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Stephen Landry  
Executive Director

## LOUISIANA STATE RACING COMMISSION

September 17, 2024

The Honorable Phillip R. DeVillier  
Speaker of the House  
Post Office Box 94062  
Baton Rouge, LA 70804-9062

The Honorable Cameron Henry  
President of the Senate  
Post Office Box 94183  
Baton Rouge, LA 70804-9183

Dear Senator Henry and Representative DeVillier:

Pursuant to La. R.S. 49:966(D)(1)(b), the Louisiana State Racing Commission hereby announces its plan to proceed with rule-making regarding the July 20, 2024 Notice of Intent of LAC 35:III.5728 "House Rules" that was promulgated on pages 1048 through 1049 of the *Louisiana Register*. The LSRC tentatively plans to vote for formal adoption of the rule at the next Public Commission Meeting and, following Commission approval, will submit to the Louisiana Register to be published after the required 90 days following Notice of Intent pursuant to La. R.S. 49:961 will have passed.

The proposed rule LAC 35:III.5728 establishes that an association's house rules cannot contradict the racing commission's rules, regulations, and directives and specifies requirements for racing commission approval of an association's proposed house rules.

In regard to the proposed rule, this Commission received 1 written comment on August 16, 2024, from Gary P. Palmisano, Jr., Vice President of Racing of Churchill Downs, Incorporated (see attached letter), 27 days after the Notice of Intent was published. The Racing Commission conducted a hearing pursuant to La. R.S. 49:961(B) on August 26, 2024 for oral discussion of the matter, wherein the commission itself, its administration, and its attorney responded publicly to Gary P. Palmisano, Jr.'s comments (see attached official meeting transcripts).

The Commission has made no changes to the proposed rule.

Subject to legislative oversight by either the House Commerce Committee or Senate Judiciary B Committee, the Louisiana State Racing Commission intends to submit this chapter of Rules to the Office of the State Register for publication following the required time periods set forth in La. R.S. 49:961 *et. seq.* Please contact Brett Bonin at (225) 888-7922 if the commission may be of any assistance to you concerning this rule.

Sincerely,

A handwritten signature in blue ink that reads "Stephen Landry".

Stephen Landry  
Executive Director

SL: md  
Enclosures

cc: Office of the State Register  
House Commerce Committee  
Senate Judiciary B Committee

the M3P program, these costs are already provided for in OGB's contracts with the vendors and should not result in additional costs to OGB for programming updates.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

OGB is funded by premiums which are paid partially by participating employers and partially by the plan participants themselves. A change in OGB's costs is expected to result in a corresponding change in plan participants' premium rates. While OGB does not anticipate an increase in expenditures in the first or second year of IRA compliance, due to the expected increase in expenditures in the third year of IRA compliance, OGB anticipates the expenditure increase will require an increase in the premium rates for OGB's self-funded health plans. OGB strives to offset large premium rate increases by spreading the expected impact to the premium rate increases across several years. As such, OGB expects the impact of the IRA in 2025 to yield an increase in premium revenue receipts of \$0.4M in FYE 2025 from what was expected without the impact of the IRA in 2025. The comparable increases for FYE 2026 and FYE 2027 are \$1.7M and \$3.1M, respectively.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

For OGB plan participants for whom Medicare pays primary, the change implements a \$2,000 per Medicare participant MOOP for prescription drug benefits, except for those retired before March 1, 2015 in the Magnolia Local Plus plan (who will have a \$1,500 per Medicare participant MOOP for prescription drug benefits) or the Magnolia Local plan (who will have a \$1,000 per Medicare participant MOOP for prescription drug benefits). For all plans and tiers, the MOOP for medical and commercial prescription drug benefits was set such that when combined with the Medicare drug MOOPs, the total MOOP is equal to the current plan design to the extent this was possible. These changes affect approximately 44,414 OGB plan participants. These updates are expected to lower prescription drug cost sharing for Medicare participants.

The IRA mandated the M3P program, requiring OGB to offer Medicare paying primary plan participants the option to pay out-of-pocket prescription drug costs in the form of capped monthly installment payments instead of all at once at the pharmacy. This program assists Medicare enrollees by allowing them to defer the cost of their prescriptions and pay a monthly amount instead. This means that a plan participant who purchases a prescription drug on January 1st will not have to pay their share of the cost on January 1st if they enroll in the program. Instead, the plan participant can spread their prescription cost across monthly payments for the remainder of the plan year. Despite payments being spread out, the plan participant's prescription costs will still accrue to meet their MOOP. However, the initial higher out-of-pocket amount can be spread out by the plan participant if they desire to participate in this program. While there is no direct cost for this program to the plan participant, as discussed above, this federal requirement will cause an increase of \$9 PMPM in 2025 for those members who participate in the program. This fee will be paid by OGB to the prescription drug administrator and covers the cost of administering this program. If every eligible participant enrolled in this program for 12 months, the annual cost to OGB would be \$4.8M.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect of the proposed changes on competition and employment is unknown but estimated to be minimal to none.

Heath Williams  
Chief Executive Officer  
2407#021

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor  
Division of Administration  
Racing Commission

House Rules (LAC 35:III.5728)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 4:148, notice is hereby given that the Racing Commission proposes to adopt LAC 35:III.5728. The proposed Rule establishes that an association's house rules cannot contradict the commission's rules, regulations, and directives and specifies requirements for commission approval of an association's proposed house rules.

Title 35

HORSE RACING

Part III. Personnel, Registration and Licensing

Chapter 57. Associations' Duties and Obligations

§5728. House Rules

A. An association shall not have house rules that are inconsistent with and/or contrary to the commission's rules, regulations, and directives.

1. All association house rules in place when this rule is promulgated will remain in place until the end of the association's current active race meet.

2. New association house rules shall first be submitted to the Louisiana Horsemen's Benevolent and Protective Association for their review and then submitted to the commission for approval noting whether or not the Louisiana Horsemen's Benevolent and Protective Association is in agreement or disagreement with the proposed new house rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:147 and R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 50:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Poverty Impact Statement

This proposed Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

This proposed Rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

**Provider Impact Statement**

This proposed Rule has no known impact on providers of services for individuals with developmental disabilities.

