

Florida Gaming Control Commission

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Meeting

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TRANSCRIPTION OF FLORIDA GAMING CONTROL COMMISSION
MEETING

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1 Thereupon,
2 the following proceedings were transcribed from an audio
3 recording:

4 CHAIR MACIVER: That housekeeping announcement
5 was just a reminder. I know we have a few items on
6 the agenda that some folks are going to want to talk
7 in regards to today, so please make sure you put in a
8 speaker card so I recognize you at the appropriate
9 time and we don't miss anybody.

10 With that, let's go ahead and jump in. Agenda
11 Item No. 1, Seminole Tribe of Florida, memorandum of
12 understanding.

13 MR. TROMBETTA: Thank you, Mr. Chair. The
14 first item is an updated memo of understanding with
15 the Seminole Tribe. This takes the existing memo of
16 understanding that the Division of Pari-Mutuel
17 Wagering prior to the FGCC had with the Seminole
18 Tribe regarding the 2010 compact.

19 So this MOU has existed and been in place -- it
20 was originally entered into in accordance with the
21 original compact in 2010, and the amendments that we
22 are making include essentially just changes from the
23 Division of Pari-Mutuel Wagering or references to
24 DBPR. We've amended them to include and address the
25 Florida Gaming Control Commission.

1 So what you have in front of you and what the
2 ask here is is that you'd approve amendment of the
3 MOU, there are no substantive changes, it just swaps
4 DBPR with FGCC, and that we would continue to conduct
5 our audits as in accordance with both the compact and
6 this memo of understanding.

7 CHAIR MACIVER: Mr. Trombetta, would it be
8 accurate for me to describe this as essentially a
9 continuation MOU of what we already had other than
10 changing from DBPR to the Gaming Commission, there's
11 no really substantive change, correct?

12 MR. TROMBETTA: Correct, Mr. Chair.

13 CHAIR MACIVER: And I just wanted to point that
14 out because obviously with the current state of the
15 compact and with the ongoing building of our
16 relationship and how that relationship is working,
17 this will end up changing over time with a new
18 compact of course, but this will maintain the status
19 quo just so that there is basically some operational
20 parameters for us in how we interact with the tribe,
21 correct?

22 MR. TROMBETTA: Yes, sir, that's correct.

23 CHAIR MACIVER: With that, commissioners, any
24 questions? Is there any debate on the issue?

25 COMMISSIONER BROWN: No, sir. Mr. Chairman,

1 I'm ready to make a motion to approve the memorandum
2 of understanding.

3 CHAIR MACIVER: Do I have a second?

4 COMMISSIONER D'AQUILA: Second.

5 CHAIR MACIVER: Any objection? Please execute
6 the memorandum. Agenda Item No. 2, and the
7 controversy I think will build with each progressive
8 agenda item. Mr. Dillmore?

9 MR. DILLMORE: Morning. Thank you, Mr. Chair.
10 You'll notice on the agenda the acronyms -- let me
11 just start off by going ahead and getting this off
12 the table because those will roll off the tongue
13 pretty quick. HISA is the Horse Racing Integrity &
14 Safety Act and HIWU is the Horse Racing Integrity
15 Welfare Unit. I just wanted to get that off because
16 those will kind of roll off as you talk about this
17 stiff.

18 The federal government had passed the Horse
19 Racing Integrity & Safety Act, it was signed into
20 federal law on December 27th of 2020 and established
21 horse integrity and safety authority. It is
22 responsible in drafting uniform safety and standards,
23 rules for track safety, and anti-doping medication
24 rules. So it was kind of broken into two units.

25 The federal law went into effect -- I'm sorry,

1 the rules went into effect on July 1st for the
2 welfare safety track rules. In preparation for
3 that -- this was pre-commission -- the division had
4 entered into a voluntary agreement to implement with
5 HISA to implement those safety track rules on a going
6 forward basis, and basically the agreement was that
7 with all the enforcement of the new federal rules
8 that the state of Florida's division would kind of
9 keep doing what it had been doing as far as stewards
10 and the regulatory vet and those functions and the
11 track that already had programs in place covering
12 some of that stuff would we continue to do those. So
13 it was kind of just a continuation.

14 The expectation was that the anti-doping and
15 safety rules would be implemented at a later date,
16 which was expected to be in January of 2023. In
17 October, the commission was sent a letter from HISA
18 basically outlying an assessment that would be going
19 to all the tracks nationwide in particular breaking
20 their overall costs down which I believe was
21 \$72 million in associating those fees directly to the
22 tracks in question.

23 In Florida, the two facilities we have running
24 were Gulfstream Park, which its assessment was
25 approximately \$5.2 million, and the Tampa Bay Downs

1 was \$1.2 million, and they'd be beginning to pay
2 those fees on a going forward basis I believe I think
3 from December or January to cover those costs for
4 overall implementation of both programs together.

5 CHAIR MACIVER: And I wanted to save questions
6 for later, but I do want to interject on this. Just
7 one question.

8 In the wake of the Black Decision -- which I
9 know you'll get into in a minute -- do we know or
10 have we received any indication from the tracks of
11 their intention to pay or not pay in December?

12 MR. DILLMORE: I have not received any
13 communication yet.

14 CHAIR MACIVER: Okay.

15 MR. TROMBETTA: Mr. Chair, if I may. The
16 indications we've received, I mean, not to contradict
17 what Mr. Dillmore says, is that the track's interests
18 is in -- generally against paying for this.

19 CHAIR MACIVER: As a broad generalization, most
20 of us are. I get that point, I just wasn't sure if
21 they were going to withhold those funds until there
22 was more clarification on the status of the law or
23 not. Sorry, Mr. Dillmore, please continue.

24 MR. DILLMORE: Not at all. So that would be
25 their full assessment absent voluntary agreement of

1 state. So in that also -- also in that letter, HISA
2 notified the Florida Gaming Commission that if they
3 were to enter into a voluntary agreement on not only
4 the previous program, but the anti-doping and
5 medication program on a going forward basis by
6 utilizing its -- some of its resources to continue,
7 for example, collecting samples from the horse racing
8 animals of the contestants, that the tracks could
9 receive a credit of up to -- depending on the extent
10 of the agreement -- anywhere from \$1.3 million to
11 \$1.6 million. Those would be allocated based on
12 their calculation if the state entered into that
13 agreement.

14 I would note that in November 16th, the
15 executive director sent a letter to HISA basically
16 saying that the state would not be able to pay those
17 fees for the tracks because mainly we don't have a
18 legislative appropriation for that and it may
19 question some legislative authority to do that. So
20 now those fees will be charged directly to the tracks
21 from HISA.

22 So that's kind of bringing us up to where we
23 are to date, obviously the one part, we put this in
24 the agenda or plan to put this in the discussion was
25 the Fifth Circuit Court of Appeals issued a ruling

1 stating that the act, questioning its
2 constitutionality. So it kind of just sets the table
3 where we're at, and I believe if -- not to get into
4 the legal part of it -- but the plan is if the state
5 doesn't enter into a voluntary agreement, that the
6 HISA or HIWU group will begin hiring to do the sample
7 collecting procedures on itself by itself, and
8 starting on January 1st. And I don't know if the
9 executive director has anything to add to where we
10 want to go from here, but that kind of lays the table
11 to how we've evolved into this point.

12 CHAIR MACIVER: Lou, if you had anything to
13 add, we'll recognize you for anything you wanted to
14 add, and then I think, Mr. Marshman, we need a little
15 bit of a walkthrough of the convoluted status of our
16 current authority.

17 MR. TROMBETTA: Yes, sir. Thank you, Mr.
18 Chair. If I can add just some of what's actually
19 being asked.

20 So the state of Florida has an opportunity to
21 enter into an agreement with HIWU to conduct some
22 portion of the drug testing program. If we do, we're
23 able to offset some of the costs associated with the
24 state of Florida. So what I'm asking the commission
25 to help with is that before legal and myself start

1 negotiating with HIWU, we're just trying to
2 essentially gauge your temperature. Are you
3 interested in us going down that road of entering
4 into those negotiations? Is there particular stuff
5 you would like us to go into or not go into?

6 So essentially what's going to happen from the
7 operational side is on January 1st, the state of
8 Florida -- the state laws in the state of Florida
9 have not changed, so state law and Florida still
10 requires and is going to require that we protect the
11 animals, we protect the wagering, and we continue to
12 ensure that samples are taken from animals, that the
13 races are run clean, and that people can count on the
14 integrity of the races that happen in the state.

15 Now, before Mr. Marshman talks about the legal
16 issues, that's kind of hanging over this, if we enter
17 into an agreement with HIWU, it will be very clear
18 about what we will and won't be doing on or after
19 January 1st. We have people at these race tracks and
20 we have -- from an operational side, we just have to
21 plan essentially.

22 So if you today tell us, "Hey, enter into some
23 type of agreement with HIWU so that the state of
24 Florida can continue to collect samples," which is
25 what I suggest, that means we'd be able to keep our

1 employees at the race tracks after January 1st, that
2 we'd continue to do essentially everything that we're
3 doing and we wouldn't have to deal with -- if we
4 don't choose to do that, HIWU is going to hire people
5 to collect those samples.

6 So in the mean time, that's going to put us in
7 a weird spot where if this case, depending on what
8 happens with this appeal, if HIWU and HISA remain in
9 effect, sometime after January 1st, there's going to
10 be somebody that is going to have to have to continue
11 to do samples.

12 So I'll be able to answer operational
13 questions, but I think maybe if I turn it over to Mr.
14 Marshman, it will clarify some of the confusion
15 regarding the legal issues.

16 CHAIR MACIVER: Mr. Marshman, you're
17 recognized.

18 MR. MARSHMAN: Thank you. Good morning. For
19 purposes of the record, we're discussing now the
20 impact of the case National Horseman Benevolent
21 Protective Association, et al vs. Black, et al from
22 the United States Court of Appeals for the Fifth
23 Circuit, Case No. 22-10387.

24 As was previously alluded, this opinion only
25 was recently issued by the Fifth Circuit on

1 November 18th. And in a nutshell, the Fifth Circuit
2 found that the Horse Racing Integrity & Safety Act,
3 the law, was unconstitutional for violating the
4 private Nondelegation Doctrine.

5 In essence, the Fifth Circuit concluded that
6 HISA's rulemaking was not subject to enough check by
7 a federal government agency, in this case, the FTC,
8 and they picked apart the act and they decided where
9 there were not sufficient checks on a private arc
10 enacting rules that would affect industry in the
11 place of the legislative or the government.

12 The parties have 45 days to petition the Fifth
13 Circuit for rehearing, either rehearing by the panel
14 itself of three judges or for rehearing on bond.
15 After that 45-day deadline is over, the mandate from
16 the Fifth Circuit would issue seven days after that.
17 The mandate means that for all intents and purposes,
18 the appeal is over, and the Fifth Circuit loses
19 jurisdiction over the matter.

20 After the mandate is issued, there is then a
21 90-day deadline for parties to seek a petition for
22 writ of certiori to the Supreme Court of the United
23 States. And once that initial petition is filed,
24 there are other deadlines that happen with briefing
25 on whether or not the Supreme Court of the United

1 States should take that issue.

2 So for now, you have an opinion that states
3 unequivocally that HISA is unconstitutional, and by
4 extension then, the authority -- it's confusing, they
5 share the same acronym -- the authority and HIWU to
6 an extent are in a very untenable position as well.
7 It's important to note that this MOU that we're
8 considering now is a tri-party agreement. It's
9 between the state of Florida, the authority, and
10 HIWU.

11 If HISA, the act, is declared unconstitutional,
12 then we'd be entering into a contract that no longer
13 exists. If, however, it's overturned or reheard and
14 reversed and the lower court finding that it was
15 constitutional is upheld, then we will have entered
16 into an agreement that will persist. In
17 communications with HIWU's counsel, they've indicated
18 that they are willing to put some provision in the
19 agreement that would terminate the agreement if HISA
20 ceased to exist. That's something that I would
21 advise the commission if it was inclined to enter
22 into an agreement to insist upon.

23 Those are the notes that I have. I'm happy to
24 answer any other questions about timelines or the
25 merits of the decision itself, but --

1 CHAIR MACIVER: Can you give us the 50,000-foot
2 non-law school don't make everybody's eyes glass over
3 description of how the preemption aspects of the act
4 affect our authority?

5 MR. MARSHMAN: According to the act, once the
6 FTC promulgated rules created by HISA for both
7 components, the Race Track Safety Program and the
8 Anti-Doping and Medication Control Program, those
9 rules once they're finalized in the final
10 registration preempt state's law, so including
11 Florida.

12 So clearly before November 18th, the Race Track
13 Safety Program's rules, which were properly
14 promulgated by the FTC in the federal register, those
15 preempted Florida law, hence why we entered into the
16 MOU so that we could continue to do some part of the
17 operation on behalf of HISA only because only HISA is
18 involved in the Race Track Safety Program.

19 Now, after November 18th, there are two
20 questions: One, what is the status of HISA and the
21 FTC's rulemaking for the Anti-Doping and Medication
22 Control Program rules, and if those have been
23 promulgated properly in the federal register, what is
24 the impact of Black on those rules?

25 Turning to the first part, I don't believe that

1 the rules are finalized yet. Ms. Stinson can correct
2 me if I'm wrong, because she's very much paying
3 attention to this issue as well. But Ms. Stinson, am
4 I incorrect?

5 MS. STINSON: Both the Race Track Safety rules
6 and the Drug Testing rules have been finalized. They
7 were resubmitted -- the Drug Testing rules were
8 submitted on October 18th I believe to the FTC.

9 CHAIR MACIVER: If Black becomes final, those
10 were adopted without actual delegable authority,
11 though, correct?

12 MR. MARSHMAN: Correct. It doesn't matter how
13 many rules the FTC via HISA promulgated. If they're
14 all unconstitutional, then those rules follow as
15 well, and there is no preemption at play for Florida
16 law.

17 CHAIR MACIVER: So, commissioners, part of the
18 reason why I was specifically asking about the
19 preemption issue, whatever agreement we would enter
20 into if we were to enter into an agreement, we would
21 have to be authorized by Florida law to do so. We'd
22 have to be agreeing to do the things that the
23 legislature has told us we are empowered to do, and
24 that from a preemption standpoint is kind of
25 questionable at the moment.

1 Now, to Mr. Trombetta's point, we do have some
2 very, very broad authority in the statutes that this
3 probably would fit under. My caution is in any
4 agreement that we had moving forward, we'd have to
5 make absolutely sure that, one, we were not failing
6 to meet any obligation that the legislature has
7 placed upon us.

8 If we're supposed to still be collecting
9 samples under Florida Statute and that's not
10 preempted that, then we're going to be collecting
11 samples under Florida Statute. If we're not supposed
12 to be entering into an agreement, if we're agreeing
13 to do things that are outside of our authority,
14 that's equally as troubling.

15 We need to do what the legislature of the state
16 of Florida has told us we're supposed to do, full
17 stop. If that law has been preempted, then we need
18 to find out what the legislature wants us to do with
19 that unless it's within our broad authority. But we
20 do seem to be in an uncertain position.

21 The savings clause that you mentioned, from my
22 own part, commissioners, I think I'd prefer if that
23 was worded as a condition precedent to an agreement
24 rather than as an exclusion to the agreement, but I
25 understand that causes a little bit of problem with

1 does HIWU start putting their own people on race
2 tracks starting January 1st.

3 I have a question about that as well. Are they
4 allowed to be there if we don't let them be there?

5 MR. MARSHMAN: It's my understanding that as a
6 matter of Florida law, only licensed individuals are
7 permitted in restricted areas of permit holders'
8 facilities. So unless the individual representing
9 HISA or HIWU had the appropriate Florida licensing,
10 there may be an issue with that person on the back
11 side of the facility.

12 CHAIR MACIVER: So when our folks showed up to
13 do collection and their folks showed up to do
14 collection and there was some sort of a standoff,
15 someone with a badge is going to come and escort them
16 from the facility?

17 MR. MARSHMAN: Hopefully it wouldn't get that
18 far.

19 CHAIR MACIVER: Okay. Commissioners, further
20 questions?

21 COMMISSIONER BROWN: Just to carry onto that
22 point. The draft agreement does give them the
23 authority to go anywhere on the track; is that
24 correct?

