



# Testimony from Dr. Robert Schmidt, Chairman of the Texas Racing Commission

Chair Nelson and members of the Texas Senate Finance Committee:

I very much appreciate the opportunity to speak with you today. My name is Robert Schmidt, and I am chairman of the Texas Racing Commission.

I asked agency staff to yield their time to me today so that I can address the issue of historical racing terminals, and in particular the offense that many of you have taken to the Commission's decision to go forward with the rules. I want to assure you that neither I nor any member of the Racing Commission meant any disrespect when we went forward with the vote. To those of you were offended, I personally would like to sincerely apologize both for myself and the full Commission, and I hope you will allow me to explain how the rules came about.

In the fall of 2013, we received letters from State Representative Roland Gutierrez and from representatives of two racetracks asking that I appoint an advisory committee. The purpose of the committee was to study pari-mutuel wagering and to devise ways to create a more competitive racing environment in Texas. At the Commission's meeting in December, I created that committee and appointed Vice Chairman Ederer and Commissioners Martin and Steen to serve. The committee met multiple times during 2014 to discuss alternatives and proposals.

At the conclusion of this process, all of the Texas racetracks, horsemen's groups and the Texas Greyhound Association united together and petitioned the Commission to consider the viability of supplementing purses with a repackaged form of betting called historical racing. I should add that this petition was unprecedented. For all of the owners, breeders, trainers, and all of the tracks to come together and jointly petition the racing commission was unique and reflected their desperate situation.

I personally was initially skeptical of the proposal when reviewing it, but felt an obligation to consider their request. Historical racing terminals were first introduced in the state of Arkansas approximately 10 years ago and were approved under the administration by then-Governor Mike Huckabee. These terminals, however, have undergone significant changes and evolution in recent years. For over a year, in a very public and transparent fashion, the advisory committee, and then the full Commission, systemically studied whether or not it had the authority to authorize historical racing and whether it in fact constituted a pari-mutuel wager. We conducted multiple public meetings at which the work of the committee and then the specific rule proposals were discussed. We opened a 6-week period of public comment

**Continued on page 2...**

and also conducted a separate hearing for the sole purpose of taking public comments. We obtained over ten separate, and frequently differing, legal opinions, including opinions from both within and outside the industry. Our own commission includes two attorneys, one of whom previously served as a United States Attorney and a second one who previously served as a Travis County prosecutor.

In considering the rules, we also took very seriously the Texas Racing Act's requirement that the Commission consider the impact of its rules on the Texas agricultural, breeding, and training industries. While the Commission does not advocate on behalf of these industries, the Act's obligation to consider these impacts is mandatory, not discretionary, and the current state of these industries is dire.

- In 2013, Texas ranked 23<sup>rd</sup> out of the 39 racing states in terms of the average Thoroughbred purse paid by race.
- In 2013, Texas ranked last among the major racing jurisdictions in terms of the average Thoroughbred purse paid by race.
- The total amount of Thoroughbred purses paid out in Texas have decreased by 74 percent in the past ten years, from \$41.2 million in 2004 to \$14.9 million in 2014.
- Similarly, the annual amount of Texas-Bred Incentive funds paid to Thoroughbred owners and breeders have decreased by 40% in the past 10 years, from \$5.8 million in 2004 to \$3.5 million in 2014.
- When comparing states of similar size, in New York, the four tracks that conduct Thoroughbred racing will offer total purses in 2015 in excess of \$180 million dollars. In Texas, the four tracks that conduct Thoroughbred racing will offer purses of less than \$15 million.
- Horse racing is carried out in Louisiana, Arkansas, Oklahoma, and New Mexico – all the border states. In each of these states, the purses are supported by additional revenue from various forms of legal gaming. A good horse that competes in an \$18,000 Maiden Special Weight race in Texas would be able to race against similar competition for a \$40,000 purse in Louisiana and an \$85,000 purse in New York. The quality of horses in each of these races is the same, it is only the purse structure which is different.
- The impact of this purse disparity is very significant in the breeding shed. A stallion's value is in large measure judged by how successful its foals and fillies are on the racetrack, measured by earnings. A mare's value is similarly judged by the earnings its foals and fillies win on the racetrack. As a result of the decline in purses, the number of Thoroughbred horses bred in Texas has declined by 74 percent, from 2,623 foals in 2001 to 686 foals in 2014.

Detractors of historical racing have argued that the terminals cannot offer a true form of pari-mutuel wagering. Having studied this

issue intensely for a year, I would respectfully disagree. Any terminals that a track submits to the Commission for review would have to comply with the requirements of the Act, otherwise the Commission would not approve them. While you may see newspaper articles showing photographs of historical racing terminals in other states, none of these have been approved in Texas and by the current rules, without modification, they couldn't be approved. We believe that the market in Texas is large enough that providers would design terminals that satisfy the state's very strict and controlled criteria.