**Public Comments**

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m. Monday - Friday, and interested parties may submit oral or written comments, data, views, or arguments relative to this proposed rule for a period up to 20 days (exclusive of weekends and state holidays) from the date of this publication to Brett Bonin, Assistant Attorney General, 320 North Carrollton Avenue, Suite 2-B, New Orleans, Louisiana 70119-5100.

Stephen Landry  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: House Rules**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is not anticipated that state or local governmental units will incur any costs or savings as a result of this proposed rule.

To improve the Racing Commission's oversight of disputes between the Horsemen's Benevolent and Protective Association and licensed racing associations, the Louisiana State Racing Commission proposed to adopt Section 5728 (House Rules) of Part III, Chapter 57 of Title 35 (Horse Racing) of the Louisiana Administrative Code. Specifically, the proposed rule establishes the rules, regulations, and directives of the Racing Commission take precedence over licensed racing association's house rules. Additionally, the proposed measure requires any new racing association house rules must first be submitted to the Louisiana Horsemen's Benevolent and Protective Association for review prior to being submitted to the Racing Commission for approval. The submission to the Racing Commission must note whether the Horsemen's Benevolent and Protective Association agrees or disagrees with the racing association's proposed rules.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)** There is no anticipated costs or economic benefits to directly affected persons, small businesses, or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Implementation of this proposed rule is not anticipated to have an effect on competition and employment.

Stephen Landry  
Executive Director  
2407#006

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Racing Commission**

Purses from Sports Wagering (LAC 35:III.5734)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 4:148, notice is hereby given that the Racing Commission proposes to adopt LAC 35:III.5734. The proposed Rule creates procedures on how the commission shall allocate appropriations from sports wagering pursuant to statute.

**Title 35  
HORSE RACING**

**Part III. Personnel, Registration and Licensing  
Chapter 57. Associations' Duties and Obligations  
§5734. Purses from Sports Wagering**

A. Each fiscal year, the commission shall allocate any appropriations received pursuant to R.S. 27:625(G)(4) as prescribed in R.S. 4:199(E).

1. Thoroughbred funds per R.S. 4:199(E)(1) shall be distributed periodically based on requests from the Louisiana Thoroughbred Breeders Association upon issuance of each condition book from each racing association. Quarter horse funds per R.S. 4:199(E)(2) shall be distributed periodically based on requests from the Louisiana Quarter Horse Breeders Association upon issuance of each condition book from each racing association.

2. Each receiving association shall maintain funds in a separate interest-bearing bank account approved by the commission, with appropriate transfers made to the horsemen's bookkeeper for purse distribution. The purse fund account so designated shall be a separate account from all other sources of purse funds, and the source of funds shall be indicated as such on racing association daily racing programs (Louisiana Thoroughbred Breeders Association or Louisiana Quarter Horse Breeders Association).

3. Unused funds at the end of a race meeting shall be retained in such bank account, for use during the next race meeting, and shall be subject to the same restrictions as specified herein.

4. Adequate records, to the satisfaction of the commission, shall be maintained, and fund usage and records will be audited by the commission, with reports issued.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:148 and R.S. 4:199.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 50:

**Family Impact Statement**

This proposed Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972

# CHURCHILL DOWNS

INCORPORATED

Gary P. Palmisano, Jr.  
Vice President of Racing

Direct: 502.638.3805  
Gary.Palmisano@kyderby.com

August 16, 2024

Mr. Edward J. Koehl, Jr., Chairman  
Louisiana State Racing Commission

Mr. Stephen Landry, Executive Director  
Louisiana State Racing Commission

320 N Carrollton Avenue  
Suite 2-B  
New Orleans, Louisiana 70119-5100

RE: **Written Comments to Proposed Rule Concerning an Association's House Rules  
(LAC 35:III.5728)**

Dear Chair Koehl and Executive Director Landry:

I recently spoke to Mr. Landry regarding the Louisiana State Racing Commission's ("Commission") notice of intent to adopt proposed regulation LAC 35:III.5728 ("Proposed Regulation") concerning an association's duties and obligations with its house rules. As you will remember, the Commission passed a motion to move forward with publishing this Proposed Regulation during its meeting held on April 29, 2024, the week of the Kentucky Derby when I and other Churchill representatives were unable to attend. Please accept this correspondence as Churchill Down Incorporated ("CDI") and Louisiana Horseracing Company, LLC's ("Fair Grounds") written comments in response to the Proposed Regulation. We are submitting these comments in advance of the Commission's next meeting scheduled for August 26, 2024, during which time we understand this issue will be on the Commission's agenda to allow public comment by representatives of CDI and others.

## 1. Current Requirement for Conditions Book and House Rules

As you are aware, every racing association publishes a conditions book prior to the commencement of its race meet. The conditions book includes an association's house rules and requirements for the horsemen who choose to participate at the association's upcoming race meet. Participation on Fair Grounds, or any other racetrack, is voluntary – if any of the conditions or rules at Fair Grounds presents creates a situation in which a horseman is unwilling to participate, he/she is free to make that decision. Furthermore, our racetrack must currently comply with the Commission's current rule found at 35:III.5729, which mandates Fair Grounds submit to the Commission "the conditions for all races it proposes to hold, together with the stakes, purse, or reward to be offered, all of which shall be approved by the commission before being published."

This has proven to be non-controversial – Fair Grounds submits its conditions book prior to its meet and the Commission approves it before it is published for the horsemen.