25 MR. MARSHMAN: I believe so. I believe that

1 that provision was included in the original Race
2 Track Safety Program as well. However, we were doing
3 more of the work in the Race Track Safety Program, so
4 it was less of an issue then.

5 COMMISSIONER BROWN: Can you talk real briefly
6 about what is a stay and the timing of a stay and how
7 that would affect our employees, how that would
8 affect HIWU's employees in regulatory oversight?

9 MR. MARSHMAN: I can certainly address the
10 first part of that. Mr. Trombetta or Mr. Dillmore
11 might be better to address the second part.

12 But going to your question, Commissioner Brown,
13 about the stay. If a party seeks a petition for writ
14 of certiori, then that party may also move for a stay
15 or petition for a stay. By default, the stay is
16 90 days, and for good cause shown, they can ask for
17 more time.

18 MR. TROMBETTA: Commissioner Brown, if you
19 don't mind, could you restate the second part.

20 COMMISSIONER BROWN: If the decision, the Black
21 case is -- and the effect of the law is just halted,
22 what effect would that have if we go ahead and enter
23 into an agreement? What effect would it have on the
24 posture that we're in?

25 MR. TROMBETTA: Well, I think it would depend

1 on how the agreement is structured. And so I think
2 it might help -- the state of Florida, we could
3 essentially work the agreement to maintain and to
4 continue to do what we're doing so that it would be
5 our people that would be continuing to collect
6 samples. I think that's probably the best example.
7 That would then have the impact of lowering the total
8 cost to associates to the state, and it would give
9 us, being the agency, the Gaming Commission, more
10 surety over a very uncertain thing, and that our
11 people -- it would be very clear who would be
12 collecting the samples at the track at that time. .

13 COMMISSIONER BROWN: So it's just a very
14 confusing paradigm for us, for the two tracks, and
15 for the industry as a whole. If we enter into an
16 agreement, are we blessing a law that already -- it
17 has been deemed by a federal appellate court that's
18 unconstitutional?

19 MR. TROMBETTA: If I may, I believe that we
20 could also address that with language in the document
21 -- agreement itself sort of to the condition
22 precedent type thought that the Chair referenced
23 prior.

24 CHAIR MACIVER: To my mind, the document would
25 have to say we are agreeing to do what the state of

1 Florida has always been compelled to do under our
2 state law, we will continue to do what our commission
3 is compelled to do under Florida state law, and if
4 the act is found unconstitutional, guess what? We're
5 still going to do what we're compelled to do under
6 Florida State law.

7 COMMISSIONER BROWN: I would agree, Mr. Chair,
8 on that. With regard to Tampa Bay Downs and
9 Gulfstream, there are comments in this file that were
10 submitted prior to the Black case decision by the
11 appellate court. Have we heard from Tampa Bay Downs
12 or anyone from Gulfstream? Because I'd be curious to
13 hear their position right now about whether we do
14 enter into any sort of agreement. I'd also be
15 curious to know if they do intend to pay the
16 assessments come December -- the 10th?

17 MS. STINSON: Yes. So I did reach out to both
18 Gulfstream and Tampa Bay Downs yesterday, but I
19 haven't heard anything back yet. Granted, it was
20 later in the day when I contacted them. But
21 December 10th would be when they would be receiving
22 the bill or the bill from HISA and HIWU for their
23 allotted amount.

24 COMMISSIONER BROWN: I just want to note
25 because we haven't had an opportunity to hear them

1 here, but these comments are very persuasive,
2 compelling. I completely agree, it's an additional
3 regulatory assessment that's being put on these
4 tracks for revenue that we are already collecting and
5 the work that we're already doing. It's a law that
6 has just been found to be unconstitutional. So the
7 fact that whether or not they're going to go ahead
8 and pay it, I would be curious to hear that, and
9 that's ancillary to the discussion about this MOU
10 because I do think we have the authority right now
11 irrespective of HISA. I do think we have the
12 authority to do what we're doing.

13 MR. TROMBETTA: Mr. Chair, if I may.

14 CHAIR MACIVER: Please.

15 MR. TROMBETTA: Just something else to keep in
16 mind. What we're asking for from you today is
17 essentially just authority to go forward and start
18 these negotiations. It's not a final document at
19 this point. So this won't be the end. It will sort
20 of allow us to go down this road, so we'll probably
21 be able to get more feedback as that happens.

22 VICE-CHAIR YAWORSKY: Mr. Trombetta, just to be
23 clear on that point you just made. I think an
24 authorization of some kind from the commission to
25 begin these discussions would enable that to happen

1 and then we could either reconvene to discuss at a
2 later time what you -- the result of those
3 negotiations or simply do an e-mail type -- what we
4 have done similarly in the past where you would
5 distribute a copy to all the members of the
6 commission, and if there was any objection where a
7 meeting was necessary, that could come up.

8 MR. TROMBETTA: Yes, sir. Mr. Chair, whatever
9 discretion you guys would like in terms of how we
10 finalize the ultimate document, we're just looking
11 for some authority -- essentially we didn't want to
12 waste a bunch of a man hours if it wasn't something
13 you guys wanted to go down.

14 COMMISSIONER D'AQUILA: So if I understand
15 correctly, Mr. Trombetta, you're just asking for
16 authority to go and negotiate, we're not actually
17 going to sign it this month; is that correct?

18 MR. TROMBETTA: Correct. We're asking for
19 authority to negotiate with HIWU and HISA because it
20 is a tri-party document.

21 The other thing I'd also ask is that if you'd
22 just give us some feedback about where you'd like us
23 to stop. From what I'm gathering just from this
24 conversation, the big thing would be collecting
25 samples. If you'd like us to continue to collect

1 samples, we would work that -- we'd go down that
2 direction. I think that would be most helpful from
3 my side, too, just in terms of keeping people -- not
4 keeping, but in other words, it would allow me and
5 Mr. Dillmore to coordinate staff at the tracks on and
6 after January 1st.

7 CHAIR MACIVER: Commissioners, if you're all in
8 agreement, from my part, I think my preference would
9 be the stopping point would be what we currently do
10 in statute. We would agree to do what we do in
11 statute because that basically keeps us acting
12 appropriately whether this goes away or not. When
13 you have a facially unconstitutional finding by a
14 court of appeal, it's a pretty good clue that this
15 probably is not going to survive.

16 So with that, I don't think we want to go
17 beyond what we have previously been doing. Again,
18 what are we authorized to do, no more, no less.
19 Commissioners?

20 VICE-CHAIR YAWORSKY: Just a follow-up on that
21 point. If we do go in that direction where it's this
22 far and no farther, would that impact the ability of
23 the tracks to continue to operate? I just want to
24 understand the impact of that.

25 MR. TROMBETTA: If I may, just let me ask Mr.

1 Marshman something before I respond: So there's a
2 few things we have to figure out to really be able to
3 answer that question. The timing of when we're going
4 to get this document finished I think is probably the
5 most important part. The goal would be to provide
6 assurances to the tracks so they can continue to
7 attract horses and they know sort of -- they have
8 some surety about what's going to be happening in
9 January, that there will be people there to provide
10 the services that we currently do to make sure the
11 races can happen.

12 So it's kind of hard to answer that question
13 directly. I believe that they would be able to
14 operate as they're doing no matter what happens here.

15 VICE-CHAIR YAWORSKY: I agree -- I'm so sorry
16 -- but I wholeheartedly agree with the Chair's
17 thought on continuing to ensure that we're fulfilling
18 our statutory obligations and not going further than
19 that . But also I do think an eye needs to be kept
20 throughout these discussions on ensuring that this
21 important industry in Florida is able to continue to
22 operate, but the primary concern is the statutory
23 obligations that the commission has.

24 CHAIR MACIVER: I think as we go forward in any
25 negotiations, we're going to expect good faith on the

1 part of both HISA and HIWU, that they're not going to
2 start proceeding as though there's not an agreement
3 in place as we're negotiating an agreement, and if we
4 get an indication that that's not the case, that that
5 good faith is not there, then we'll have to have a
6 special meeting to finalize a document sooner rather
7 than later. Commissioner, please.

8 COMMISSIONER BROWN: I have a question. In the
9 document, the draft document, it talks about
10 information sharing and other mutual things, but with
11 regard to -- it also references violations of the
12 ADCM program. What would happen -- if there's a
13 violation in this interim period let's just say
14 before a writ of cert is sought or if there's a stay,
15 what would happen if there's concurrent violations or
16 different violations because there are different
17 standards from HISA and Florida?

18 MR. MARSHMAN: It depends on what happens with
19 Black. Say a race happens on January 1st and there's
20 a violation that's later detected from a sample, if
21 the opinion in Black is in effect, then Florida law
22 is unquestionably a in effect. However, if Black is
23 still in effect, then preemption would kick in and
24 the federal regulation would impact that sample and
25 they would be the ones looking at that violation of

1 their rules.

2 COMMISSIONER BROWN: So I think that needs to
3 -- if we are going to enter into some type of
4 memorandum of understanding, that needs to be very
5 clearly delineated so there's no ambiguity among the
6 tracks, among the industry of what laws prevail.

7 CHAIR MACIVER: Commissioners, any further
8 discussion?

9 COMMISSIONER D'AQUILA: So from the track's
10 perspective, they're adhering to two sets of laws
11 during this interim period; is that correct?

12 MR. MARSHMAN: Not necessarily. On January
13 1st, I think this is where I was confused earlier,
14 the Anti-Doping and Medication Program rules take
15 effect January 1st. So on January 1st, if a race was
16 to occur and Black had not been -- if the opinion of
17 Black had not been finalized and had not been stayed,
18 then the rules would have some effect, HISA's rules
19 would have some effect, and until at least the 45-day
20 window is over after November 18th.

21 Once that window has elapsed, then the parties
22 can try to do rehearing or they can do -- well, it
23 would take a little bit longer for a writ of certiori
24 and a stay, but there is going to be this period
25 where Black is not yet in effect and the HISA's rules

1 are in effect. So for the race track, I believe that
2 the HISA Anti-Doping and Medication rules would be in
3 effect starting January 1st up until and when if the
4 Black case becomes final or goes into effect.

5 COMMISSIONER D'AQUILA: I have a question for
6 Ms. Stinson. Has there been any discussion or have
7 you heard anything with regard to HISA delaying the
8 implementation in light of what has transpired just
9 in the past few weeks?

10 MS. STINSON: In regards to HISA and HIWU or
11 from other states?

12 COMMISSIONER D'AQUILA: Let me clarify. HISA,
13 HIWU, and the January start date.

14 MS. STINSON: We have had discussions with
15 HIWU, which is the drug testing component. We
16 actually had a conversation with them the day after
17 the opinion came out, and they did say to us that
18 they were intending on going forward January 1st.

19 CHAIR MACIVER: It would seem to me that for
20 people in that position, it might be incumbent upon
21 them to seek some sort of emergency injunction, but
22 who am I to say? Any further discussion or debate?

23 COMMISSIONER D'AQUILA: I have a question for
24 Mr. Dillmore. Mr. Dillmore, is it realistic if HISA
25 were to get started to be able to hire and put in

1 place a separate testing team per se on this national
2 scale if the states decide to go their own way?

3 CHAIR MACIVER: You're recognized, Mr.
4 Dillmore.

5 MR. DILLMORE: Thank you. It's really hard to
6 speak for someone else's hiring practices or what
7 their intent is, but they made it very clear that
8 that is their goal. It seems like it would be a big
9 lift to do that in a short amount of time, but all I
10 can tell you is what they communicated to us is that
11 isn't their intention.

12 COMMISSIONER D'AQUILA: Thank you.

13 CHAIR MACIVER: Commissioners? Commissioner
14 Brown.

15 COMMISSIONER BROWN: One more logistic
16 question. With regard to the mitigation of the
17 credits and how that's calculated, during this period
18 of uncertainty -- and I think that's an important
19 part that needs to be addressed in any time of
20 arrangement, because that's kind of the incentive,
21 right? The mitigation of the assessment that can
22 range from 1.3 to 1.6, when would that occur and the
23 timing of it with the current case and the bill --
24 and I don't know how the tracks are being assessed in
25 full for a year or if it's based on incremental

1 amount, and then when would the mitigation of the
2 credits be given to them? I care most about that
3 given that this is such a large assessment on the
4 industry.

5 MR. MARSHMAN: If I may, I would defer to Ms.
6 Stinson as she's more familiar with the methodology
7 for accruing fees for states.

8 CHAIR MACIVER: Ms. Stinson, you're recognized.

9 MS. STINSON: Thank you. So in the letter that
10 we received from HISA regarding the Race Track Safety
11 and Anti-Doping and Medication Program and our
12 allocation of credits, if we negotiate with them and
13 enter into an agreement, they did say that they were
14 amenable to accepting partial payment or installments
15 from the race tracks for this amount.

16 COMMISSIONER BROWN: I just want to point out
17 that the assessment does include litigation cost to
18 defend the HISA law that was found unconstitutional,
19 so the tracks are going to be paying for the legal
20 fees of HISA and HIWU as well, I assume?

21 MS. STINSON: Yes.

22 COMMISSIONER BROWN: That's crazy.

23 CHAIR MACIVER: Commissioners, anything
24 further?

25 COMMISSIONER D'AQUILA: To Commissioner Brown's

1 point, I would expect the commission, if we are
2 negotiating, to go with the most aggressive
3 month-to-month payment plan for the tracks possible,
4 and when I use the term aggressive, I mean favorable
5 to tracks, but I also express concern about funding
6 these lawsuits as well. And I would also add concern
7 looking at the details of the proposed HISA budget,
8 some of the line items that are in there really do
9 require further detail to understand.

10 MS. STINSON: If I may, the -- since the state
11 of Florida has opted out of collecting payments from
12 the tracks, the tracks are going to be the ones that
13 are going to be dealing with HISA and HIWU directly
14 regarding the payment structure or when they're going
15 to be giving those payments.

16 CHAIR MACIVER: Mr. Vice Chair.

17 VICE-CHAIR YAWORSKY: Thank you. If I may on
18 that point: Have we looked at this -- the budget
19 that has been provided, HISA's budget and HIWU's
20 budget?

21 MS. STINSON: Yes, we have looked at it. We
22 did receive it along with this letter.

23 VICE-CHAIR YAWORSKY: Because I do struggle a
24 bit with the staggering cost imposed on the tracks
25 for this implementation and regulation under HISA and

1 HIWU. It seems like it's a substantial cost for a
2 number of services that I -- I understand there's
3 legal fees involved and some other add-on things, but
4 the cost of it seems staggering to me when you take
5 into account the fact that Florida seems to have done
6 a good portion of this at a dramatically cheaper
7 price.

8 So I guess the -- your prior answer to
9 Commissioner D'Aquila is that the view right now is
10 that that would really be something for the track to
11 take up -- the tracks to take up with HISA; is that
12 --

13 MS. STINSON: So we sent a letter to HISA on
14 November 16th saying that we were opting out of
15 collecting the fees regarding these payments. Other
16 than that, I really can't speak to the agreements
17 between HISA and the tracks.

18 VICE-CHAIR YAWORSKY: Can I ask it this way:
19 Is there a formal mechanism and rule in the federal
20 rule or through some sort of other structure than
21 HISA where there is a transparent and fair process
22 for the tracks to both inquire about the budget, the
23 cost to be imposed upon them, and a format for them
24 to add input and discussion on kind of ensuring the
25 costs are fair and reasonable?

1 MS. STINSON: So there is a rule regarding
2 payment methodology and what states are assigned what
3 amount of money, and also not only just the states,
4 but it's broken down by tracks. That has been
5 promulgated through the federal register, but that
6 does not address your point regarding the fact that
7 they don't have any mechanism to examine HISA's books
8 other than what they're given through this budget.

9 VICE-CHAIR YAWORSKY: Okay. Thank you.

10 CHAIR MACIVER: Commissioners, further debate
11 or discussion? I'm going to go as long as you all
12 have curiosity.

13 COMMISSIONER BROWN: Thank you. I did not
14 understand that when we opted out that we would not
15 have the authority or right to question, analyze,
16 review, challenge the proposed \$72 million budget of
17 HISA, and the comments, again, from these tracks are
18 very persuasive. They may be forced to run less
19 races, which would translate to less revenue that we
20 collect as a state. So we are all impacted by this
21 assessment.

