMAN VAN CLIEF: We have a second. Is there
22 any further discussion or are there any questions
23 from the commissioners? If there are none, then I
24 would ask you to signify your approval by saying
25 aye.

1 NOTE: The Commission votes aye.

2 CHAIRMAN VAN CLIEF: Any opposed? The
3 regulations as set forth are adopted unanimously.
4 Thank you very much.

5 One way or another, we've gotten through this
6 entire agenda. I now need a motion to -- well, I'll
7 stop there but I get ahead of myself. We do have a
8 few moments for additional commissioner comments.

9 COMMISSIONER MILLER: Mr. Chairman, I do want to
10 say one other thing. You know, we lost our counsel
11 at the very inappropriate time and right in the
12 thick of this matter relating to dealing with
13 historic horse racing and our previous counsel left
14 for greener pastures, but I want to say Robert
15 Drewry is here today with us from the Attorney
16 General's office and he's going to be the counsel
17 here going forward and I want to have the permission
18 to welcome him to the Commission. He has a
19 relationship to one of our greatest former
20 governors, Governor Mills Godwin, so he can't be all
21 bad.

22 CHAIRMAN VAN CLIEF: Thank you. We join you in
23 welcoming Mr. Drewry and it looks like we're almost
24 there. He has survived his first baptism under fire
25 with this Commission.

1 COMMISSIONER REYNOLDS: Mr. Chairman.

2 CHAIRMAN VAN CLIEF: Commissioner Reynolds.

3 COMMISSIONER REYNOLDS: Mr. Chairman, I wanted
4 to pick up on what Mr. Stevens said earlier. That
5 as a former chairman back when the racing world came
6 to an end, I thought it was a breath of fresh air to
7 see the stakeholders, the track owners making a
8 commitment to work closely with the Virginia horse
9 racing industry. From what I've seen from this
10 chair, I think they've worked well together. I
11 think they both deserve a lot of praise and
12 congratulations for getting us to this point in
13 time.

14 while the regulations aren't exactly the way I
15 would like to see them either, I think they're
16 regulations that we can utilize to get off to a
17 great start here. I think we over the next couple
18 of years can work hard together as a Commission with
19 our stakeholders to realize this new dream that we
20 have and I just want to thank you all for working so
21 hard together.

22 I want to thank the public for all of their
23 input and their comments. I do think this was a
24 true public process and procedure, one that I hope
25 that most of us can be proud of.

1 I'm sure not all of us are happy, but I think we
2 have a great opportunity to get started and I just
3 want to thank you all for all that you've done and
4 I'm looking forward to the future and I know that
5 you all will work well together, even years down the
6 road, so thank you all for your work.

7 CHAIRMAN VAN CLIEF: Thank you, Commissioner
8 Reynolds. A couple of last comments. I'd like to
9 thank all parties who have been involved in this
10 process over the last several months. Those of you
11 who have given the thought and taken the time to
12 speak before this Commission, to draft in most cases
13 carefully your comments and submit them, we've
14 literally reviewed hundreds of comments from the
15 public, and I particularly thank all of you.

16 I don't think in any single instance have we
17 received commentary that wasn't courteous and
18 thoughtful. And again, that's sort of a rare
19 quality these days.

20 I think that the industry as of this morning is
21 reaching and passing through nothing less than a
22 historic inflation point and I'd like to thank the
23 VEA and the Gold Cup and the VHHA and the VHBPA, all
24 of our horsemen and industry stakeholders for
25 building an organization and creating an environment

1 in which this process would even be possible.

2 I would also like to thank Revolutionary Racing
3 and the Colonial Downs Group for what is already a
4 very substantial investment of both faith and money
5 in this project and we look forward to the future.

6 Six years ago, this Commission empaneled a study
7 commission of the industry and every single business
8 indicator we looked at pointed downwards. I think
9 over the last few years, although it may not be
10 drastic, they have been inching back up and I think
11 this sets the stage for a very positive growth to
12 occur. I hope it does and I know this Commission
13 looks forward to being supportive in any way we can.

14 Again, thanks to everyone. We have had the
15 welfare of the entire Commonwealth in mind
16 throughout this process and hopefully, the regs that
17 we have just promulgated will give us all a healthy,
18 positive and a forward-looking point from which to
19 go. Thank you all very much and now we do need a
20 motion to adjourn.

21 COMMISSIONER REYNOLDS: So moved.

22 COMMISSIONER MILLER: Second.

23 CHAIRMAN VAN CLIEF: Thank you. None are
24 opposed. We stand adjourned.

25 NOTE: The hearing is adjourned at

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CERTIFICATE OF COURT REPORTER

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I, Sandra G. Spinner, hereby certify that having first been duly sworn, I was the Court Reporter at the meeting of the Virginia Racing Commission at the time of the hearing herein.

Further, that to the best of my ability, the foregoing transcript is a true and accurate record of the proceedings herein.

Given under my hand this 9th day of October, 2018.

Sandra G. Spinner

SANDRA G. SPINNER
COURT REPORTER