Last year, Fair Grounds submitted its conditions book to the Commission, which included the following house rules:

<b>2023-2024 Fair Grounds House Rules</b>
1. For the 2023-2024 season at Fair Grounds we will require a veterinary examination by the attending veterinarian and submitted to the racing office at scott.jones@fgnc.com and our Equine Medical Director, Dr. Farmer at william.farmer@kyderby.com PRIOR to entry for the following circumstances: <ol style="list-style-type: none"><li>First time starters five (5) years old and older.</li><li>Any previously raced horse that has not raced in previous 365 days</li><li>Any horse eight (8) years or older</li></ol>
2. Any horse coming off a layoff of more than thirty (30) months is ineligible to train or race at FG unless approved by the CDI Equine Medical Director prior to arrival at FG.
3. Any horse that has been beaten by twelve (12) or more lengths in the horse's previous five (5) starts shall be ineligible to start at FG until such time that the horse competes elsewhere and is beaten by less than twelve (12) lengths.
4. Any horse that has more than four (4) starts in a 56-day period (8 weeks) shall be ineligible to race until the 56th day from the fourth previous start.

As has been the case every year, the Commission approved Fair Grounds' conditions and house rules without controversy or scrutiny.

## 2. The Commission's Proposed Regulation on House Rules

Strangely, the Commission has now chosen to deviate from its well-established process for approving conditions books (and the house rules incorporated therein) by apparently ceding its decision-making authority to the LaHBPA. Specifically, subparagraph 2 of the Proposed Regulation now requires that:

“New association house rules shall first be submitted to the Louisiana Horsemen's Benevolent and Protective Association for their review and then submitted to the commission for approval noting whether or not the Louisiana Horsemen's Benevolent and Protective Association is in agreement or disagreement with the proposed new house rules.” (Emphasis added.)

One might reasonably interpret this to mean the Commission no longer wishes to exercise its sole responsibility for approving, or disapproving, an association's conditions book. If the Proposed Regulation is passed in its current form, the LaHBPA will now be granted a seat at the proverbial decision-making table with respect to approval over an association's house rules. At a minimum, the LaHBPA is now being afforded what appears to be a consent right. Furthermore, Proposed Regulation is unnecessary considering the LaHBPA is already contractually entitled to receive Fair Grounds' condition book “at least four (4) days prior to final publication to permit the HBPA to make recommendations pertaining to same before printing.” The LaHBPA is already a participant during the review process without the Proposed Regulation.

In addition, LA Rev Stat § 4:141 provides absolute clarity that the state has empowered the Commission to “institute and maintain a regulatory program for the business of racing horses” and that such program “assures the protection of public health, safety and welfare.” The Commission, and the Commission alone, is vested with “the full power to prescribe rules and regulations and conditions under which all horse racing is conducted.” For the Commission to now require the LaHBPA to first weigh in and offer its consent for an association’s house rules presents a direct conflict with the legislative intent and policy that affords the Commission with the power to regulate horse racing. It bears reminding that just as each of the licensed racetracks operating in the state are regulated by the Commission, so too are each of the individual licensed horsemen that are represented by the LaHBPA – the LaHBPA is not a proxy operating on behalf of the Commission to do its work.

Fair Grounds urges the Commission to reconsider the delegation of this authority to the LaHBPA and respectfully requests that subparagraph 2 of the Proposed Regulation be removed in its entirety.

### 3. Unintended Risks and Consequences of Passing the Proposed Regulation

As previously stated, the above house rules from Fair Grounds’ 2023-2024 meet were approved by the Commission. However, these same rules, when published as part of Fair Grounds’ comprehensive proposed “Rules and Conditions for Racing and Training” (“Conditions”), which are required to be signed by both trainer and his/her attending veterinarian, were rejected last year by counsel for the LaHBPA. Importantly, these Conditions are in effect at all CDI-owned racetracks without opposition from any horsemen, local HBPA, or racing commission. In fact, the majority of the horsemen on the backside of the Fair Grounds have already reviewed and agreed to these Conditions while running at other CDI-owned racetracks in other jurisdictions. This begs the question whether the LaHBPA is representing the collective interests of Louisiana horsemen when opposing Fair Grounds’ Conditions. We elected not to require these Conditions to be executed last year.

But when Fair Grounds does seek the Commission’s approval of such Conditions in the future, or new house rules necessitated by the need to protect the health and safety of our equine athletes, is the Commission content with the LaHBPA forcing it to choose sides? This hypothetical becomes a reality when the LaHBPA notes its disapproval of a Fair Grounds house rule under the requirements of the Proposed Regulation. This is the case even if such house rules are consistent with the Commission’s rules, regulations, and directives.

### 4. Summary and Request from Fair Grounds

As a result of the LaHBPA’s objection to Fair Grounds’ Conditions last year, and their default position of resolving disagreements they may have with the Fair Grounds by using the Commission as its arbiter, the Commission has advanced the Proposed Regulation. Fair Grounds seeks to work cooperatively and collaboratively with both the LaHBPA and the Commission on all matters pertaining to a safe and successful race meet. But the Commission’s willingness to explicitly delegate its authority to the LaHPBA in the Proposed Regulation presents not only a legal question, but also presents a direct impediment to the spirit of cooperation that Fair Grounds wishes to enjoy with its racing partners.

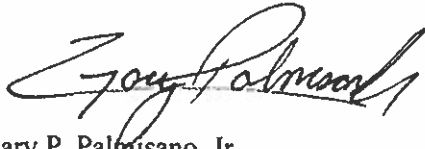
Comments to LSRC

August 16, 2024

Page 4

We recently experienced the disastrous unintended consequences of short-sighted and unilateral initiatives advanced by the LaHBPA, devoid of industry input and participation, with respect to the medication changes made earlier this year. No one wins in such a situation and the Commission faced scrutiny that I assume it would have otherwise wished to avoid. Similarly, we believe that if the LaHBPA is entitled to a consent right over an association's conditions book and/or house rules, the Commission will be left holding the bag when having to choose between its licensed racetracks and its licensed horsemen. For these reasons, Fair Grounds urges the Commission to reconsider the delegation of this authority to the LaHBPA and respectfully requests that subparagraph 2 of the Proposed Regulation be removed in its entirety.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Palmisano, Jr.", written in a cursive style.