22 So I'm just trying to understand: We have no
23 point of entry to challenge the budget when we
24 decided to opt out?

25 MS. STINSON: We didn't have that either way.

1 So even if we opted into paying, there's no mechanism
2 for us to challenge the budget that HISA has unless
3 we sue.

4 CHAIR MACIVER: Would it be fair to say that
5 our ability to do that wasn't by us opting out, but
6 by the Supremacy Clause and by the Preemption
7 Doctrine?

8 MS. STINSON: Yes.

9 CHAIR MACIVER: Okay.

10 COMMISSIONER BROWN: Okay. So nobody can
11 challenge the cost if this law is ultimately found
12 unconstitutional at any point?

13 CHAIR MACIVER: If I may, I think what I'm
14 hearing is is there an administrative or an executive
15 function that we would have in challenging those
16 costs, and I'm not hearing one. As far as is there a
17 legal way for those costs to be challenged, one, I
18 think we have some informal bargaining power as we're
19 dealing with the federal entity. Thinking slightly
20 outside the box, the discussion we had a little bit
21 earlier about who's licensed to be on these tracks in
22 the first place or not and how an agreement would
23 allow them to be on tracks that are regulated at the
24 state level is certainly a leverage point that we'd
25 have, and then there is always litigation.

1 I think that the decision to move forward on
2 litigation would be a policy decision that would be
3 made by the people of the state of Florida through
4 their -- at least some input through their
5 legislative, but there are leverage points for still
6 I think -- and I'd defer to staff to comment on any
7 of -- anything further as far as those leverage
8 points go.

9 MR. MARSHMAN: Mr. Chair, if I may. Just two
10 points for the commission. First is the Anti-Doping
11 and Medication Control Program was supposed to be
12 live July 1st of 2022. Obviously it wasn't, so HISA
13 made the decision to push that effective date back.
14 There's the option whether they execute it or not to
15 push the effective date back. They've already chosen
16 to not follow the law once, they may do so in the
17 future given the impact of Black.

18 Second, to Commissioner Brown's frustration
19 about the costs that are being levied and the budget,
20 it's important to remember that HISA, the Horse
21 Racing Integrity & Safety Authority, is not a federal
22 entity. In fact, it is a not for privately held
23 corporation. It was created by federal law and has
24 limited oversight by the FTC for rulemaking. So it
25 is a slightly different beast when challenging its

1 budget.

2 There is a Federal Administrative Procedures
3 Act rule challenge provision that could be exercised
4 against the payment methodology rule, but the budget
5 itself, that may be more difficult to challenge
6 directly.

7 CHAIR MACIVER: Commissioners? Staff, do you
8 feel you have adequate guidance from the commission
9 on how to proceed?

10 MR. TROMBETTA: Thank you, Mr. Chair. I think
11 we do have a good idea of some of the concerns and
12 some of the intent. I think if there could just be a
13 vote finalizing the action, I think we'll be good to
14 go.

15 CHAIR MACIVER: Do I have a motion to authorize
16 staff to proceed with negotiations?

17 VICE-CHAIR YAWORSKY: So moved.

18 CHAIR MACIVER: And a second?

19 COMMISSIONER DRAGO: Second.

20 CHAIR MACIVER: Without objection, show that
21 motion carries.

22 Commissioners, I'm going to call for just a
23 ten-minute break real quick with everyone's
24 indulgence, and we'll be back at 10:25.

25 (Brief recess taken.)

1 CHAIR MACIVER: All right, folks, sorry for the
2 couple-minute delay on 10:25. But jumping right back
3 in. We're reconvened on Agenda Item No. 3.

4 Mr. Trombetta, I believe we were going to have
5 a little bit of a general discussion and maybe a few
6 specific policy and procedures, but mostly a general
7 discussion of how should we approach these.

8 MR. TROMBETTA: Yes, Mr. Chair. Thank you.
9 Agenda No. 3 is sort of an internal discussion point,
10 but it's helpful. As the agency establishes some
11 policies and procedures, I'd essentially like buy-in
12 from the commission just to make sure that you all
13 are onboard with what's happening. So what I'm kind
14 of asking for is for the commission to accept a
15 recommendation that policies and procedures that
16 would have applied agency wide come before the
17 commission in some way, and I can make a
18 recommendation, but really, I'd just like something
19 from the commission establishing a directive for my
20 team to establish these procedures.

21 We have a handful of operational procedures
22 that we're ready to formally adopt or finalize or
23 execute, and my recommendation would essentially be
24 that as we have these things ready, we bring them in
25 front of the commission and get sign off from a

1 majority of the commissioners just as a standard
2 practice, that way you guys are aware of these
3 policies and procedures, you can have input, as they
4 do affect the agency as a whole.

5 So Mr. Chair, right now, I mean, it's not for
6 approval, the actual policy right now, but we have a
7 harassment policy and attendance and leave policy and
8 agency property and an acceptable use also for IT
9 that we're working on. They're nearly finished, and
10 those are just examples of what this item would be.
11 At some point we'd -- take the harassment policy,
12 we'd formally bring a version of it to the commission
13 for approval before it gets implemented.

14 CHAIR MACIVER: Commissioners, I think a brief
15 discussion amongst us on any input that we'd like to
16 give any further considerations about that approach.
17 I'm wholly in agreements, yes, when these policies
18 and procedures are ready, they need to come before
19 the commission, we need to have commission sign off
20 to put them in place.

21 One suggestion that I'd make is as we bring
22 these forward and approve them, we probably include
23 in each of those presentations of policies and
24 procedures the commission's input on what's next and
25 where we need to be going and what our priorities are

1 for getting more things adopted, that's probably the
2 appropriate time to have those discussions. But
3 other than that, I want to say, commissioners, any
4 input that we can give the staff or you'd like to
5 give the staff, now is the time. Mr. Vice Chairman.

6 VICE-CHAIR YAWORSKY: Thank you. I would just
7 -- I would encourage -- this is a rare opportunity in
8 state government to basically start from scratch and
9 do some research and identify the best practices for
10 AP&Ps, they're very important when things matter, and
11 to make sure that everything is running
12 appropriately.

13 I would just suggest that we take time to
14 research and take a look at what other agencies are
15 doing. I've personally experienced agencies that
16 have fantastic AP&Ps, and I've seen some that have
17 not been touched in 25 years and it becomes a
18 problem. I would first encourage that.

19 Secondly, I would just encourage also that as
20 they're being developed, that it is an internal
21 process that allows for input from our folks on the
22 ground to some extent, mainly division directors and
23 heads of various areas, that they have a feeling that
24 if they have input, to provide it, it's heard, and
25 that they have had a chance through a routing system

1 or something to look at it as it's being developed to
2 share their thoughts along the way.

3 CHAIR MACIVER: Commissioner Drago?

4 COMMISSIONER DRAGO: Just a couple of
5 suggestions, that I'd like to see some type of
6 process established whereby you produce these
7 policies. In other words, are you going to bring in
8 subject matter experts in each particular area as you
9 write some of those policies and ensure that those
10 people are part of whatever process you have, whether
11 it's subcommittees to write these policies or however
12 you do it, and include some type of period where
13 they're revisited, whether it's manually, every three
14 years, something along those lines, and have those in
15 policy so you know to follow those, and we won't run
16 into -- like Commissioner Yaworsky ran into speaking
17 about -- where policies were great 35 years ago and
18 they weren't revisited since, that more common around
19 the country, especially law enforcement agencies.

20 So I would like to see a process in how this is
21 going to be done and what rules -- kind of guidelines
22 and rules you're going to have for yourselves to do
23 that, and I'm perfectly satisfied with doing it as
24 you said, bring it to us after you've written it, and
25 we will sign off on it. Policies and processes are

1 very important, from my perspective.

2 CHAIR MACIVER: Commissioners? Commissioner
3 Brown.

4 COMMISSIONER BROWN: I agree with everything
5 that was said.

6 CHAIR MACIVER: The only thing that occurs to
7 me -- I'm looking over and seeing our Chief of Gaming
8 Enforcement -- some of our law enforcement policies
9 and procedures, I think the bulk of them will be
10 appropriate for public discussion and consumption,
11 but there are certainly going to be things in those
12 procedures that would -- perhaps investigative
13 techniques, things like that. So we'll have to be
14 mindful of a separate process for those law
15 enforcement policies that are going to be different
16 than the run-of-the-mill stuff.

17 Any further discussion? Then I believe we're
18 moving on. I believe we're moving on to Agenda Item
19 No. 4, transfer of ownership. Mr. Dillmore, were you
20 going to present the 50,000 foot -- and again, I
21 think we're looking at the 50,000-foot, at this
22 level, and Mr. Marshman -- actually, let's start with
23 Mr. Marshman real quick. Given the at least
24 expressed trade secret portion of that, perhaps an
25 admonishment for each of our commissioners might be

1 in order.

2 MR. MARSHMAN: I would never admonish the
3 commission, but I will note that a portion of the
4 application that has been submitted by Wind Creek has
5 been marked confidential or trade secret, and for the
6 public facing meeting materials, those appear as
7 blank pages or blacked out pages.

8 Of course, commissioners, you were provided
9 unredacted copies of those materials, but it is
10 important to bear in mind as we may or may not
11 discuss some of the details of this application
12 today, that what has been marked as trade secret or
13 confidential should not be disclosed at this time in
14 public.

15 CHAIR MACIVER: That's not to say that that
16 will be the case moving forward once a determination
17 has been made on those things, but for right now, so
18 that we all avoid any potential criminal liability,
19 it's best that we don't discuss those things. You're
20 recognized. Thank you.

21 MS. POUNCEY: Good morning. Jamie Pouncey,
22 Permit Holder Administrator, Division of Pari-Mutuel
23 Wagering. Item No. 4 on the agenda is West Flagler
24 Associates ownership transfer, Case No. 2022048451.
25 Wind Creek Miami, LLC has submitted an application to

1 transfer a permit from an existing permit holder to
2 another existing permit holder. Specifically the
3 application seeks to transfer Permit No. 155 from
4 West Flagler Associates to Wind Creek.

5 Upon review of the application, it appears all
6 the necessary requirements have been met, therefore
7 we recommend approval. Permit 155 was originally
8 issued August 11, 1931 for the conduct of greyhound
9 racing.

10 PCI Gaming Authority, an unincorporated
11 chartered instrumentality of the Poarch Band of Creek
12 Indians, a federally recognized Indian tribe through
13 its wholly owned subsidiary, Wind Creek, has entered
14 into an asset purchase agreement with West Flagler.
15 Pursuant to that agreement, Wind Creek will acquire
16 100 percent ownership interest and equity interest in
17 the permit because it's acquiring the permit, Wind
18 Creek will also acquire the pari-mutuel operating
19 license, the card room license, and the slot machine
20 license for fiscal year 2022-2023.

21 The application was received on October 6th, it
22 was deemed completed as of November 18th. PCI
23 currently holds interest in other pari-mutuel
24 permits, meaning that all of its entities, persons
25 listed have been vetted previously in those other

1 ownership interests. Therefore Wind Creek, a wholly
2 owned subsidiary of PCI, is qualified to obtain
3 ownership interest in this permit.

4 The recommendation is that the commission
5 should approve the request for transfer of
6 100 percent ownership interest in Permit No. 155 from
7 West Flagler Associates to Wind Creek, LLC, the
8 wholly owned subsidiary of PCI Gaming Authority.

9 CHAIR MACIVER: Thank you. Commissioners, if
10 there's no objection, I'm inclined to move into
11 public comment before we do questions, discussion or
12 debate.

13 Mr. Lockwood, this is your application, I'm
14 going to recognize you both first and last. You're
15 recognized.

16 MR. LOCKWOOD: Thank you very much. I'll be
17 honest, at this time yesterday morning, I did not
18 prepare to present anything to the commission on this
19 issue because this is such a simple and narrow
20 transaction. I had no idea that it was going to
21 become such a hotly discussed topic at this
22 commission. What I would like to say is I did
23 prepare some notes and I appreciate the opportunity
24 to provide some rebuttal because I'm not really sure
25 what the complaints would be to this transaction.

1 What I would say is that as Ms. Pouncey's
2 already outlined, this entity already owns two
3 pari-mutuel permits in the state. They're operating
4 facilities, they've been operating here for over ten
5 years each of them, they're acquiring another
6 pari-mutuel facility in the state. We've went
7 through the background screenings, and that generally
8 for a pari-mutuel permitting process is the end of
9 the analysis.

10 This is not the Nevada Gaming Commission or
11 another commission where we have any type of
12 character and fitness type of examinations or any
13 type of in-depth examinations. Generally we make
14 sure the authorized people that are the ultimate
15 owners and managers have the appropriate licenses,
16 and here, this is just simply a transition from the
17 other facilities.

18 To the extent that there's any objections to
19 this proceeding, I would note that Florida law is
20 abundantly clear on this issue. Third parties do not
21 have the right to intervene into and object to this
22 commission's permitting procedures for either new
23 permits or applications.

24 I understand Mr. Dunbar's got a speaker card in
25 here, he's well aware. I actually tried in 2008 to

1 intervene and contest some permits that were issued
2 by the state, had clients that were objecting to
3 that. We lost that case. Mr. Dunbar was on the
4 other side and he held the position that third
5 parties don't have the right to intervene in here,
6 this is a proceeding between the applicant, and at
7 that time it was the Division of Pari-Mutuel
8 Wagering, and there is no expressed statutory right
9 for any party to come in and try to delay this
10 proceeding.

11 Compare that to last month, the commission had
12 a relocation of a pari-mutuel permit in St. Lucie
13 County. There was a specific statutory procedure in
14 place where parties -- there had to be a duly-noticed
15 public hearing, there had to be a public hearing, an
16 opportunity for people to come in and object, and
17 that proceeding exemplifies the fact that the
18 legislature contemplated that when permits are being
19 relocated, maybe there is a scenario where somebody
20 would have an objection to that and it would have
21 some impact on them and they could come before the
22 commission and make those complaints. But here we're
23 just talking about the transfer of ownership, and
24 we're talking about the transfer of ownership from
25 one entity that's in Florida to another entity that's

1 already been approved by the commission.

2 So with that, I would say that there really is
3 no basis to delay this proceeding at all. The
4 parties since we -- and this has been a long process,
5 I hope the commission can appreciate that, and it's
6 been an enormous amount of work for all parties
7 involved. This proceeding started back in the
8 summer. At this point there were a lot of interested
9 buyers for the property, ultimately it came down to
10 PCI Gaming and Wind Creek Miami and their subsidiary,
11 they were successful, they entered into this
12 agreement.

13 We began talking with the commission staff I
14 believe in August, let them know that this was
15 ongoing, we had a potential buyer in place and that
16 it was very important that we were able to secure a
17 position on either the November or the December
18 commission agenda so that we could get this
19 transaction approved before the end of the year.

20 I cannot overstate the importance that we're
21 allowed to close this transaction financially by the
22 end of the year. As everyone is aware, the global
23 economic markets are volatile to say the least. If
24 we pump this issue beyond this commission meeting and
25 into next calendar year, I don't know what that means

1 for this transaction, quite frankly. We thought we
2 had everything and we've been preparing and we're
3 ready to close. We actually have a call this
4 afternoon at 3:30 p.m. hoping that we would receive
5 after we saw the meeting materials that there was a
6 recommended approval, that we'd be able to line up
7 closing for this transaction.

8 I hope that the commission allows us to move
9 forward with that. If there's been some defect that
10 they would allege is the meeting materials or the
11 notice or anything of that nature, I would say, look,
12 that would apply to everything that's on this agenda,
13 and that is a very dangerous precedent for us to
14 submit.

15 One thing I do want to note, and the general
16 counsel did indicate this to me, is the redactions
17 that we provided to this document in our application.
18 There's nothing nefarious here with that. I'll give
19 you exact reasons as to why we do that, and my firm
20 has done this for years. And the reason is that we
21 want to make sure that there's no inadvertent
22 dissemination of documents that we submit to this
23 agency or any other agency that are trade secret that
24 get released to the public without the agency
25 understanding that they are in fact privileged

1 documents.