Detractors have also argued that historical wagers are a new form of gaming. I again would respectfully disagree. Although relatively slow to innovate compared to other industries, racing in Texas has continued to evolve, particularly over the past 15 years. For many years, pari-mutuel wagering consisted of betting for win, place, and show on each race. The card also featured a daily double in which the patrons were asked to choose the winner of two races paired together, usually the third and fourth race of each day. However, over the past 15 years, the variety and popularity of exotic wagers such as the Pick (n), the Super Hi-Five, and the Fortune Pick (n) have increased dramatically. Exotic forms of wagering have, in fact, changed significantly the landscape of wagering on both live and simulcast races.

Rather than being a new form of wagering or gaming, a historical wager is a repackaged wager. In Texas, I can drive to Houston and bet on horse races at Sam Houston Race Park this weekend. While at Sam Houston Race Park, I can also place a "future wager" on the upcoming Kentucky Derby to be held in May. Since the actual contestants have not yet been picked, I may actually be placing wagers on horses that will not qualify for the race, horses that may become injured and not run in the race, and horses that in fact may not live to compete in the event. This future wager, however, is legal in Texas today. Historical racing simply repackages this concept and allows patrons to wager on races which have previously occurred. It provides patrons in 2015 with more racing action and more opportunities to fill their time in the 30 minutes that normally occur between live races.

Innovations in technology are not unique to racing. The increasing use of terminals at race tracks simply reflects society's changing preferences. Ten years ago, Christmas shopping was done in person, with shoppers often struggling with long lines in retail stores and congested parking lots. Now many consumers use a video terminal at home, their home computer, to complete their shopping. Ten years ago, flying from Dallas to Austin required a personal visit to the airline agent to secure your ticket and confirm your flight. Now, airlines deliberately steer you away from ticket agents and towards terminals to secure boarding passes. At racetracks, most patrons now prefer not to wait in long lines to deal with a mutuel clerk, but instead use nearby self-service terminals to place their often complicated wagers. The advent of historical racing terminals is simply the next step of a natural process.

I also firmly believe that historical racing terminals in no way increases the footprint of gaming. These terminals can only be installed at active racetracks in the state of Texas, of which there are currently only seven. If all of the inactive racetracks built facilities and became active, the maximum number would be thirteen. These are the same facilities at which wagering is currently permitted, so the footprint remains the same.

One of the most significant advantages of historical racing terminals is that they actually help the horsemen and the horse industry. Casino advocates in other states have persuaded their legislatures to enact casino gaming on the condition that a portion of the proceeds will go to support racing. However, after the casinos have been approved and developed, the casinos view the racing industry as a burden and, over time, the horses and the horsemen are jettisoned. Historical racing terminals, however, inevitably tie the revenue from historical racing terminals to the purse structure within the state and support the industry for which it is intended.

In closing, I want to emphasize to you how seriously the Commission has taken this initiative. In my seven years on the Commission, even controversial issues would generate only 20 to 25 pieces of mail or email during the public comment period. However, during the comment period involving historical racing, we received over 13,000 comments both for and against the proposed rule changes. Quite simply, for a period of time, everyone who worked on the Commission's small staff had as part of their responsibility, the duty to review a series of comments and classify them as for or against the rules changes and highlight any new points which would assist the commissioners in reaching a final decision. Of the 13,000 comments, I would estimate that approximately 10,000 were form letters either for or opposed to the rule changes. The majority of comments in favor were written by horsemen, and a majority of comments in opposition were written by greyhound protection groups. The comments ran approximately 3 to 1 in favor of authorizing historical racing.

About 3,000 comments were individually composed. Included in those comments was the letter in opposition from the Senate Republican Caucus, which many of you signed. We also received letters from legislators in support. In addition, I received personal calls from the former lieutenant governor, from the former comptroller, and from a former governor expressing their opinions regarding this matter.

In late August, after studying this matter for a full 12 months, the Commission, composed of conservative Republicans, by a vote of 7 to 1 approved the historical racing rules. I know that some of you were disappointed that the Commission did not make the choice you preferred, but I want you to know that the decision was taken seriously and with full consideration given to all sides of the debate.

For the past 12 years, we have witnessed unprecedented prosperity in the state of Texas, in large measure due to the efforts of the Governor, Lieutenant Governor, and Legislature. By creating a favorable business environment without oppressive regulation or a state income tax, the state's leadership has benefitted almost every industry in Texas except the horse industry. However, for the state's agricultural, breeding and training industries, the reverse holds. Texas now has an industry that is near the bottom, and its product is frankly unattractive. We attract horses literally on their last legs in an environment that is more conducive to cheating than not. I do not have to be an advocate for the industry to recognize that the horsemen deserve to have a fair chance.

Thank you very much for your attention, and I will take questions at this point.