Gary P. Palmisano, Jr.

cc: Brett Bonin (Assistant Attorney General and Counsel to LSRC)  
Dr. William Farmer (Equine Medical Director, CDI)  
Ozair Shariff (Corporate Counsel, CDI)

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\* IN RE: LOUISIANA STATE RACING \*  
\* COMMISSION MEETING OF \*  
\* 8/26/24 \*  
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VOLUME I

Louisiana State Racing Commission meeting  
taken in the above-captioned matter, on Monday,  
August 26th, 2024, at the Hotel Montelone, 214  
Royal Street, New Orleans, Louisiana, commencing  
at 9:05 a.m.



1 MR. EARL LANDRY:

2 Yes.

3 MR. STEPHEN LANDRY:

4 Mike McHalffrey?

5 MR. MCHALFFEY:

6 Yes.

7 MR. STEPHEN LANDRY:

8 Dr. Travis Miller?

9 DR. MILLER:

10 Yes.

11 MR. STEPHEN LANDRY:

12 Dr. Vincent Tumminello?

13 DR. TUMMINELLO:

14 Yes.

15 MR. STEPHEN LANDRY:

16 Ms. Catherine Winters?

17 MS. WINTERS:

18 Yes.

19 MR. STEPHEN LANDRY:

20 That motion and second is passed  
21 unanimately, Mr. Chairman.

22 CHAIRMAN KOEHL:

23 Thank you. If you guys want to stay, we  
24 will get to your next issue on the agenda.

25 This calls for a discussion of the notice of

1 intent.

2 Do you have the rule on the screen?

3 MR. BONIN:

4 Yes.

5 MR. PALMISANO:

6 I think this is a current rule. There is  
7 a rule, a house rule, that was discussed at  
8 the last meeting that I think is what the  
9 notice of intent applies to, correct?

10 MR. BONIN:

11 That is correct.

12 MR. PALMISANO:

13 So do you want to put that one up or do  
14 you want to keep this one up? It is up to  
15 you.

16 MR. BONIN:

17 I was just keeping that up because it  
18 also kind of --

19 MR. PALMISANO:

20 Absolutely.

21 So at the past meeting there was a notice  
22 of intent regarding a new rule, a new  
23 regulation that would be put into effect that  
24 at, I believe, Part A gives the Commission  
25 approval to -- Oz has it pulled up here -- the

1 house rule Part A gives the Commission  
2 approval over any house rule that an  
3 association creates, if I'm thinking about it  
4 right, provided it is not contrary or  
5 contradictory to current regulations, but then  
6 it adds Part B, which says that new  
7 association house rules shall first be  
8 submitted to Louisiana HBPA for their review,  
9 and then submitted to the Commission, approval  
10 -- Commission for approval noting whether or  
11 not the HBPA is in agreement or disagreement  
12 with the proposed new house rules.

13 So, Mr. Bonin, the statute that I think  
14 you had -- or the regulation that you had  
15 pulled up is exactly what is in place today,  
16 which gives the Commission approval over each  
17 track's, each association's condition book.  
18 Within our condition book is our rules. So  
19 Part A of the new rule is already, to some  
20 extent invalid, because the Commission is  
21 already approving house rules through the  
22 already established regulation, which gives  
23 the Commission approval of the condition book.

24 So Part B or No. 2, as it is on the  
25 screen, is I think where our question or what

1 we would like to point out to the Commission  
2 as a potential pitfall and something for  
3 you-all to consider, and I'll use an example  
4 just to sort of simplify the conversation  
5 here, our first house rule that we have had in  
6 place for a number of years is that a  
7 five-year-old first-time starter requires a  
8 veterinarian exam before they compete. So  
9 playing this scenario out, under this  
10 potential new rule, let's use a hypothetical,  
11 although I will tell you-all that this will  
12 absolutely come in front of you at some point  
13 in time, somewhere down the line, let's say,  
14 hypothetically speaking, the HBPA disagrees  
15 with the safety initiative that a racetrack  
16 proposes. So we have got a racetrack saying  
17 that a five-year-old first time starter should  
18 have a veterinarian exam before their first  
19 career race. There is obviously a reason why  
20 a five-year-old horse has never made a start  
21 before. So if a track is requiring that horse  
22 to have an additional veterinary exam, it  
23 seems like a reasonable safety approach.  
24 Let's say, hypothetically, under this rule, we  
25 come to you and say the HBPA disagrees with

1           that.

2           This Commission is now put in a terrible  
3           position of having to referee that  
4           disagreement. Your Commission is going to  
5           have to decide whether or not the track safety  
6           rule is correct or whether or not the  
7           horsemen's opinion of a five-year-old first  
8           time starter and his health is correct. My  
9           concern, and I think what should be your  
10          concern, is making the wrong choice.

11          Let's say, again, hypothetically, that  
12          you-all choose to take the HBPA's disagreement  
13          of that rule and wipe that house rule off and  
14          an incident were to happen with a  
15          five-year-old first time starter. I think  
16          this Commission would be very looked down upon  
17          and very nonfavorably mentioned throughout the  
18          industry press.

19          So our recommendation, our ask is to keep  
20          what is in place today, which currently gives  
21          the Commission the approval of the condition  
22          book, inclusive of our house rules and that  
23          seems like the best path forward to, A, keep  
24          the Commission out of a situation of  
25          refereeing a difficult decision and, B,

1 maintains the Commission's authority  
2 overseeing house rules and not deferring that  
3 authority to a party, like the HBPA, and then  
4 finally I would close by saying at the end of  
5 the day horsemen have a right to run wherever  
6 they want to run. So if we require a  
7 five-year-old first time starter to jump  
8 through an extra hoop of a veterinarian exam  
9 and a horsemen chooses not to do that they do  
10 not have to race at the Fair Grounds. If that  
11 is a burden that they do not want to overcome  
12 or a house rule where if a horse hasn't run in  
13 the last year they are required an extra  
14 veterinarian exam, if that is an extra hurdle,  
15 there is other opportunities to race, but if  
16 our track wants to have an additional safety  
17 measure in place it should be up to the  
18 Commission through the process that is already  
19 well documented, already established and  
20 already going through every year the approval  
21 of the condition book.