2 I'm not taking the position that every single
3 thing that we submitted to this commission is trade
4 secret. I understand there's a public records
5 request now. I will work with the commission and
6 with the staff to provide a less redacted document.
7 There are obviously certain things about this deal
8 that are going to be trade secreted. The gaming side
9 of things is a very simple issue, but you've gotta
10 understand, this is an asset that's been in place
11 since 1931. There's hundreds of employees, there's a
12 lot of things going on with this from a corporate
13 standpoint that have to be negotiated and a lot of
14 those deal terms in this environment, very
15 complicated, and we'd object to those type of terms
16 being released.

17 And again, we'll work with the commission if
18 there's any public records request on that to narrow
19 those redactions for sure, but I would certainly
20 implore the commission to move forward with this
21 approval today in order to have us able to close this
22 transaction before the end of the year. And unless
23 there's any questions, I'll reserve my right to rebut
24 any of the other speakers, the objections they may
25 have.

1 CHAIR MACIVER: I'll make sure you have the
2 opportunity.

3 MR. LOCKWOOD: Thank you.

4 CHAIR MACIVER: Mr. Sowinski?

5 MR. SOWINSKI: Thank you, Mr. Chairman, and
6 commissioners for the opportunity to speak with you
7 today and for your service to the state in this role
8 on this very important commission. My name is John
9 Sowinski, and I'm with the No Casinos Organization.
10 I'll spare you the long history, but we've been
11 around since the '70s opposing the expansion of
12 gambling in the state and at the ballot box and the
13 legislature and in the courts. Most recently we were
14 the author and principal campaigner for the Amendment
15 3 campaign which placed Article 10 Section 30, the
16 Voter Approver of Gambling Amendment, into the State
17 Constitution.

18 We may have no objection whatsoever to the
19 substance of this transaction, and which will likely
20 be the case. The problem that we have is a process
21 related one. One of the great opportunities that we
22 have with the creation of the Gaming Commission and
23 with your important role here, and one of the
24 promises made with the legislation that established
25 it was to really elevate the public discussion and

1 bring out into the forefront these types of decisions
2 that are made about the gambling industry in our
3 state. And one of the things that sort of caught our
4 attention when the agenda packets dropped was this is
5 a 110-page agenda item -- 103 -- which have given
6 redacted -- and with respect to the last speaker's
7 statement, it feels like we have to pass it so we
8 know what's in it.

9 And I know that you know what's in it, but the
10 public should also have the ability to see and kick
11 the tires of everything that is not truly, truly a
12 trade secret that's in there. And I don't think that
13 103 out of 107 pages, 94 percent of the content of an
14 application should be shielded from public view
15 before it is acted upon in its important precedent
16 because the precedent you set now may carry well into
17 the future on this.

18 The other thing, and it's another thing that we
19 didn't have the opportunity just because of the tight
20 time frame, and that is that in the vetting process,
21 my assumption is that everyone passed the vetting
22 process that's involved in this. But I don't think
23 it's as robust to review as the transfer of a Class 3
24 gaming license. This is not running horses and card
25 rooms at Gretna, this is Class 3 gaming. This is

1 slot machines in the most highly populated area of
2 our state, and it merits a higher level of scrutiny
3 than deferring to due diligence and background checks
4 that were done for permits issued ten years ago.

5 And so we think that that ought to be looked at
6 as though it is a new venture, not relying on past
7 due diligence. And again, I'd suspect that everyone
8 would pass, but we're setting precedence here.
9 Everything you do sets precedent, and that's one of
10 the burdens of being on a brand new body here.

11 And so our request is not to disapprove this
12 permit, our request is to -- let's have all of the
13 information about the permit that's appropriate to be
14 in the public record in the public record. Counsel
15 for the applicant just said there are things that can
16 be in the public record that right now the public
17 does not see. So to strike, not just oppose and not
18 just optics, but substance of transparency, our
19 request is that approval of this item and disposition
20 of it be postponed until such a time as everything
21 that can be unredacted is unredacted. Thank you very
22 much for your time today.

23 CHAIR MACIVER: Thank you, Mr. Sowinski. I
24 have no further speaker cards. I'm going to just
25 take an opportunity. Is there anyone who did not

1 have the opportunity to put in a speaker card who had
2 wished to speak on the agenda item today? Seeing
3 none, Mr. Lockwood, if you'd like to rebut.

4 MR. LOCKWOOD: Thank you very much. First off,
5 again, I'd be happy to work with Mr. Sowinski on his
6 public records request to get a less redacted version
7 of that. The comment, though, that he did make about
8 the background checks -- and maybe staff can confirm
9 this for the commission -- but we're not relying on
10 background checks that were previously done. All of
11 these individuals, actually, we had to go back and
12 re-background screen them specifically for this
13 transaction because the background screening
14 requirements are slightly different for a card room
15 and a regular pari-mutuel license than they are for
16 slots. So they had to go through those background
17 screenings as well, and they did, all of those
18 individuals passed as well. So there are no
19 outstanding background screenings, and they were just
20 recently conducted as of just a few weeks ago. So
21 these are all very recent, this has all been going
22 through.

23 And the comment about the hundreds of pages,
24 certainly this is a very long purchase agreement. I
25 think that once we get into a public records request,

1 we can share that. But again, I would implore the
2 commission to not delay this transaction into next
3 year because I do have fear as to what that would
4 involve for this entirety.

5 There has been a lot of work, I can't tell you
6 how many attorney and consultant hours have been
7 spent on this so far, a lot of long nights for a lot
8 of people, and we've done a lot of hard work, and the
9 commission here has done a lot of hard work to get us
10 to this position where we can be here on this agenda
11 item and be before you in advance of the end of the
12 year so that we are successfully able to close this
13 facility and this transaction, and we hope that is
14 not going to be pushed into next year.

15 These public record issues, I mean, again,
16 there's certainly nothing there, and we're happy to
17 work with them on that. And with that, I would just
18 really ask the commission that we move forward and
19 approve this transaction. Thank you.

20 CHAIR MACIVER: Okay. I'm going to offer a bit
21 of explanation. And commissioners, I will give an
22 opportunity to object before taking any action.
23 However, my concern here is with the Sunshine Act
24 aspects of this. And Mr. Sowinski, to your point
25 that you don't know if there's anything objectionable

1 in there, I am pretty skeptical that there is
2 anything that would be legitimately objectionable in
3 there. I don't think there is.

4 With that said, I think that the public is
5 entitled and very good at deciding what they find to
6 be relevant and not relevant. So if there is an
7 over-redaction of material that the public has not
8 had an opportunity to consider prior to us taking
9 action, I think it would be inappropriate for us to
10 take action at this time, and my intent is to
11 temporarily postpone this agenda item.

12 Mr. Lockwood, I'm not going to make a date
13 certain on when we're postponing that agenda item.
14 If you can work with staff, I would be amenable to
15 scheduling a meeting prior to the end of the year for
16 the special purpose of considering this prior to the
17 end of the year and not punting it all the way to
18 January if possible. Please work with staff on that.
19 But again, I'm going to temporarily postpone this
20 from the agenda today. Commissioners, is there any
21 objection?

22 COMMISSIONER DRAGO: No objection. I think
23 that's a very good alternative.

24 COMMISSIONER BROWN: I agree, and I do agree
25 with the comment that was made by the speaker, Mr.

1 Sowinski, that the staff does need to look at this as
2 a new venture. An acquisition of this nature, of
3 this magnitude, is significant. And I also looked at
4 trying to look at the applicants and all of those
5 associated with PCI Gaming, again, which is really
6 the wholly owned subsidiary. So I'd like to see
7 those applicants in there in the background check to
8 make sure that we have all of the information. It
9 was not in the file that I had.

10 CHAIR MACIVER: Mr. Vice Chair.

11 VICE-CHAIR YAWORSKY: Just for the record, I
12 want to give our counsel an opportunity to provide
13 information about two things. The first one would
14 be, just generally speaking, the role of the agency
15 as it relates to submissions that are filed as trade
16 secret. In that role, could you --

17 MR. MARSHMAN: We received the application in
18 two forms. We received a completely unredacted copy
19 of the application and then we received a redacted
20 version of the application from the applicant. We
21 didn't make any redactions in any of the materials
22 that are in the public facing materials, those are
23 from the applicant, and as the applicant's attorney
24 already said, he will go back and review the
25 redactions that he made to ensure that the redactions

1 are as narrow in scope to make sure that only trade
2 secrets are being protected.

3 In the mean time, however, further materials we
4 posted on the website. The commission and no other
5 state agency is ever in a position to determine what
6 is or is not trade secret. That's a determination
7 that's made by a court of law pursuant to for this
8 case the provisions of Chapter 688 by way of Chapter
9 119. In the mean time, there is a carveout in 119 on
10 its face for information that has been marked trade
11 secret that is confidential and exempt from the
12 provisions of Chapter 119 and the Florida
13 Constitution's provisions that provide for the open
14 government.

15 So everything that the commission has done so
16 far has been in accordance with those provisions.

17 VICE-CHAIR YAWORSKY: Thank you. And then my
18 second question on this, again, just for clarity:
19 When it comes to -- Mr. Sowinski mentioned at one
20 point I think about the heightened nature that he
21 believes this transaction should fall under. To be
22 clear, as the commission has reviewed this
23 transaction, we have complied fully with Florida law.

24 MR. MARSHMAN: That's correct. Florida law is
25 clear on the type of scrutiny that is applied to an

1 application such as this, and I would discourage the
2 commission from treating this differently than what
3 Florida law requires the commission to do for an
4 application such as this.

5 After reviewing Ms. Pouncey and her team's
6 work, I have no doubt that we have abided by the
7 relevant provisions of Chapter 550 and 551, and this
8 application was properly vetted with the appropriate
9 level of scrutiny that is owed by Florida law.

10 VICE-CHAIR YAWORSKY: And I beg your
11 indulgence, Chair, one more question.

12 CHAIR MACIVER: Please.

13 VICE-CHAIR YAWORSKY: When it comes to another
14 comment that was made regarding the potential
15 interested parties and this transaction or involved
16 parties in this transaction, when it comes to Florida
17 law and the degree to which the Gaming Commission is
18 authorized to review interested parties and
19 essentially how far through a chain of company up to
20 an ultimate controlling person, it's not necessarily
21 indefinite.

22 MR. MARSHMAN: No. There's a fixed point
23 provided by law that caps -- for lack of a better
24 term -- who exactly we're looking at, that's defined
25 in Florida law, and to a certain extent, our rules.

1 And again, Ms. Pouncey and her team performed that
2 level of review. And as Mr. Lockwood alluded to
3 earlier, the individuals themselves that were
4 associated with this transaction were already
5 licensed.

6 However, to possess the type of permit they're
7 going to have and its accompanying licenses, they had
8 to be subjected to additional scrutiny and have their
9 individual licenses upgraded -- for lack of a better
10 word -- to another license. So that's another thing
11 that Ms. Pouncey and her team helped the applicant do
12 to make sure this was correct.

13 VICE-CHAIR YAWORSKY: With all that said, I
14 wanted to make sure that was very clearly put on the
15 record, all those three items. But I do believe that
16 some -- it is appropriate, the Chair's action to
17 table this at the moment is appropriate given the
18 circumstances. I also agree wholly with the Chair on
19 this, that I think working with staff to try and meet
20 the interests of all the parties is also appropriate
21 in a timely fashion. But since there seems to be
22 some potential here for the parties to work together
23 to resolve any concerns that may exist, I think we
24 should allow them some time to do that and then
25 hopefully re-circle. I can't speak for everyone, but

1 I'm more than happy to meet at any point this month
2 to try and facilitate this agreement down the road.

3 COMMISSIONER D'AQUILA: Mr. Chair, can you
4 reiterate our reason again for delaying?

5 CHAIR MACIVER: Purely out of the Sunshine Act,
6 we cannot take any action as a collegial body without
7 an automatic opportunity for the public to provide
8 meaningful input. The level of meaningful input that
9 is appropriate is something that belongs to the
10 public to decide. Because there is some question
11 about and an over-redaction of the material, what is
12 very likely not relevant to any legitimate opposition
13 material is probably redacted, but the general public
14 has a right to see that material before we take an
15 action. So an amount of time to delay, let that
16 redaction be clarified, let the public see what
17 they're entitled to see before we take any action as
18 a collegial body is incumbent upon us under the
19 Florida Constitution and the Sunshine Act itself.

20 COMMISSIONER DRAGO: I think our concern with
21 the public transparency has come up many, many times
22 with this commission, but I think this is something
23 that could be -- it sounds like it would be resolved
24 fairly quickly. The commission from what I hear is
25 willing to work to get this resolved in a timely

1 manner so it doesn't drag on beyond the 1st of the
2 year or anything along those lines, that it can be
3 resolved fairly quickly to the satisfaction of all
4 the parties, then I'm for it.

5 I think we should try to do that in the
6 interest of public transparency and ensuring
7 integrity in our industry in this state. I think
8 it's a good way for us to go at this time
9 specifically because it can be resolved fairly
10 quickly and easily, I think.

11 CHAIR MACIVER: Commissioner Brown, and then I
12 have one more speaker card.

13 COMMISSIONER BROWN: I have a question for
14 staff. Not just transparency to the public, but also
15 transparency to us, when we review an application
16 like this, are we to be given all of the ownership
17 interests, a background of what Ms. Pouncey has
18 reviewed? In the file, the unredacted file, I didn't
19 see any of that. I just -- there was very little --
20 other than the asset purchase agreement and then --
21 that was pretty much the bulk of everything.

22 CHAIR MACIVER: Commissioner, respectfully, I'm
23 not going to cut you off, I'll let it continue, but I
24 do want the commission to be wary that we're not
25 getting into the merits of this discussion today.

1 COMMISSIONER BROWN: I just wanted to know what
2 we're able to review.

3 CHAIR MACIVER: I just wanted to put out that
4 caution to everyone.

5 MS. POUNCEY: Okay. So I believe why the
6 information isn't in there is because that
7 information isn't necessarily required as a
8 submission to the transfer itself. In other words,
9 the requirement is that those individuals have valid
10 licenses, so that information was submitted to us
11 under like a supplemental submission that came
12 separately. It required all new applications for the
13 individual, because as Mr. Marshman stated, it is an
14 upgrade because they're going into the more stringent
15 statutory requirements. That information is
16 submitted to our office of operations, each
17 individual has submitted their application, a new
18 fingerprint card, they required a new criminal
19 history, background check, and staff in the office of
20 operations would have re-reviewed all of the
21 information provided on that application, and then if
22 everything was okay, they would have approved the
23 upgrade, they would be issued a new license which
24 would allow them access to a slot machine area within
25 the facility that they subsequently would be

1 acquiring.

2 COMMISSIONER BROWN: I think for purposes,
3 again, of transparency to the public, if that
4 information, that overview was in the cover letter
5 memo, that would have been a lot clearer that it's
6 been vetted, that the dialogue with Vice Chair
7 Yaworsky, what he stated I think was really important
8 for the public to know that there's been a lot of
9 vetting up until this point. I didn't see it in
10 there, so I didn't know, and I had questions about
11 it, too.

12 MS. POUNCEY: Yeah. I mean, I state it, but I
13 don't go into detail specifically who they were, just
14 that the individuals associated with the ownership
15 interest and the business making authority for PCI
16 have been vetted, and in this instance, actually
17 re-vetted. So as stated before, this is not a
18 ten-year-old review. This is very fresh in this
19 month, completion and upgrade to higher ranking
20 license.

21 COMMISSIONER BROWN: Thank you. With that, Mr.
22 Chairman, I -- sensitive to the timeliness of an
23 asset purchase agreement and the closing, so I'd be
24 happy to meet any time this month.

25 CHAIR MACIVER: Excellent. Mr. Dunbar, I

1 received a speaker card, and Mr. Lockwood, I will
2 honor my commitment to give you the last word.