22 MR. MCHALFFEY:

23 I have a question, please.

24 Do you want to go first or --

25 MR. SHARIFF:

1                   No. You go ahead.

2                   MR. MCHALFFEY:

3                   You-all have a 15-day quarter horse meet  
4 going on right now. How many safety rules  
5 have you put in the house rules for that?

6                   MR. PALMISANO:

7                   Our equine medical director, Dr. Farmer,  
8 is here. He can speak directly to that. I  
9 know he was here last week conducting his  
10 typical safety --

11                   MR. MCHALFFEY:

12                   Extra house safety rules for the quarter  
13 horses. Have you done anything like they are  
14 talking about doing for thoroughbreds?

15                   MR. PALMISANO:

16                   State your name.

17                   DR. FARMER:

18                   My name is Dr. William Farmer. Last name  
19 is spelled F-A-R-M-E-R, equine medical  
20 director for Churchill Downs.

21                   So in the condition book we did not have  
22 any stated additional house rules.

23                   MR. MCHALFFEY:

24                   That is what I wanted to know. Thank  
25 you.

1 CHAIRMAN KOEHL:

2 Last year didn't you-all get together  
3 with the LHBPA and submit your house rules and  
4 there was no dispute between the two?

5 MR. SHARIFF:

6 Chairman Koehl, we do that by contract.  
7 The HBPA agreement with the Fair Grounds  
8 requires that no later than four days prior to  
9 us going and publishing these, we have to  
10 provide them to the HBPA. That has been the  
11 case. Now, Gary can speak a little bit about  
12 -- there was -- there has been a little bit of  
13 a wrinkle last year and in our public comments  
14 that were provided to this Commission on  
15 August 16th by letter, which I hope everyone  
16 received, we did clarify that there was a bit  
17 of a wrinkle, but Gary can add a little more  
18 color to it.

19 MR. KOEHL:

20 So then you-all worked with them last  
21 year on --

22 MR. SHARIFF:

23 Yes.

24 CHAIRMAN KOEHL:

25 -- on submitting your house rules?



1 MR. SHARIFF:

2 Yes. At our --

3 CHAIRMAN KOEHL:

4 And this year you haven't?

5 MR. PALMISANO:

6 It is August. That is typically -- We  
7 are not ready to --

8 MR. SHARIFF:

9 We are a little bit early.

10 MR. PALMISANO:

11 We are not ready to produce our condition  
12 book or any of that material yet. That  
13 typically is going to happen in the month of  
14 September.

15 CHAIRMAN KOEHL:

16 What is the reason for delay?

17 MR. PALMISANO:

18 That is our standard process. We put the  
19 condition book around the end of September and  
20 that is when conversations start, but to your  
21 point we did disagree with the HBPA  
22 particularly on our trainer veterinarian  
23 agreement. So, at our other five CDI  
24 properties, we have an agreement that  
25 basically states that the trainer agrees to

1 all of the onsite rules and regulations at a  
2 CDI facility.

3 MR. MCHALFFEY:

4 The tracks are under HISA?

5 MR. PALMISANO:

6 Doesn't matter. It is a house rule. The  
7 trainer agreement is not anything HISA  
8 specific. It is saying that you agree to play  
9 by the rules of the racetrack. You agree that  
10 what your employees do is on you. You agree  
11 that your tending veterinarian is going to  
12 uphold all veterinarian standards and  
13 practices.

14 Point being the HBPA pushed back on that  
15 and we did not require that at the last Fair  
16 Grounds meet. So we did work together,  
17 exactly to your point, and I think we are  
18 losing a little bit of ground here, sight of  
19 the overall picture. The current rules that  
20 we have in place, the HBPA has agreed to over  
21 the last many number of years.

22 I think when you look at the future  
23 rules, I don't know what that could bring and  
24 I think my position or my point to you-all to  
25 consider is what position will you be in

1 refereeing that dispute in the future and how  
2 much are you willing to take on for that  
3 refereeing, as opposed to just maintaining the  
4 status quo, which is we talked to the HBPA, we  
5 submit the condition book, the Commission  
6 reviews it.

7 When you go down this path, you are  
8 opening yourselves up to having to referee  
9 publically a disagreement over a potential  
10 safety issue between an association and the  
11 horsemen's group and, for me, that just feels  
12 risky as a Commission.

13 DR. TUMMINELLO:

14 Well, Gary, it sounds like we are  
15 refereeing already. I mean we refereed this  
16 morning for the last hour. We are refereeing  
17 again because you guys can't work things out  
18 together.

19 MR. PALMISANO:

20 And I think --

21 DR. TUMMINELLO:

22 You put us in a position that makes us  
23 have to referee.

24 MR. MCHALFFEY:

25 Brett, do --

1 CHAIRMAN KOEHL:

2 That is what the obligation of the Racing  
3 Commission is.

4 MR. PALMISANO:

5 It is to regulate, not referee.

6 MR. MCHALFFEY:

7 Do we need to make a position to go  
8 forward with this or do we -- What are we --  
9 What's --

10 CHAIRMAN KOEHL:

11 This is just a discussion.

12 MR. SHARIFF:

13 This is public comments.

14 MR. BONIN:

15 Mr. Vice Chair, it is just they asked for  
16 the ability to comment on it, but I do want to  
17 add that this is a public Commission and  
18 everything is intended to be aired out in  
19 public at a meeting like this.

20 When you-all promulgate rules those go  
21 through an additional step where -- not only  
22 this Commission in a meeting here, but it goes  
23 through a lengthy process of going even to the  
24 legislature, to the -- the governor gets  
25 notice of it. I think that is the proper

1 procedure perhaps for -- if they have certain  
2 safety rules or things that they want, I think  
3 that is the better way to go and the channel  
4 to go where it is even more public. The  
5 governor knows, the legislature knows what is  
6 going on.

7 I think the intent of this rule was not  
8 have house rules that are inconsistent or  
9 contrary to the Commission's rules,  
10 regulations and directives. You don't want  
11 this Commission doing something that the  
12 governor has ostensibly looked at, that the  
13 legislature has okayed, that public from the  
14 entire state gets put on notice by the  
15 register and has the ability to comment as  
16 Churchill has.

17 So I think there is a pretty big danger  
18 in allowing somebody to really do a lot with,  
19 quote-unquote, rules that are put in as a  
20 condition on poor people that are just trying  
21 to get their horses in. This is the proper --  
22 the legislature is proper, the governor having  
23 notice. So I think that this house rules was  
24 directly on point. This Commission has to  
25 approve the condition book, but everybody

1 needs to be a part of it and certainly the  
2 horsemen need to be a part of it and all this  
3 requires is that more people get better  
4 notice.

5 So you-all just brought out that this  
6 is going to be promulgated, I guess, their  
7 house rules, at the end of September. We have  
8 a meeting in October. That gives a very  
9 short, potentially three-week, timeline to be  
10 able to review house rules, but I think the  
11 more people that are required to look at it,  
12 the more people that they are required to say  
13 have either agree or don't agree so that this  
14 Commission can then look at it publically and  
15 vote on it as in the public interest and if  
16 they really do have specific safety rules that  
17 they want to do that they think are that  
18 important, then they should be requesting to  
19 promulgate rules and have those be made a rule  
20 where it goes through an even further and  
21 bigger process where the governor can take a  
22 look at it, the legislature can take a look at  
23 it.

24 MR. SHARIFF:

25 But, respectfully, we are not -- We would

1 not seek to have new rules promulgated through  
2 the legislature. Things are dynamic. Things  
3 change. Conditions change. Things are put in  
4 place for the protection of our equine  
5 athletes that need to remain fluid. We are  
6 not looking for laws to be created. There are  
7 rules that come, there are rules that go.  
8 When I say rules, I mean house rules. They  
9 are not statistic.

10 So, respectfully, I don't think that is  
11 what we are looking for here. What we are  
12 looking for is a concession that, look, we --  
13 this has nothing to do with HISA -- we are not  
14 looking at putting anything in place that is  
15 contrary or contradictory to Louisiana law.  
16 That is very clear and this Commission's task  
17 is to ensure that that doesn't happen. No  
18 issue there with No. 1, but this sort of  
19 pseudo consent right for the HBPA, which by  
20 the way they already contractually, Mr. Bonin,  
21 they are a part of the process. So I think  
22 this is a little superfluous and unnecessary.  
23 They are already part of this process. They  
24 already disagreed with the trainer agreement  
25 last year, which we then did not promulgate

1 and require be part of our condition book, but  
2 the fact that they already have a seat at the  
3 table, this seems like a little bit of  
4 overreach because, as Gary mentioned, there is  
5 going to be a disagreement at some point and  
6 the now formal requirement that HBPA's  
7 approval or disapproval by law be noted puts  
8 the Commission in a very precarious position  
9 and I think it is almost -- I used the word in  
10 my public comment letter -- that was a bit of  
11 a pseudo delegation to the HBPA, it sort of --  
12 look, this Commission's job -- someone  
13 mentioned sort of in passing that, yes, it  
14 seems like we are refereeing.

15 The job of the Commission is to regulate  
16 and to regulate both parties, HBPA's licensed  
17 trainers, owners, jockeys, et cetera and the  
18 association is similarly licensed. So there  
19 has to be some neutrality here and this just  
20 -- I think this puts the Commission in a  
21 precarious position that it is favoring HBPA's  
22 view on a house rule that the racetrack may  
23 put in place for the protection of its equine  
24 athletes.

25 MR. BONIN:



1           Mr. Chairman, I do want to caution the  
2 Commission. He mentioned being able to use  
3 house -- you know, these conditions as a fluid  
4 means of dealing with safety issues, but as  
5 this Commission is aware that is the whole  
6 reason for the rule process, that everybody  
7 gets notified, and as this Commission is well  
8 aware when the emergency medication rules were  
9 put forth, the legislature wanted to weigh in  
10 and the governor's office can weigh in. This  
11 Commission should never want to be that fluid  
12 where racetracks are just promulgating all of  
13 these safety rules that may or may not mesh  
14 with rules that have been placed by this  
15 Commission for decades, some perhaps several  
16 hundred years.

17           So they should all be taken very  
18 cautiously and methodically and they should  
19 follow -- anything that is that important with  
20 a safety rule shouldn't be fluid where it is  
21 just coming out and it is 30 days and, you  
22 know, there is a problem with the horsemen  
23 having notice or other people having advanced  
24 notice because then you get into the same  
25 problem that you got -- that can be seen with

1 -- you are passing big rules that can have a  
2 big effect on the horse racing industry, the  
3 Commission, the tracks and trickle down to  
4 everybody else.

5 So I really think that if they have that  
6 big of concerns it really has to be requesting  
7 a rule and requesting where everybody is  
8 getting notice, where the legislature is  
9 getting notice and the governor is getting  
10 notice. This idea that there would be fluid  
11 changes in safety rules and stuff is -- can be  
12 problematic, Mr. Chairman.

13 MR. MCHALFFEY:

14 Building on what you said and what they  
15 are saying and Dr. Farmer, there was no safety  
16 rules for the quarter horse meet. Does that  
17 make -- That makes no sense.

18 MR. SHARIFF:

19 We haven't had a quarter horse meet in  
20 five years at the racetrack.

21 MR. MCHALFFEY:

22 But you are running one now.

23 MR. PALMISANO:

24 Brett, I would ask -- Brett, I would ask  
25 you, after your sort of spiel there, then how

1 are emergency rules reasonable. If everyone  
2 is required notice, if the legislature needs  
3 to be involved, if the governor wants to look  
4 at them, if there is a process and public  
5 comment, then why is there even an emergency  
6 rule procedure? If rules aren't meant to be  
7 fluid, if you recognize and realize there was  
8 a massive issue with the way the mediations --  
9 then we shouldn't allow emergency rules,  
10 right?