3 MR. DUNBAR: Thank you, Chair. I didn't have
4 any real intention to speak, but there were a couple
5 of things -- this is Mark Dunbar on behalf of the
6 Seminole Tribe -- there are a couple of things that I
7 wanted to provide clarification on.

8 The issue isn't so much this applicant or this
9 acquirer. When the Gaming Commission was created,
10 there was a lot of thought given to the new authority
11 of the commission. To the comment of Mr. Lockwood
12 about you aren't the New Jersey Gaming Commission,
13 you're not the Nevada Gaming Commission, I would say
14 yes, you are. And there were specific provisions
15 that were incorporated into the authorities that were
16 given to you that the Division of Pari-Mutuel
17 Wagering didn't have that involved the reviewing of
18 the due process that goes into considering applicants
19 both procedural and substantive. Part of that was to
20 bring transparency to the public on application
21 processes that haven't been all that clear in the
22 past and to provide clarity as to how this
23 transaction is happening and what's going on there.

24 I'm sure staff did a very diligent job. I've
25 worked with staff for the last 25 years on different

1 transactions, but what I can tell you is a permit
2 holder to permit holder transaction involving a
3 casino license is different than a permit holder to
4 permit holder transaction involving Gretna, Florida.
5 That I went through when the Poarch purchased Gretna,
6 and I can tell you our deal documents were longer
7 than 100 pages. Just by way of background, I just
8 want you to understand that.

9 The other thing is from when Commissioner Drago
10 was secretary to when we probably had four or five
11 former directors that are in the audience including
12 the current ones and the one that's been interim
13 multiple times, the permit holder review in the
14 application for a permit holder and permit holder to
15 permit holder transfer has been subject to different
16 internal policies that govern the review of the
17 application.

18 There was a time when permit holders were not
19 allowed to do transactions like this, you were not
20 allowed to do an asset acquisition. They were
21 actually -- if you go back and look to the very first
22 one that was sought in the 1930s, it was West
23 Flagler, they were going through bankruptcy, there
24 was an effort to try to acquire them during an asset
25 deal, and the Attorney General said, "No, you can't

1 do it that way. You have to buy the stock in the
2 company," and that was the interpretation for a very
3 long period of time.

4 Since I've been practicing in the last 25
5 years, that's changed. In the last probably decade
6 or so, the interpretation and the scrutiny and the
7 module for review has changed to allow these asset
8 transactions for a new corporation to pop up like
9 this one did and acquire -- and the scrutiny is just
10 inside that new corporation and whoever controls it.
11 And I'm not saying yea or nay on it, I'm just saying
12 what we're hoping to do is to have a process where
13 you guys decide and the public is aware so there is
14 precedent moving forward, there is uniformity.

15 Because -- a basic question, the slot machine
16 chapter says the slot machine licenses are
17 nontransferable. I don't know how a new corporation
18 acquires them. I know that it's been allowed in the
19 past, I never understood why, but it is a process
20 that you guys will have to look at, and that's a lot
21 of reasons -- I was involved in I think it was when
22 Commissioner Drago was secretary on a transaction
23 that was related to a slot machine license holder and
24 we weren't allowed to do a stock deal -- I mean, no,
25 sorry, we weren't allowed to do an asset deal. We

1 had to do a stock deal so that Gulfstream Park stayed
2 Gulfstream Park forever.

3 So I throw that out there so you understand,
4 it's not about necessarily having a bunch of people
5 looking over the shoulder of staff, it's just so that
6 the public knows what the vetting went through and so
7 people that are coming in next know what the process
8 is and what the statutes mean when you have a statute
9 that says very clearly the slot machine license isn't
10 transferable.

11 I mean, I just want you to understand that
12 that's a lot of what's motivating when you see the
13 entire 100 pages redacted, you know there's a lot
14 more pages involved in a transaction like that.
15 There's a financing box that said yes, there's
16 financing involved, but we don't know because it's a
17 redacted portion. A lot of times if you look in the
18 pari-mutuel statute, anybody that's involved in
19 financing, they typically have to go through a review
20 also.

21 So there are all these different kinds of
22 things that we just know don't know because we can't
23 see.

24 CHAIR MACIVER: Noted. Thank you. Before we
25 proceed, Mr. Lockwood, I do just want to say, a whole

1 lot to unpack in all of the comments today. I want
2 to be clear that our delay today is not a matter of
3 intervention of either parties, it is simply the
4 Sunshine Act aspect of this that has been brought to
5 the attention of the commission. So I want to
6 caution against not addressing every opportunity for
7 collateral debate, and you're welcome to respond as
8 appropriate.

9 MR. LOCKWOOD: Sure, I appreciate that. You
10 know, thinking back to some of the earlier commission
11 meetings that we had, I know there was a lot of
12 discussion about the purpose of the commission
13 meetings, what the commissioners have, the discretion
14 of their decisions, things like that. Seeing back to
15 the debate this morning on the HISA and the horse
16 racing agreements, I mean, there's a lot of
17 discretion there that the commission has in making
18 the decisions on how to move this agency forward.
19 This issue here is a very -- it is a basic ownership
20 transfer. At the end of the day, this is a very
21 basic licensing issue. Really the only review for
22 the department are these background screenings, and
23 they have been done.

24 So prior to the establishment of the commission
25 and the commission takes the place of what was

1 previously the division director, this transaction
2 would have already been approved, it would have
3 already been closed at this, because there is no
4 right of any party here even if Mr. Sowinski -- and I
5 don't believe they'll have any objections -- but even
6 if I give him the entire agreement, there's no legal
7 basis for him to challenge, there's no legal basis
8 for the Seminole Tribe to challenge.

9 I went through this transaction, a similar
10 transaction with the -- in the Office of Medical
11 Marijuana use last summer where we had a disgruntled
12 investor that tried to sue and stopped the
13 transaction. They had a number of public records
14 requests, same thing, we had redacted everything.
15 The transaction was approved, it was allowed to move
16 forward. There's public records lawsuits that are
17 moving on, that happens.

18 I don't think we're going to have any public
19 records lawsuits here, but I would say that I'd
20 encourage the commission -- and I know there's been
21 discussion and it seems to be that your desire is to
22 punt this issue down the road, but I think that sets
23 very dangerous precedent.

24 Our next two agenda items that we have are
25 renewal of slot machine licenses. They happen to be

1 in the market area of West Flagler and their
2 competitors. This gamesmanship of these issues,
3 these issues of trying to come in and delay action, I
4 believe they could cause serious ramifications and
5 set very bad precedent for how this commission was
6 originally intended to set up, because if we have a
7 scenario where people come in and they start
8 objecting to very basic things, slot machine license
9 renewal, there really is nothing to object to.

10 Just like an ownership transfer, there's quite
11 frankly less to object to in an ownership transfer.
12 But allowing parties to come in and move these things
13 and influence these business decisions is going to be
14 highly problematic for this commission going forward,
15 and again, I would urge you to strongly reconsider
16 this decision and move forward.

17 There is no question that this staff has done
18 everything that they were required to do, and as it
19 relates to prior transfers and what people have done,
20 we've had Pompano Casino, they transferred ownership
21 not too long ago. I've been involved in multiple
22 instances with the Dania Casino in its transfers of
23 ownership. We've had transfers of ownership at Mardi
24 Gras. All of these things have been worked through
25 with staff.

1 This is a very established practice, it's been
2 the same for as long as I've been practicing with the
3 agency, and I've done numerous ownership transfers
4 for them. We follow the same rules every single time
5 and go through the exact same process.

6 So again, I would implore the commission to
7 please push this forward, have this vote, approve
8 this transaction, and allow us to close this in the
9 year. I would say even pushing this thing two weeks
10 may be problematic. I mean, this is a very large
11 transaction. It's a very problematic transaction.
12 You punt it two weeks, we may have a problem in being
13 able to close this transaction by the end of the
14 year.

15 CHAIR MACIVER: Thank you, Mr. Lockwood. To
16 commission staff, I want to in the greatest manner
17 possible express how diligently I want staff to work
18 to make this happen as quickly as possible. I
19 recognize the last-minute position that Mr. Lockwood
20 and his client have been put in, so let's do what we
21 can as quickly as we can. It is also a not lost on
22 me the suggestion of gamesmanship, and I'm just going
23 to counsel all parties to the greatest extent
24 possible, I want to encourage folks to avoid all
25 indicia of gamesmanship when it comes to these

1 things. We don't want to get back into the shall we
2 say environment when all of the stakeholders in this
3 industry are at each others' throats again.

4 With that said, show the agenda item tabled for
5 a time to be determined. Item No. 5, slot machine
6 licenses. Ms. Pouncey, you're recognized.

7 MS. POUNCEY: It's me again. Item No. 5.1 is
8 the slot machine license renewal for Miami Jai Alai,
9 Casino Miami, Case No. 2022052214. Casino Miami
10 submitted their slot license application for renewal
11 on August 31, 2022, the application was deemed
12 complete August -- excuse me -- November 18, 2022.

13 The recommendation is that the commission
14 approve the request. They have submitted their
15 application, the other requirements, and the annual
16 operating fee.

17 CHAIR MACIVER: Commissioners, any questions?
18 Mr. Vice Chair?

19 VICE-CHAIR YAWORSKY: That was it.

20 CHAIR MACIVER: Click off of the microphone.
21 The recommendation of staff?

22 MS. POUNCEY: Approval.

23 CHAIR MACIVER: Is there any health, safety or
24 welfare of the general public reason why we would not
25 move forward?

1 MS. POUNCEY: No.

2 CHAIR MACIVER: Commissioners, any debate? Do
3 I have a motion?

4 COMMISSIONER D'AQUILA: Motion.

5 CHAIR MACIVER: Do I have a second?

6 COMMISSIONER BROWN: Second.

7 CHAIR MACIVER: Without objection, show the
8 motion adopted. Agenda Item No. 5.2.

9 MS. POUNCEY: That is the slot license renewal
10 for South Florida Racing Association, Case
11 No. 2022052289. The slot machine license application
12 was submitted on September 22, 2022. The application
13 was deemed complete November 18, 2022. They
14 submitted the required documentation and annual
15 renewal fee, and the recommendation is that the slot
16 machine license be approved.

17 CHAIR MACIVER: Any health, safety, or welfare
18 of the general public reason why we should not
19 approve?

20 MS. POUNCEY: No.

21 CHAIR MACIVER: Commissioners, any questions?
22 Any debate? Do I have a motion?

23 COMMISSIONER BROWN: Move to approve.

24 CHAIR MACIVER: A second?

25 COMMISSIONER D'AQUILA: Second.

1 CHAIR MACIVER: Without objection, show the
2 motion carries. Thank you. Commissioners, Agenda
3 Item No. 6, transfer tax credit.

4 MS. SWAIN: Good morning.

5 CHAIR MACIVER: Good morning.

6 MS. SWAIN: Tracy Swain, Revenue Program
7 Administrator. This is in reference to the transfer
8 of West Flagler, Case No. 2022052210, transfer of
9 \$360,000 of their tax credit to Daytona Beach Kennel
10 Club.

11 All the requirements of 550.09511(b) have been
12 met by both parties, and staff recommendation is that
13 the staff credit be approved.

14 CHAIR MACIVER: As usual, this is one of the
15 most ministerial of our functions. Commissioners,
16 any discussion or debate? Do I have a motion?

17 COMMISSIONER D'AQUILA: Motion.

18 CHAIR MACIVER: Do I have a second?

19 COMMISSIONER BROWN: Second.

20 CHAIR MACIVER: Without objection, show the
21 motion carries. Thank you. And now we move on to
22 Agenda Item No. 7, a series of informal hearing
23 recommendations. Ms. Alvarado.

24 MS. ALVARADO: Good morning. This is Emily
25 Alvarado. Item 7.1 is Kevin Kivela vs. The Gaming

1 Commission in Case No. 2022009682. This case came
2 before you following the recommended order issued by
3 the hearing officer on November 21, 2022. An
4 informal hearing was conducted on September 22nd
5 regarding a notice of intent to deny a card room
6 employee occupational license that was issued on
7 June 16, 2022. The denial was based upon the
8 applicant's felony offense which was in 2007
9 operating a vehicle while intoxicated, third offense
10 out of Hancock County, Iowa.

11 Prior to the hearing, the applicant provided
12 four letters of recommendation that were in the
13 meeting materials, and at the hearing, the applicant
14 testified that he was no longer drinking alcohol,
15 he's been sober for 11 years, he frequently attends
16 Alcoholics Anonymous, he's involved with setting up
17 the meetings. He's had no alcohol related offenses
18 past this 2007 offense. He's paid all his court
19 costs, completed his probation, he's also licensed to
20 be a card room dealer in three other states.

21 Following the hearing, the hearing officer
22 recommended that this applicant get granted their
23 card room license.

24 CHAIR MACIVER: For the benefit of all of us on
25 the commission, could you briefly run through the

1 standard of review when we are acting in a
2 quasi-judicial fashion with a recommended order?

3 MS. ALVARADO: Sure. So 12057K states that the
4 agency may adopt the recommended order as the final
5 order of the agency, it does allow some leniency.
6 When rejecting or modifying such conclusion of law,
7 the agency must state with particularity its
8 reasoning for rejecting such conclusion of law or
9 interpretation of law. The agency may not reject or
10 modify the finding of fact unless the agency first
11 determines from a review of the entire record and
12 states with particularity in the order that the
13 finding of facts were not based on competent
14 substantial evidence.

15 CHAIR MACIVER: Commissioners, everyone
16 follows? Okay. Any questions for Ms. Alvarado?

17 COMMISSIONER BROWN: I want to thank staff on
18 the rest of these items, too, and the hearing officer
19 taking their time and diligence in conducting it, and
20 this is a great case and the end result is very
21 favorable to the applicant. So I would move for
22 approval of the item.

23 CHAIR MACIVER: Is there a second?

24 COMMISSIONER D'AQUILA: I'll second.

25 CHAIR MACIVER: Without objection, show that

1 motion carries. Let me also echo not only the
2 excellent work that has gone into this, but to the
3 hearing officer specifically, we've given a lot of
4 very subjective guidance over the course of our
5 meetings on how we like discretion to be applied, and
6 I think that all of the reading I did on these
7 informal hearings, it seems like all of our input has
8 been very well taken. And these were very on point.
9 With that, move on to item -- Mr. Vice Chair.

10 VICE-CHAIR YAWORSKY: Just to make an added
11 comment. To any applicants or potential applicants
12 that may be listening, I think that this case is also
13 a good example of reading the application form and
14 providing candor throughout the process. I think
15 that that was -- if I recall correctly, that was a
16 bit of a sticking point in this case, and if there's
17 anyone out there who happens to be listening, I think
18 more information tends to be better when explaining
19 these circumstances, and it would have been helpful
20 from the onset. But I'm very pleased with the work
21 that the hearing officer did and the commission staff
22 did on this matter. So thank you.

23 CHAIR MACIVER: Thank you, Mr. Vice Chair.

24 COMMISSIONER D'AQUILA: I will just add
25 compliments to the hearing officer and the staff and

1 believing in the power of the human spirit. Great
2 work.

3 CHAIR MACIVER: Agenda Item 7.2, you're
4 recognized.

5 MS. ALVARADO: This is FGCC versus Shlomo Maman
6 in Case No. 2022021401. This case came before you
7 following the recommended order that was issued by
8 the hearing officer on November 21, 2022. An
9 informal hearing was conducted on September 22nd
10 regarding a one-count administrative complaint
11 alleging that the respondent was excluded from PPI,
12 Inc. on April 26, 2022, and is therefore subject to
13 exclusion from all pari-mutuels and all slot machine
14 facilities in the state.

15 At the hearing, he testified that he was --
16 well, in the record, it showed that he was excluded
17 for removing chips from a poker table after he had
18 placed an all-in bet an at an improper time. He
19 testified that he removed the chips off the table in
20 the past and it was not an issue, but that when he
21 did it that day, they told him that he was no longer
22 allowed to do that. He admitted to having two prior
23 issues with PPI prior to the issue that got him
24 permanently excluded.

25 The hearing officer recommended that We exclude

1 this patron from all pari-mutuels and slot machine
2 facilities in the state of Florida.

3 CHAIR MACIVER: So a very good example why you
4 don't reverse the credibility findings of hearing
5 officers, this gentleman did not pass the
6 straight-face test. Commissioners, any questions?
7 Any debate? Is there a motion?

8 COMMISSIONER DRAGO: I'll make a motion and
9 it's to adopt the hearing officer's recommendation.

10 CHAIR MACIVER: And a second?

11 COMMISSIONER D'AQUILA: Second.

12 CHAIR MACIVER: Without objection, show the
13 motion carries. Agenda Item 7.3. Ms. Alvarado, if
14 you could give us just the intro, we do have a
15 speaker card on this agenda item.

16 MS. ALVARADO: Okay. This is Alisha Brown vs.
17 Florida Gaming Control Commission in case
18 No. 2022027510. This came before you following the
19 recommended order that was issued on November 22,
20 2022. An informal hearing was conducted on
21 September 22nd regarding a notice of intent to deny
22 Ms. Brown's pari-mutuel wagering professional
23 individual occupational license that was sent on
24 June 29, 2022. The denial was based upon her four
25 felony offenses.

1 CHAIR MACIVER: Mr. Spatola, in the interest of
2 your client.

3 MR. SPATOLA: Thank you, Mr. Chair, members of
4 the commission. I come here before you on behalf of
5 Ms. Alisha Brown. You see before you a recommended
6 order from the hearing officer to approve the
7 application for licensure. If you look through the
8 recommended order, going to the Vice Chair's previous
9 discussion of candor, Ms. Brown was -- had candor
10 with the commission about what her previous problems
11 were. She's completely turned her life around, she
12 works in the Sumter County community doing community
13 service work, the Junk in the Trunk fundraiser.
14 She's partnered with very large corporate interests
15 down in that area to help reinvigorate that community
16 with investments that she's made. As it mentions in
17 there, and while not completely persuasive, she holds
18 an alcoholic beverage license, that also has some
19 indicia of some good moral character, and I would
20 just urge the commission to adopt the findings of the
21 recommended order. They're based on what you read
22 there in the packet.

23 I think it's clear that the conclusion of law
24 is appropriate that she's met the character and
25 fitness qualifications for this license. Thank you

1 very much.

2 CHAIR MACIVER: Commissioners, any questions?
3 Any debate? Do I have a motion?

4 COMMISSIONER BROWN: Mr. Chair, I would move to
5 approve the hearing officer's recommendation granting
6 the license.

7 CHAIR MACIVER: And a second?

8 COMMISSIONER DRAGO: Second.

9 CHAIR MACIVER: Without any objection, show the
10 motion as adopted. Thank you, Mr. Spatola.

11 MR. SPATOLA: Thank you, Mr. Chair. Thank you,
12 members of the commission.

13 CHAIR MACIVER: Agenda Item 7.4, you are
14 recognized.

15 MS. ALVARADO: This is FGCC vs. Brunel Borgella
16 in Case No. 2022021401. This case came before you
17 following the recommended order that was issued on
18 November 21, 2022. An informal hearing was conducted
19 on October 19th regarding a one-count administrative
20 complaint alleging that respondent was excluded from
21 Big Easy Casino on June 6, 2022, and is therefore
22 subject to exclusion from all pari-mutuels and all
23 slot machine facilities in the state of Florida.

24 At the hearing, he testified that he was at the
25 table with four other people, he believed that he was

1 the winner at the time, he took the winnings and
2 walked away and then used some of the chips to
3 purchase food. He was stopped by security and
4 management and was told that he was not the winner
5 and he had to return all the chips that he had taken
6 off the table. He stated that he gave some of his
7 chips to cover the amount he paid in food and
8 beverages. The report stated that he was excluded
9 from the facility because he had removed the chips
10 pending review of who was the winner of the table, he
11 was not told that he could remove the chips, so the
12 hearing officer recommended entering an order
13 excluding respondent from all pari-mutuels and all
14 slot machine facilities in the state of Florida.

15 CHAIR MACIVER: Having read through this, I
16 don't remember the exact detail of -- was there a
17 specific credibility finding about his testimony?

18 MS. ALVARADO: Yes.

19 CHAIR MACIVER: And he was not found credible?

20 MS. ALVARADO: No.

21 CHAIR MACIVER: Commissioners, any further
22 questions? Debate? Is there a motion?

23 VICE-CHAIR YAWORSKY: So moved to uphold the
24 hearing officer's recommendation.

25 CHAIR MACIVER: Mr. Vice Chair, I was about to

1 say, your theater projection was not good on that
2 one.

3 VICE-CHAIR YAWORSKY: Sometimes I'm better than
4 others. It really depends on the time of day.

5 CHAIR MACIVER: Is there a second?

6 COMMISSIONER DRAGO: Second.

7 CHAIR MACIVER: Without objection, show the
8 motion carries. And I believe we are on -- I say I
9 believe because sometimes I lose count -- 7.5.

10 MS. ALVARADO: This is FGCC vs. Kelly Delaynes
11 Jones in Case No. 2022037934. This case comes before
12 you following a recommended order that was issued by
13 the hearing officer on November 21st. An informal
14 hearing was conducted on October 19th regarding a
15 two-count administrative complaint alleging that
16 respondent was convicted of a felony and failed to
17 inform the commission of this felony within 48 hours.
18 The respondent was convicted on July 13, 2022 of
19 grant theft.

20 At the hearing, respondent testified that she
21 was unaware that she had to notify us within 48
22 hours. She did admit to entering a plea of guilty,
23 but she stated that she was attempting to overturn
24 this, although she had missed her appeal date. When
25 asked about that, she stated that she was recently in

1 a car accident that caused traumatic brain injury,
2 she stated that she has violated her probation a few
3 times due to drug use, but she believes that that's
4 due to her medication. She stated that she has had
5 no arrests or legal trouble since that conviction.
6 The hearing officer recommended revoking respondent's
7 pari-mutuel wagering professional individual
8 occupational license.

9 CHAIR MACIVER: Commissioners, any questions?

10 COMMISSIONER BROWN: I would just say, I mean,
11 this is a difficult one except for the fact that this
12 is grand theft and she's in the position -- you know,
13 when we have these types of cases, this is one of
14 those crimes that you really have to just say maybe
15 you're in the wrong profession if you're going to
16 commit a crime of grand theft. And while I feel
17 sympathy for her, I think the hearing officer made
18 the right decision here. And again, I think that
19 those -- grand theft and the conviction is a clear
20 case, clear-cut case here. So with that, I'd move
21 approval of the hearing officer's recommendation.

22 COMMISSIONER D'AQUILA: I second.

23 CHAIR MACIVER: Without objection, show the
24 motion carries. I believe we're moving on to Agenda
25 Item No. 8, our default find orders. I'm just going

1 to make one very brief comment.

2 Commissioners, as I was being briefed on these
3 cases, one thing that I observed, I do see a number
4 of penalties in the default final orders that aren't
5 increased after they fail to respond to or
6 communicate to the commission, and that gave me pause
7 because I do think that failure to cooperate with our
8 inquiries should be an aggravating factor. In our
9 discussions, though, it is pointed out that sometimes
10 that is an inadvertent thing due to the shall we say
11 transient nature of this work, trying to get ahold of
12 people who are out-of-state, that that is not always
13 -- while incumbent upon them to make sure that we can
14 contact them, it's not always the most logistically
15 practical thing.

16 So I, from my own part, would suggest to staff
17 as they are dealing with these, that I would like to
18 see failure to cooperate with our inquiries as an
19 aggravating factor when it comes to default
20 penalties. However, I do think they need to be read
21 on a case by case in the manner in which you are
22 doing, and I do think you are doing it appropriately.

23 So I would just counsel to continue doing what
24 you're doing, but keep that in the back of your mind
25 that where it is clear that we're just being

1 disregarded, that is an aggravating factor. With
2 that, the floor is yours.

3 MS. ALVARADO: Item 8.1 is FGCC vs. Hunter
4 Steven Jones in Case No. 2022020885. In the case
5 materials you were provided the two-count
6 administrative complaint alleging that respondent was
7 convicted of a felony and failed to notify the
8 commission within 48 hours of the conviction. This
9 is a violation of 550.1055(b). You have also been
10 provided the e-mail from respondent's probation
11 officer showing that he had been served with the
12 administrative complaint.

13 Respondent failed to respond within 21 days,
14 therefore we'd ask the commission enter an order
15 finding that the respondent was properly served with
16 the administrative complaint, they failed to respond
17 within 21 days, that the factual allegations in the
18 administrative complaint are accepted as the finding
19 of facts in the AC and that concluding that
20 respondent's general individual occupational license
21 shall be revoked due to the felony conviction.

22 CHAIR MACIVER: After question and debate, when
23 I ask for a motion, should we make sure that they
24 reiterate the entire string of things you just asked
25 us to approve?

1 MS. ALVARADO: No, it's okay.

2 CHAIR MACIVER: Okay. Commissioners, any
3 question? Any debate? Commissioner Brown.

4 COMMISSIONER BROWN: Just a question for staff.
5 Once we enter a final order revoking an individual's
6 license, how do we notify their employer? Are they
7 notified, or it's just the individual?

8 MS. ALVARADO: I believe just the individual is
9 sent a final order.

10 COMMISSIONER BROWN: I think it would be a good
11 practice to at least let the employer know because
12 they may inadvertently have them still retained on
13 employment when they don't have a licensed employee
14 there. It's just a matter of good practice, I would
15 think.

16 MS. ALVARADO: Okay.

17 CHAIR MACIVER: Mr. Vice Chairman? I thought I
18 saw another click. Any further question or debate?
19 Is there a motion?

20 COMMISSIONER D'AQUILA: Motion.

21 CHAIR MACIVER: And a second?

22 VICE-CHAIR YAWORSKY: Second.

23 CHAIR MACIVER: Without objection, show the
24 motion impair carries. Item 8.2.

25 MS. ALVARADO: This is FGCC vs. Ricardo

1 Rodriguez Luque in Case No. 2022024921. In the case
2 materials you're provided a one-count administrative
3 complaint alleging that respondent was excluded from
4 Casino Miami on December 26, 2021 for manipulating a
5 slot machine to gain winnings. Specifically he had a
6 key to the slot machine and he was lifting it to
7 reset the machine when he lost so that he wouldn't
8 lose his money. He's subject to exclusion pursuant
9 to 550.02516 and 551.112 Florida Statutes. You were
10 also provided the USPS certified mailing tracking
11 number and the delivery confirmation.

12 Respondent failed to respond within 21 days,
13 therefore I'd ask the commission to enter an order
14 finding that he was properly served, he failed to
15 respond within 21 days, that the factual allegations
16 in the case are accepted as the finding of facts
17 concluding that he's permanently excluded from all
18 pari-mutuels and slot machine facilities in the
19 state.

20 CHAIR MACIVER: Commissioners, any questions?
21 Any debate? Commissioner D'Aquila? No? Is there a
22 motion?

23 COMMISSIONER BROWN: I would move to approve
24 this item, but I would note that there's another
25 individual suspect and I'm hoping that individual

1 that was involved with this, I hope that we get to
2 see that one complaint before us as well.

3 MS. ALVARADO: There is a complaint open.
4 We're trying to achieve service right now, but there
5 is a complaint.

6 COMMISSIONER BROWN: Thank you. I move to
7 approve.

8 CHAIR MACIVER: Is there a second?

9 COMMISSIONER D'AQUILA: Second.

10 CHAIR MACIVER: Any objection? Seeing none,
11 the motion carries. Item No. 8.3.

12 MS. ALVARADO: FGCC vs. Erwin Oscar Oliva in
13 Case No. 2022034261. This case was a one-count
14 administrative complaint alleging that respondent was
15 excluded from Magic City Casino on June 24, 2022 for
16 fighting with another patron. He's subject to
17 exclusion pursuant to Section 550.02516 and 551.112
18 Florida Statutes. You were also provided the USPS
19 tracking and the delivery confirmation.

20 Respondent failed to respond within 21 days,
21 therefore the division would ask the commission to
22 enter an order finding that they were properly
23 served, they did not respond within 21 days, that the
24 finding of facts in the administrative complaint are
25 the factual allegations in this case, and concluding

1 that respondent shall be added to the permanent
2 exclusion list for slot machine and pari-mutuel
3 facilities in the state.

4 CHAIR MACIVER: Commissioners, I'd just like to
5 point out in this case and especially for the public
6 that might be listening that this is a very good
7 example where responding to the commission is in the
8 best interest of the person receiving the
9 administrative complaint. I would be very skeptical
10 about issuing a statewide order in an individualized
11 case of fighting. That might be something that we
12 would certainly discuss amongst ourselves before
13 issuing this order, but it wouldn't be a default
14 order in that the receiver of the complaint did not
15 respond. I think that it's wholly appropriate that
16 we do approve the recommendation.

17 With that, any questions or debate? Seeing
18 none, is there a motion?

19 COMMISSIONER BROWN: I agree with you. I don't
20 know if fighting would be a complete exclusion from
21 all casinos in the state and all pari-mutuels in the
22 state of Florida, but the aggregating factor is the
23 fact that he just ignored us entirely, so I would
24 move to approve the recommendation.

25 CHAIR MACIVER: Is there a second?

1 COMMISSIONER DRAGO: Second.

2 CHAIR MACIVER: Is there any objection? Seeing
3 none, show the motion carries. Agenda Item 8.4.

4 MS. ALVARADO: This is FGCC vs. Joe Silliato in
5 case No. 2022041767. Here there was a one-count
6 administrative complaint that was seeking suspension
7 of respondent's pari-mutuel wagering professional
8 individual occupational license due to an outstanding
9 debt related to horse racing in the state of Florida.
10 This is pursuant to Section 551057. You were also
11 provided the USPS certified mail and delivery
12 confirmation.

13 Respondent failed to respond within 21 days,
14 therefore the division would ask the commission to
15 enter an order finding that the administrative
16 complaint was properly served, that he failed to
17 respond within 21 days, that the factual allegations
18 in the AC are accepted as the finding of facts in
19 this case and concluding that respondent's
20 pari-mutuel wagering professional individual
21 occupational license shall be suspended until the
22 commission receives confirmation that the payment has
23 been fully satisfied.

24 CHAIR MACIVER: Commissioners, questions?
25 Debate? Is there a motion?

1 COMMISSIONER DRAGO: Motion to approve staff
2 recommendation.

3 CHAIR MACIVER: And a second?

4 COMMISSIONER BROWN: Second.

5 CHAIR MACIVER: Any objection? Seeing none,
6 show the motion carries. Agenda Item 8.5.

7 MS. ALVARADO: This is FGCC vs. Renaldo Mario
8 Richards in Case No. 2022046353. This case there was
9 a one-count administrative complaint filed alleging
10 that respondent violated Section 550.24151(a) Florida
11 Statute and Rule 61D6.0082(e) Florida Administrative
12 Code by racing a horse with an impermissible amount
13 of clenbuterol. You were provided the USPS tracking
14 and the delivery.

15 Respondent failed to respond to the
16 administrative complaint. They did request a split
17 sample that came back with the positive result as
18 well, therefore the division would ask the commission
19 enter an order finding that the respondent was
20 properly served, failed to respond within 21 days,
21 that the factual allegations in the AC are accepted
22 as the finding of facts in this case, and concluding
23 that respondent shall be issued a \$500 fine and a
24 50-day suspension, which is the minimum on the ARCI
25 guidelines.

1 CHAIR MACIVER: Mr. Vice Chairman?

2 VICE-CHAIR YAWORSKY: Thank you, Mr. Chair.

3 With your indulgence, it's not really germane to the
4 topic, but I meant to ask this the other day: What
5 does clenbuterol do? Does anyone happen to know?

6 MS. STINSON: It is a bronchodilator. I
7 actually just pulled up the Wikipedia page to make
8 sure.

9 CHAIR MACIVER: So the animal might have had
10 RSV like everyone else in the state right now.

11 VICE-CHAIR YAWORSKY: Thank you very much. I
12 appreciate it. I'll move the staff recommendation.

13 COMMISSIONER BROWN: Second.

14 CHAIR MACIVER: Any objection? Without
15 objection, show the motion carries. Item No. 8.6.

16 MS. ALVARADO: This is FGCC vs. Donald Hunt in
17 Case No. 2022049258. In this case there was a
18 one-count administrative complaint filed alleging
19 that respondent violated Section 550.24151(a) Florida
20 Statutes and Rule 61D6.0082(s) by racing a horse with
21 an impermissible amount of omeprazole. You will also
22 see the USPS certified tracking number as well as the
23 delivery confirmation.