11 MR. BONIN:

12 No. So the bottom line is that the  
13 system worked. The important thing to  
14 remember here is that if you go through the  
15 regular rule process, you know, it is a  
16 180-day process, approximately, and it gives  
17 people a lot of time to look at stuff, but if  
18 you say, for instance, like you-all were  
19 talking about, you know, safety rules that you  
20 are going to do at the end of September to be  
21 voted on by this Commission in October, that  
22 is almost akin to an emergency regulation and,  
23 as everybody can see, there are heightened --  
24 much more height requirements both in law and  
25 administrative regulation for the State of

1 Louisiana that says, man, if you are going to  
2 do something on an emergency basis, you need  
3 to meet these higher requirements. So these  
4 higher requirements, for instance, this  
5 Commission is required to send notice if they  
6 are even thinking about an emergency  
7 regulation to two attorneys in the governor's  
8 office and they need to get their approval to  
9 even be able to proceed on an emergency rule  
10 and there is strict procedures. If they don't  
11 respond within 48 hours, then this Commission  
12 can go ahead and move forward. The  
13 legislature, if they have a problem, they will  
14 literally call up, which they have, and said,  
15 "We have a problem with this and we want you  
16 to rethink it; otherwise, we are going to have  
17 a hearing," and then the Commission gets  
18 hauled before a hearing in the legislature and  
19 the legislature can strike out and obliterate  
20 that rule.

21 So each time you sort of, you know, speed  
22 up the timeline for important rules and  
23 regulations, the requirements get higher and  
24 higher and higher and you-all saw that with  
25 the emergency medication rules where, you

1 know, there was feedback from the legislature,  
2 there was feed back from the governor. The  
3 system worked. It, basically, allowed people  
4 the opportunity to be able to weigh in and say  
5 what they thought and how they should handle  
6 it, and then this Commission can respond  
7 appropriately, just like it did, but if you  
8 start staying that you want the opportunity to  
9 be fluid with your rules that then come before  
10 this Commission and you don't want the  
11 horsemen to necessarily be able to have  
12 notice --

13 MR. SHARIFF:

14 They have notice.

15 MR. BONIN:

16 -- that's a public problem, but just the  
17 requirement that you have to send them and you  
18 have to get a response. They are representing  
19 ten to thirteen thousand licensees in the  
20 state that form the core of the horse racing  
21 industry in the state along with the tracks.  
22 So I think the Commission needs to be guided  
23 by what is in the public interest in putting  
24 all of this out there in the public and  
25 requiring and ensuring that the horsemen get

1 notice, that every -- the tracks, that  
2 everybody that is involved have notice and if  
3 you are going to change something dealing with  
4 safety, you are talking about vets and having  
5 a vet be able to review, we were just -- many  
6 of us were all out at the Fair Grounds, your  
7 track, this past Saturday for an LQHBA  
8 meeting. There were three commissioned vets  
9 checking out horses on the front side. There  
10 was a Commission vet on the backside doing  
11 drug testing. So there were four vets that  
12 worked for this Commission that were on that  
13 track.

14 So, again, you know -- And it should be  
15 state public vets that are doing this where if  
16 somebody doesn't have a particular interest,  
17 maybe where it is just the track's interest or  
18 it is just the HBPA interest, all of these  
19 things literally should go through the  
20 Commission and the Commission should be  
21 enforcing them to ensure that there is no  
22 partiality and that one side is over  
23 represented or has their vet checking and  
24 deciding whether or not a horse can run or not  
25 because some of the things that have been

1 mentioned about having these pre-vet checkouts  
2 potentially by somebody other than a State  
3 vet, I mean that person, a non-state vet,  
4 could determine that a horse is unfit to run,  
5 in which case you would have a non-state vet  
6 deciding that a horse that may be going into a  
7 million-dollar futurity can't run, and then  
8 they are cut out of the process with no  
9 involvement by the State vets or the State  
10 Racing Commission

11 MR. STEPHEN LANDRY:

12 Dr. Farmer, did you want to comment on  
13 the question that Commissioner McHalfey  
14 asked --

15 DR. FARMER:

16 Yes.

17 MR. STEPHEN LANDRY:

18 -- about the safety -- the fact that  
19 there is none in the condition book for the  
20 quarter horse meet?

21 DR. FARMER:

22 So, just for some background information,  
23 when I started in this role, this is my first  
24 meet for a quarter horse meet and we did the  
25 same thing with the thoroughbred meet. When I

1 first started everything stayed as is, we  
2 didn't have any changes the first year that I  
3 was with Churchill Downs.

4 One for me is to learn the industry in  
5 this jurisdiction and to see what our risks  
6 were and where we could potentially improve,  
7 and then over the years we have added the  
8 first -- the second year that I was here, we  
9 added a few rules, we have added a few since.  
10 So to the question about why there was no  
11 quarter horse specific house rules, that was  
12 in keeping status quo with what has been the  
13 tradition in Louisiana at the other  
14 racetracks. So that wasn't a -- we weren't  
15 turning a blind eye saying quarter horses are  
16 different than thoroughbreds. Obviously, they  
17 are a very different industry than the  
18 thoroughbred, they have different risks, but  
19 that was our opportunity to assess that.

20 MR. STEPHEN LANDRY:

21 Just could I ask one question. It is my  
22 understanding that you agreed on the condition  
23 book last year, which contained house rules.  
24 Does Churchill Downs plan on having new house  
25 rules in this year's thoroughbred condition



1 book that was not in last year's condition  
2 book?

3 DR. FARMER:

4 Not at this time.

5 MR. STEPHEN LANDRY:

6 So then why are we here?

7 MR. PALMISANO:

8 The only thing that was not --

9 CHAIRMAN KOEHL:

10 They are allowed to make comments on the  
11 rule.

12 MR. SHARIFF:

13 And I think we did. Executor Landry, I  
14 think we did. It is anticipating the future.  
15 It may not be the case for this upcoming meet.  
16 I think we are very candid here, we don't have  
17 any plans for the upcoming meet that is going  
18 to raise any questions, but, yes, we don't  
19 know about the future and we didn't want the  
20 Commission to be that arbiter.