24 Respondent failed to respond within 21 days,
25 therefore the division would ask the commission enter

1 an order finding that respondent was properly served
2 with the administrative complaint, they failed to
3 respond within 21 days, that the factual allegations
4 in the administrative complaint are accepted as the
5 finding of facts, and concluding that respondent
6 shall be issued a written warning which is what is
7 required in the ARCI guidelines for a Class D drug.

8 CHAIR MACIVER: Commissioners, any questions?
9 Mr. Vice Chairman.

10 VICE-CHAIR YAWORSKY: I'll move the staff
11 recommendation.

12 CHAIR MACIVER: A second?

13 COMMISSIONER DRAGO: Second.

14 CHAIR MACIVER: Any objection? Without
15 objection, show the motion carries. Commissioners,
16 moving into Item No. 9 and specifically addressing
17 9.1, 9.2 and 9.3, please correct me if my summary of
18 this has any material error, but my understanding is
19 that counsel for Tampa Bay Downs, TPD Entertainment,
20 has asked if we could postpone consideration of these
21 items so that -- for pure scheduling reasons so that
22 he would be able to represent the interests of his
23 client. I think that that is something we can
24 accommodate. If there's no objection, I would
25 postpone it, but I want to ask the commission's

1 indulgence first.

2 COMMISSIONER D'AQUILA: Agreed.

3 COMMISSIONER DRAGO: We're not under any time
4 constraints to be concerned about with this?

5 CHAIR MACIVER: Thank you.

6 MS. ALVARADO: No, there are none.

7 COMMISSIONER DRAGO: I'm fine with it then.

8 CHAIR MACIVER: Show Agenda Item 9.1, 9.2 and
9 9.3 postponed until the next commission meeting,
10 which brings us to Item No. 9.4.

11 MS. ALVARADO: FGCC vs. Peter Walder in Case
12 No. 2022046363. In this case you were provided the
13 filed administrative complaint alleging that
14 respondent raced an animal that had been determined
15 to have omeprazole present in its system. This is a
16 violation of 550.24151(a) and 61D6.0082(s) Florida
17 Administrative Code. You also were provided the
18 settlement and consent order which had a written
19 warning.

20 This is respondent's first violation of this,
21 so the recommended penalty for this for a Class D
22 drug is a written warning for a first offense. The
23 division would ask that the commission enter an order
24 adopting and incorporating the proposed settlement
25 and consent order in this case.

1 CHAIR MACIVER: Commissioners, any questions?

2 COMMISSIONER BROWN: I just have a question
3 that's kind of tangentially related about HISA and
4 HIWU and whether this would be of a violation if the
5 law was -- stands and is not reversed by the decision
6 that was just held. Does it change the ARCI's
7 guidelines for whether a gastrin secreted depressant
8 would be a violation?

9 MS. STINSON: I can't speak to omeprazole
10 specifically. I know that it is a little bit
11 different than the ARCI guidelines that we adopted,
12 but the ARCI guidelines that we adopted were also
13 from 2014, so there's -- I believe the HISA
14 guidelines are a little bit updated.

15 COMMISSIONER BROWN: Is the 2014 the most
16 recent one, guidelines?

17 MS. STINSON: No, but pursuant the legislature,
18 that's what Florida law requires us to adopt.

19 COMMISSIONER BROWN: Okay. Thank you.

20 CHAIR MACIVER: And that statutory requirement
21 would in theory be preempted if the rules that were
22 adopted were not found to be unconstitutional? Okay.
23 Commissioners, I have lost my place.

24 COMMISSIONER BROWN: Move to approve.

25 CHAIR MACIVER: We were in discussion and

1 debate.

2 COMMISSIONER BROWN: Sorry. Move to approve
3 the consent order.

4 CHAIR MACIVER: Is there a second?

5 COMMISSIONER DRAGO: Second.

6 CHAIR MACIVER: Any objection? Show that the
7 motion carries, and that would move us to Agenda
8 Item 10. Commissioners, anyone need a break? Okay.
9 Let's move on to Agenda Item 10. These are license
10 denials, and 10.1.

11 MR. TAUPIER: Mark Taupier for the record.
12 Item 10.1 is Yohanni Mariana Vasques Feliz, Case No.
13 2022045263. This matter was before the commission at
14 the November duly-noticed meeting. The commission
15 did ask that staff go back and try to contact Ms.
16 Yohanni Vasques Feliz for a little bit more
17 information as to why her license was revoked from
18 Maryland.

19 We did have staff -- Ms. Glenda Ricks did reach
20 out to Ms. Vasques to get some information, and she
21 did get some information. If Ms. Ricks has more
22 information that I leave out, I invite her to
23 indulge, but basically what we were told by Ms.
24 Vasques was that there was a high roller that was
25 coming in for about three months, depending on how

1 much that high roller won, she was paid in a large
2 amount of cash tips and was also paid with a credit
3 card. It just kind of depended on how much they were
4 winning that day. It went on for several months.
5 That's sort of most of the information we got.

6 We don't know whether or not the fraudulent
7 credit card was known to her. We don't know whether
8 or not the fraudulent credit was known to the high
9 roller. We don't know why it was ongoing for three
10 months before the credit card stopped working. She
11 did get a letter from her employer that she signed
12 stating that pending the investigation, she would be
13 terminated if it was substantiated, and it was.

14 So at this time based off of the information or
15 lack thereof and the information that we got, that
16 kind of doesn't really fill in the holes. The
17 recommendation at this point from staff is to
18 authorize the issuance of the notice of intent to
19 deny.

20 CHAIR MACIVER: Leading off with discussion and
21 debate -- actually, first, commissioners, any
22 questions? Mr. Vice Chair.

23 VICE-CHAIR YAWORSKY: Ms. Vasques is here?

24 MR. TAUPIER: She's not here.

25 VICE-CHAIR YAWORSKY: Okay. Sorry, I think I

1 misunderstood.

2 MR. TAUPIER: It was a telephone conference
3 that Ms. Ricks had with her.

4 VICE-CHAIR YAWORSKY: Thank you for clarifying.

5 CHAIR MACIVER: Any further questions?

6 Commissioners, I'll lead off discussion and debate.
7 While I'm mindful and I'm not casting aspersions at
8 the state of Maryland, because I realize we're all
9 bound by the authorities that we do and do not have,
10 the fact that Maryland is not willing to share
11 information or not able to share information with us
12 gives me significant due process concerns. I believe
13 that this is within our authority to deny, but I
14 think that it is a scant record that we'd be denying
15 on, and that gives me a significant amount of pause.

16 With that said, that pause might be mitigated
17 somewhat in that she would have notice and hearing
18 rights once we issue a notice of intent to deny and
19 then it would be it incumbent upon us to show that
20 lack of good moral character. Mr. Marshman or Mr.
21 Taupier, please jump in here. The unfortunate
22 problem with us going down that road is we would be
23 exposing ourselves to -- the exposure of attorney's
24 fees should we inappropriately deny this and lose.

25 So while it does mitigate the pause I have over

1 the due process of this applicant, I'm not sure if on
2 this record I would want to stick the commission's
3 neck out. That's a question for us to debate.

4 COMMISSIONER BROWN: I'm just wondering the
5 same thing, Mr. Chairman. The fact that Maryland did
6 not tell us why she revoked it, what the crime --
7 lottery gaming related crime is or infraction. I
8 really found nothing in here other than her license
9 was revoked -- pardon me -- by Maryland, and
10 therefore we should deny her. But I just don't know
11 what to do with this one. There's just not a lot
12 here.

13 MR. TAUPIER: I understand the waiver and the
14 sentiment that the commission has with this. Going
15 to the Chair's comment on attorney's fees, that is
16 always something that I keep in mind, but it is only
17 to prevailing parties, and just because it may get
18 filed at DOAH or it may go to an informal where
19 prevailing party fees really wouldn't be accounted
20 for, that doesn't necessarily mean that once due
21 process kicks in and we get more information through
22 subpoena powers of DOAH, that upon review of our
23 record that we can come back to the commission and
24 ask to grant the license. We can always pull back
25 from DOAH. There is case law where pulling back does

1 not mean you are the prevailing party.

2 So as far as attorney's fees goes, I think as
3 the litigator, it's very incumbent upon me to make
4 sure that every posture and every day that we are
5 litigating this, that I am keeping in mind whether or
6 not we can reach the threshold of -- well, it's not
7 clear and convincing with license denial, it's more
8 likely than not. I think we are past the point where
9 there is probable cause because all of the law that
10 we have before you only requires you to look at
11 whether or not it was revoked. It doesn't state why
12 it was revoked. It doesn't really go into that.
13 Obviously good moral character and things like that
14 are considerations for licensees --

15 COMMISSIONER BROWN: But she has the burden,
16 it's her burden to prove, and she could be forthright
17 in providing details which were not really --

18 MR. TAUPIER: Correct. With license denials,
19 the burden is always on the petitioner to prove why
20 they are entitled to the license. So through
21 discovery and all of that, we can get a very clear
22 picture within the first 30 days if we do litigate it
23 whether or not we will either prevail or not. I feel
24 comfortable going forward with it, I think we have
25 probable cause to go forward with it, but as time

1 goes on, if anything changes, obviously we would keep
2 the commission apprised.

3 COMMISSIONER BROWN: I respect your opinion.
4 Thank you.

5 COMMISSIONER D'AQUILA: General question. Can
6 an individual compel the state of Maryland in this
7 particular instance to release that record?

8 MR. TAUPIER: So DOAH does have subpoena power,
9 and we can do subpoenas. Whether or not Maryland
10 recognizes the subpoena is a whole different story.
11 I don't know if they would. I would still try it to
12 see if we could. But it's not like a court or law
13 enforcement agency that has jurisdiction of
14 Maryland's records that I would be able to use to get
15 it.

16 CHAIR MACIVER: Unless I'm wrong, to enforce
17 that subpoena, we'd have to have a court in Maryland
18 issue an order enforcing it?

19 MR. TAUPIER: Correct.

20 COMMISSIONER D'AQUILA: My question pertained
21 to the individual. The individual can ask that that
22 be released, Ms. Vasques, in this situation?

23 MR. TAUPIER: She would probably have an easier
24 time because she could sign release of information.
25 Whether or not Maryland gives her -- well, they

1 should, there's due process, so she should be able to
2 get the records that suspended or revoked her
3 license. Whether or not Maryland does that is up in
4 the air, but they should be able to.

5 COMMISSIONER D'AQUILA: So is that an option in
6 this particular instance to give her an opportunity
7 to obtain that record?

8 MR. TAUPIER: It is. She should have that
9 record if Maryland did everything correctly. Due
10 process requires that she be served with the papers
11 or the pleadings to which instituted the action.
12 Based upon the record that you have before you, it
13 does seem like Maryland did give her correspondence.
14 The only thing we're missing is the actual December
15 letter outlining exactly what happened. So she could
16 get that, we've been in this process for about three
17 months, and she I believe from my conversations with
18 Ms. Ricks which she had with Ms. Vasques is that she
19 never got that piece of paper from Maryland, she only
20 got something from her employer.

21 COMMISSIONER DRAGO: Just, I guess, a comment,
22 if I could, Mr. Chairman.

23 CHAIR MACIVER: Commissioner Drago.

24 COMMISSIONER DRAGO: We have an individual here
25 who had their license revoked from another state.

1 The statute says we can deny someone a license for
2 that, correct?

3 MR. TAUPIER: Correct.

4 COMMISSIONER DRAGO: There's nothing that I see
5 in the material that would mitigate that and any
6 information that -- whatever she did, she didn't
7 really do or she's innocent or anything like that.
8 It's just that her license was revoked. We don't
9 really have any information on either side of it. So
10 in my mind, there's no reason to ignore the fact that
11 she had a license revoked and that gives the
12 commission the authority to deny.

13 In my mind, it would be if something came along
14 that showed that she was really innocent or wrongly
15 convicted or whatever that we might consider as a
16 mitigation, that would be one thing, but I don't see
17 any of that here. And we're all trying to be
18 compassionate, and I know that, and give everybody
19 the benefit of the doubt and we're all kind of
20 struggling right now to find a way to help people,
21 but I think there comes a point where we just have to
22 look at the facts and accept the facts for what they
23 are and rule based on that instead of trying to.

24 We did hand this off once already to try to get
25 more information. It wasn't like we just kind of

1 just didn't care and threw this aside and moved on.
2 We did try to get -- a lot of work done by you folks,
3 you've done extra work trying to get Maryland to give
4 us more information, to give us something that to
5 hang our hats on, to do something other than the
6 recommendation, but I don't see any -- I don't see
7 any of that. I see we're right back to where we
8 were, they had their license revoked, and I think it
9 would be incumbent upon us as the commission to then
10 fulfill our obligation to deny the license here
11 pending the information that we got or lack thereof.

12 VICE-CHAIR YAWORSKY: I think just looking at
13 the law in general and the basis for the revocation
14 here is very important. You made that point earlier.
15 It's not an uncommon practice in a number of
16 industries for a state to rely on the judgment of
17 other states when making determinations of who should
18 operate in theirs. And I think I agree with
19 Commissioner Drago, that that is truly the basis that
20 we're at is that there's -- within statute, there's a
21 contemplation that because another jurisdiction has
22 made a determination, we will take our action based
23 off of that and that alone.

24 I think earlier it was mentioned that there is
25 -- there may be a bit of a transient nature in this

1 business in general of people moving from one state
2 to another, and I think my judgment on this is that
3 the integrity of states acting to protect their
4 interests should be supported. I think that we would
5 appreciate the notion that I think -- I would
6 imagine, I haven't looked -- but I imagine a number
7 of other states have similar laws on the books when
8 it comes to recognizing that Florida takes
9 independent action on its own, that that would become
10 relevant in these other states to revoke a license.

11 So with that in mind, I do support I think the
12 action that's proposed here by staff. I also, as
13 others have said, I appreciate the due diligence that
14 has been put into this, but I'm comfortable with
15 supporting it.

16 CHAIR MACIVER: So -- one thing from my part I
17 want to clarify. I'll start off by if there is a
18 motion to accept the staff's recommendation, I will
19 support that motion with my vote. I will depart my
20 reasoning slightly only that I don't give as much
21 default confidence to the administrative actions of
22 executive actors in other states. They are
23 presumptively correct, but our obligation once we
24 have the authority to deny a license is to exercise
25 our discretion in deciding whether that's the

1 appropriate thing to do, and that other state has not
2 given us any guidance in how to exercise that
3 discretion. I'm not as comfortable hitting the
4 automatic button on that.

5 But with that said, I'm willing to move forward
6 because there would be a notice of intent to deny and
7 there would be notice and hearing rights afforded to
8 the applicant. Without any further debate, is there
9 a motion?

10 COMMISSIONER BROWN: I would move to approve
11 the staff recommendation, and I really want to also
12 stress how grateful I am for the dialogue that that
13 we had here today. I think it was very hearty, very
14 thoughtful, and you all made some very great
15 comments. So I would support the motion.

16 COMMISSIONER D'AQUILA: Second.

17 CHAIR MACIVER: Is there any objection?
18 Hearing a second, is there any objection? Showing
19 none, show the motion carries. Thank you. 10.2.

20 MR. TAUPIER: This is Walisha Janceess Wadley
21 (ph.), Case No. 2022046547. This is a application
22 for a slot machine card room pari-mutuel combination
23 occupational license. The license application was
24 submitted on September 22nd of 2022, and a waiver
25 applied for, because upon review of that application,

1 it appears that she did have a misdemeanor conviction
2 in the state of Florida. It appears based off of the
3 record that the applicant was going to be working at
4 a slot machine card room facility and was --
5 indicated to us that she was no longer going to be
6 employed there. We asked whether or not she still
7 wanted to have a waiver interview nonetheless, and
8 she indicated that she did.