21 Chairman Koehl, quickly, I will say it  
22 again, Brett is a very competent lawyer, I  
23 have worked with him and I enjoy my time  
24 working with him, particularly when we are on  
25 the same side, not opposite sides, but I just

1 wanted to clarify and actually push back on  
2 one comment.

3 There is a lot of discussion about the  
4 rule making process and the importance of all  
5 the stakeholders to weigh in when rules and  
6 laws are created. I have to clarify.  
7 Churchill Downs is not making law. When you  
8 say rule for Churchill, we are not a state  
9 actor, we are a private racetrack and we are  
10 not creating law. So we don't have to go  
11 through that process of rule making and all  
12 the legislature and this. If the rule is not  
13 comfortable, it is voluntary. When the  
14 Commission makes a rule or a regulation, it is  
15 law.

16 So there is a distinction here. So the  
17 input of stakeholders is very important. The  
18 current infrastructure allows for that and  
19 this Commission has to regulate and approve  
20 the conditions book. The HBPA is in an  
21 ongoing conversation with us. We worked  
22 through it last year. We don't agree with  
23 HBPA's position with respect to the trainer  
24 agreement, we nixed that last year. There is  
25 going to be an issue that comes some time down

1 the road, I'm sure of it, that there is going  
2 to be a disagreement to Gary's point, the  
3 Commission is going to have to be that arbiter  
4 again and be put in an awkward position, but  
5 we are not creating rules, we are not creating  
6 law. We are a racetrack and it is purely  
7 voluntary. When this Commission puts in place  
8 a rule, it becomes law. So I just wanted to  
9 create that distinction there, that we are not  
10 creating law.

11 MR. MCHALFFEY:

12 One more comment about that. There is a  
13 fine line between what you are talking about  
14 and the statement that you made, if you don't  
15 like the house rules, you can run somewhere  
16 else, that concerns me. You know, that  
17 concerns me when you said they are voluntary,  
18 they are voluntary so if you don't want to be  
19 here, you can go somewhere else. That is what  
20 I got out of that right there.

21 MR. PALMISANO:

22 I get that. I would say let's use  
23 another example. If the Louisiana law  
24 requires one ambulance, human ambulance, to  
25 follow the field and Fair Grounds wants to

1 say, hey, we want two, it might make sense for  
2 jockeys to come ride at Fair Grounds because  
3 they feel an impetus that it is an extra safe  
4 environment.

5 So, to that extent, that is a voluntary  
6 decision that we are making to provide a safer  
7 environment and a rider would have the  
8 opportunity to come take advantage of that or  
9 not.

10 MR. MCHALFFEY:

11 I understand.

12 MR. BONIN:

13 Mr. Chairman, if we could also just,  
14 since this is comment --

15 CHAIRMAN KOEHL:

16 Wait a minute. You said that last year  
17 you-all consulted with the LHBPA about your  
18 rules and that you had an agreement -- a  
19 contract with them to do so.

20 MR. SHARIFF:

21 Yes, the current contract with the  
22 HBPA --

23 CHAIRMAN KOEHL:

24 Do you have the same contract for this  
25 year for this thoroughbred meet coming up in

1           October?

2           MR. SHARIFF:

3                     It's in the pipeline. I don't think it  
4           has been signed -- I'm sorry. Yes, we do. It  
5           is the same contract.

6           CHAIRMAN KOEHL:

7                     And it requires you to run whatever  
8           rules, house rules, you are going to have by  
9           them?

10          MR. SHARIFF:

11                     Yes.

12          CHAIRMAN KOEHL:

13                     Well, that's exactly what this says.

14          MR. PALMISANO:

15                     The difference is --

16          CHAIRMAN KOEHL:

17                     There is no difference. There is no  
18          difference.

19          MR. PALMISANO:

20                     -- in the future -- in the future it is  
21          going to come up to you to decide between the  
22          disagreement.

23          CHAIRMAN KOEHL:

24                     Well, if there is a disagreement.

25          MR. MCHALFFEY:

1                   That is what we do.

2           MR. PALMISANO:

3                   There might be a disagreement.

4           CHAIRMAN KOEHL:

5                   But it doesn't mean that we are going to  
6 side with LHBPA or Churchill Downs.

7           MR. PALMISANO:

8                   It doesn't.

9           CHAIRMAN KOEHL:

10                   So, you know --

11           MR. PALMISANO:

12                   It just feels like an extra step when it  
13 is already happening. So our point is this  
14 entire rule is unnecessary because all of  
15 these things are already happening.

16           CHAIRMAN KOEHL:

17                   And there is nothing wrong with it. End  
18 of discussion.

19           MR. BONIN:

20                   Yes, Mr. Chairman, that is what I wanted  
21 to clarify.

22           CHAIRMAN KOEHL:

23                   We are finished discussing this and we  
24 are going to take a five-minute break and Boyd  
25 can be ready to report next. We will take a

1 five-minute break and get with the Boyd  
2 Association report, Boyd Delta Downs  
3 Association report.

4 ~~(A recess is taken.)~~

5 CHAIRMAN KOEHL:

6 Mr. Kuypers, if you are ready.

7 MR. KUYPERS:

8 Hello? There we go.

9 Good morning, Commissioners, Chairman.

10 We are going to start off with John Simon, our  
11 director of racing operations for Delta Downs.  
12 He is going to give a little progress report  
13 on a wonderful meet at Delta Downs.

14 MR. SIMON:

15 Good morning, Chairman and Commissioners.  
16 I would like to start out with our -- we had  
17 an outstanding quarter horse meet this year at  
18 Delta Downs that ended on July 13th. We were  
19 up 9.4 percent in total race handle. We set  
20 an all-time quarter horse handle record on the  
21 Lee Berwick trials on July 22nd with a 1.47  
22 million dollar handle which was up from last  
23 year's same card, twelve races of 920,000. We  
24 set two records actually throughout the  
25 quarter horse meet. Also, we ran 402 races

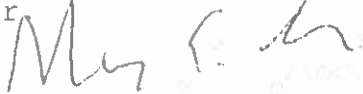
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