9 We did try to reach out when the waiver
10 interview was supposed to be scheduled and the
11 applicant failed to attend the waiver, did not pick
12 the phone up, and we have not heard back. Therefore
13 on November 21st, the Director of Division of
14 Pari-Mutuel Wagering on behalf of the executive
15 director denied the waiver. And I will note that the
16 law under our rule does require that failure to
17 participate in the waiver process shall result in a
18 denial of the waiver application. Therefore based
19 upon that, the staff recommendation is to issue the
20 notice of intent to deny.

21 CHAIR MACIVER: You said that it was a
22 misdemeanor. So it's not an automatic exclusion for
23 a felony, it would have been one of the enumerated
24 misdemeanors. What was it?

25 MR. TAUPIER: It was petit theft in 2006. So

1 it's not a disqualifying offense under the slot
2 machine licensing, but it is disqualifying under card
3 room and pari-mutuel. However, there is waiver
4 opportunities for card room and pari-mutuels.

5 CHAIR MACIVER: I'm sorry, was she asking for a
6 combined license?

7 MR. TAUPIER: She was.

8 CHAIR MACIVER: Commissioners, any further
9 questions? Any debate? Is there a motion?

10 COMMISSIONER DRAGO: I move to approve staff
11 recommendation.

12 CHAIR MACIVER: Is there a second?

13 COMMISSIONER D'AQUILA: Second.

14 CHAIR MACIVER: Without objection, show the
15 motion carries. Item 10.3.

16 MR. TAUPIER: Adrian Kenon, Case
17 No. 2022048911. This was before the commission at
18 the November commission meeting based upon the
19 application for a slot machine card room pari-mutuel
20 combination occupational license. The charge to
21 which would be potentially disqualifying was
22 possession of cocaine in the year of 2009. The
23 commission did want us to reach back out to Mr. Kenon
24 to get a little bit more information and give him an
25 opportunity to show rehabilitation and good moral

1 character.

2 I have reached out to Ms. Ricks and her team
3 who tried to reach out to Mr. Kenon several times, to
4 which there was no avail. I believe that the
5 individual who was picking up the phone was either
6 Spanish speaking or was answering the phone for Mr.
7 Kenon, but nonetheless, we do not have a good contact
8 number for him.

9 And at this point based off of the application
10 and the potential disqualifying conviction, the
11 recommendation is to authorize the issuance of the
12 notice of intent to deny.

13 CHAIR MACIVER: So a question that I had had, I
14 know in the regulatory and licensing sphere, there is
15 an onus upon licensees to make sure that their
16 contact information is updated with the commission,
17 so that when we reach out to them, we find them, not
18 the same of course with an applicant.

19 My question is: Does our application expressly
20 convey that requirement, that it is incumbent upon
21 you to make sure that the information in your
22 application remains current while pending, something
23 along those lines?

24 MR. TAUPIER: On our actual application,
25 there's nothing certifying that you'll keep it

1 updated, but there is certification that at the time
2 you apply, everything in it is accurate and true.

3 CHAIR MACIVER: I assume we adopted those
4 applications as forms through a 120 process, so to
5 change the form, we're going to have to open up a
6 rulemaking process, but at some point, I believe it
7 is probably incumbent upon us to make an express
8 statement on the application that, "It is your
9 responsibility to ensure that any change in
10 information is immediately indicated or reasonably
11 communicated to the commission."

12 With that, Commissioner D'Aquila, I believe you
13 had a question? Any further questions,
14 commissioners? Any debate?

15 COMMISSIONER D'AQUILA: Actually, I have one
16 question. This is not his last chance, he could
17 apply again?

18 MR. TAUPIER: He could, or he could respond to
19 the notice of intent to deny, and based upon that
20 information that we get, we'll have conversations
21 with the client and see what information he has or
22 does not have, but he could reapply if ultimately a
23 final order was issued to deny.

24 COMMISSIONER D'AQUILA: Thank you.

25 COMMISSIONER DRAGO: I just have one question

1 if I could follow-up on what the Chairman was saying.

2 Do we have access to folks' licenses through
3 the facility that they work for? In other words, are
4 they required to provide that type of contact
5 information for their employees, their licensed
6 employees to the commission? So if they move after
7 they apply, do we go to the facility and say -- and
8 have the ability to ask for their phone number or
9 contact information?

10 MR. TAUPIER: We have the ability to contact
11 the facility if we know what facility they're
12 currently employed at. There's nothing in statute or
13 rule that requires the facility to notify us of
14 non-licensed employees and their information. I
15 would almost argue that because they're not licensed,
16 we have zero jurisdiction to ask for information on
17 someone who isn't controlled or has to abide by our
18 laws, but I'm not sure whether or not Mr. Kenon did
19 have a job lined up. There are some individuals that
20 just don't have jobs lined up at facilities who are
21 just applying for a license in hopes of getting a job
22 at one of the facilities. So it may be hard in every
23 aspect to try and get contact information either from
24 the facility or otherwise.

25 COMMISSIONER DRAGO: I understand. I'm really

1 asking as it relates to somebody who's actively
2 working somewhere, a licensee. And I hear over the
3 course of time, we can't get ahold of certain people
4 who have received discipline of some type, I'm just
5 asking: Do we go to the facility when we can't reach
6 them on the contact number information we have, and
7 if we do, is the facility obligated to provide that
8 information for us and is that a resource for us?

9 MR. TAUPIER: So yes and no. If there's an
10 ongoing investigation to which the facility is part
11 of that investigation, if one of their employees is
12 committing theft, we're obviously going to
13 investigate the facility for other things, therefore
14 they would be subject to giving us information and
15 not kind of blocking us from it. So in that aspect,
16 yes, they would be obligated to give us information.

17 A lot of the licensees that are coming before
18 you where we don't have much contact with -- not
19 licensees who work at a facility, but there are horse
20 trainers who are very transient who -- Gulfstream and
21 Tampa Bay Downs, they probably don't have that
22 information. They don't update with the facility
23 such as Gulfstream. They usually have just a P.O.
24 Box and that's what they put on our applications
25 where that is their main source of contact because

1 they are so transient.

2 COMMISSIONER DRAGO: I see. Okay. Thank you.

3 COMMISSIONER BROWN: Follow-up to Commissioner
4 Drago and the earlier question about if a licensee's
5 license is revoked, we don't currently notify the
6 employer where they're employed, obviously we don't
7 want that employer to be investigated for having an
8 unlicensed employee, but they have no other way to
9 know unless we were to inform them.

10 Similarly, to Commissioner Drago, if a licensee
11 is disciplined by us, do we currently let their
12 employer know that that licensee has been disciplined
13 by the commission?

14 MR. TAUPIER: If you want to.

15 MR. TROMBETTA: Yeah. Just to jump on all of
16 this, to Commissioner Drago -- let me start here. We
17 don't currently do that as a standard process is a
18 direct answer to Commissioner Drago's question about
19 information held by the facilities. Mark was
20 correct. A lot of the applicants -- the answer is it
21 depends, which isn't a great answer, but there is
22 some information that the facilities will have that
23 could potentially be helpful.

24 But a lot of the applicants that we get may not
25 necessarily be employed at the time or their license

1 employment might not be necessarily important. In
2 other words, for horse trainers, they don't work for
3 the facilities, they just need it to be in an area.
4 So it depends on the person, it depends on the
5 application, and it would depend on the facility,
6 too.

7 CHAIR MACIVER: Sounds like an issue that might
8 want to find its way into a future AP&P.

9 MR. TROMBETTA: Noted.

10 CHAIR MACIVER: Mr. Vice Chairman.

11 VICE-CHAIR YAWORSKY: Thank you, Chair. On all
12 of that, just for clarity, it sounds like the
13 determination on the degree to which information is
14 in some cases, if I'm correct, there's a flat line,
15 the response is generally as a practice, no, we do
16 not inform employers of the fact that someone's
17 license has been suspended, revoked or otherwise; is
18 that correct? The reason I'm asking is because it
19 seems in other circumstances --

20 CHAIR MACIVER: We've sent them administrative
21 complaints when they don't enforce the license, yeah.

22 COMMISSIONER BROWN: Yes.

23 VICE-CHAIR YAWORSKY: But I guess my ultimate
24 question is: It sounds like it's very circumstance
25 dependent on things. Who is the party within the

1 agency making that determination? Is it the
2 investigator, is it the attorney at the end of the
3 line, or who's working through that?

4 MR. TROMBETTA: I think it would be based on
5 the factual circumstances involved in the licensing
6 and what happened. But ultimately I think it would
7 be from a conversation between legal and the -- even
8 Joe's team, essentially.

9 VICE-CHAIR YAWORSKY: I can only imagine the
10 white board that is at one of our two buildings where
11 you're writing down all these great ideas that we
12 have to work on at some point down the road. It must
13 be two rooms by now. Thank you very much.
14 Appreciate it.

15 MR. TAUPIER: I do have to add -- if I may be
16 recognized.

17 CHAIR MACIVER: Mr. Taupier.

18 MR. TAUPIER: Ms. Ricks just informed me that
19 when legal does file these final orders for
20 discipline or revocation, that the PMW clerk does
21 forward them to investigations and the chief of
22 investigations does forward them to the facilities.

23 CHAIR MACIVER: I have not lost my place this
24 time. We were on discussion and debate on Item 10.3.
25 Is there any further discussion or debate? Seeing

1 none, is there a motion?

2 COMMISSIONER DRAGO: Move to approve staff
3 recommendation.

4 CHAIR MACIVER: And a second?

5 COMMISSIONER D'AQUILA: Second.

6 CHAIR MACIVER: Without objection, show the
7 motion carries. Item No. 10.4. We're getting close,
8 everybody.

9 MR. TAUPIER: 10.4 is Romy Joseph, Case
10 No. 2022051304. This is before you for a slot
11 machine/card room/pari-mutuel combination
12 occupational license. The applicant did submit their
13 completed application on September 27, 2022, and upon
14 review of that application, it appeared that the
15 applicant did have several felony convictions. The
16 first is controlled substance sale and lieu thereof
17 in 2019, paired with possession of cannabis with
18 intent to sell in 2019, and possession of cocaine
19 with intent to deliver, sell within 1,000 feet of a
20 school in 2021.

21 As of yesterday, he is serving his 364 days.
22 He's currently incarcerated in the Miami-Dade County
23 Jail, I did confirm that he is still there. He did
24 not apply for a waiver because waivers do not apply
25 for felony convictions under slot licensing statutes,

1 therefore the recommendation from staff is to issue
2 the notice of intent to deny based off of the
3 disqualifying criminal convictions.

4 CHAIR MACIVER: Commissioner D'Aquila?

5 COMMISSIONER D'AQUILA: I'm reading the
6 possession of cocaine within 1,000 feet of a school
7 in 2022; is that correct?

8 MR. TAUPIER: Yes. He was sentenced I believe
9 in September or October of 2022 and is serving a
10 364-day sentence.

11 CHAIR MACIVER: Any further questions? Any
12 debate? Seeing none, is there a motion?

13 COMMISSIONER D'AQUILA: Motion.

14 COMMISSIONER DRAGO: Second.

15 CHAIR MACIVER: Without objection, show the
16 motion carries. And the last item for Item 10, 10.5.
17 You are recognized.

18 MR. TAUPIER: This is Kallen Edward Flanders,
19 Case No. 2022054557. This is a slot machine/card
20 room/pari-mutuel combination occupational license.
21 The applicant did submit a complete application on
22 November 14th of 2022. Upon review of that
23 application, it appears that applicant was convicted
24 of a felony crime and a misdemeanor crime involving
25 larceny. The felony crime was a cash deposit with

1 intent to defraud in the year of 2004 and the
2 misdemeanor was a petit theft in the year of 2004.

3 Because this is a felony, there's no waiver
4 avenue for a felony conviction under the slot
5 licensing statutes, therefore based upon the
6 disqualifying criminal convictions, the division
7 recommends that the commission authorize the issuance
8 of a notice of intent to deny.

9 CHAIR MACIVER: Questions? Discussion?
10 Debate? Seeing none, is there a motion?

11 COMMISSIONER D'AQUILA: Motion.

12 CHAIR MACIVER: Is there a second?

13 COMMISSIONER DRAGO: Second.

14 CHAIR MACIVER: Without objection, show the
15 motion carries. We are on to Item No. 11, final
16 order, pursuant to our request from the respondent.

17 MS. ALVARADO: This is FGCC vs. Tai Van Ly in
18 Case No. 2022037245. In this case you were provided
19 a one-count administrative complaint alleging that
20 respondent is subject to permanent exclusion from all
21 pari-mutuels and all slot machine facilities based on
22 him capping his bet at PPI on July 22, 2022.

23 The respondent sent in the election of rights
24 form requesting that a final order be entered
25 imposing a penalty in this case, therefore the

1 division would ask the commission enter an order
2 adding respondent to the permanent exclusion list for
3 all pari-mutuels and slot machine facilities in the
4 state.

5 CHAIR MACIVER: Commissioners, I would just
6 like to note for the record for anyone that was or
7 that may have caught it earlier, when you were
8 towards the end of the commission meeting, the
9 official term for respondent is person who received
10 the complaint when you can't remember the word
11 respondent.

12 Any questions or debate? Seeing none, is there
13 a motion?

14 VICE-CHAIR YAWORSKY: So moved. Sorry. So
15 moved the staff recommendation.

16 COMMISSIONER BROWN: Second.

17 CHAIR MACIVER: And is there a second -- I hear
18 a second. So without objection, show the motion is
19 adopted. That concludes I believe the substantive
20 portion of our agenda. Item No. 12, executive
21 director update, Mr. Trombetta.

22 MR. TROMBETTA: Thank you, Mr. Chair. I have
23 two notes and then I'm available if you need anything
24 else.

25 First one has to do with the next commission

1 meeting. I just want to make sure everyone is
2 onboard for the January 5th meeting just because it's
3 around the holidays, just to confirm that's
4 happening. There's a slot license renewal set for
5 January 9th, and we're just trying to make sure that
6 we schedule around that so that we don't miss the
7 renewal date.

8 VICE-CHAIR YAWORSKY: I think what I'm most
9 mindful -- I believe that schedule for January, the
10 3rd, 4th right now?

11 MR. TROMBETTA: The 6th, I believe.

12 VICE-CHAIR YAWORSKY: One of these days? 5th.
13 I do want to -- I think my one thought would be on
14 this is I want to be mindful of staff time around the
15 holidays. While we're here, we get our -- we get all
16 the work that staff has compiled, you know, about a
17 week before typically, but I'm very aware that the
18 work that goes into preparing that and finishing it
19 and scheduling it also takes days if not weeks to do
20 so. So my one concern around this would be really a
21 question to you: Does staff -- given the holidays,
22 is that scheduling workable for you all?

23 MR. TROMBETTA: I think if you --

24 CHAIR MACIVER: If it would help that question,
25 let me append to it with a commitment from the Chair

1 that we would keep a small agenda for that meeting.

2 MR. TROMBETTA: That would help. If we know
3 there's a meeting that date, we can manage, we can
4 start early enough to make it happen.

5 COMMISSIONER BROWN: May I ask a question about
6 -- just in general? I love having a set schedule for
7 us, but being mindful that there also -- that there
8 are committee weeks going to be going on throughout
9 the January, February, March, and I'm sure that the
10 commissioners are going to want an opportunity to be
11 up here during that time. If there is an opportunity
12 in any of these months for us to have a meeting or a
13 supplemental meeting, that would be helpful also so
14 that we get an opportunity to meet with legislatures
15 and learn a little bit more about gaming laws of
16 interest to those that are in the committees as well.

17 And I don't know if we're going to have a
18 registered lobbyist by that time, but definitely want
19 to keep all of us aware that there is committee
20 weeks, and we do need to be mindful of different
21 legislation going on as well as meeting with
22 legislatures.

23 CHAIR MACIVER: As well as having the
24 availability of Room 412 in the Knot Building on any
25 given --

1 COMMISSIONER BROWN: That's actually the most
2 important part, right?

3 CHAIR MACIVER: Anything further? Please.

4 MR. TROMBETTA: It sounds like the commission
5 is okay with maintaining the schedule for January
6 5th?

7 CHAIR MACIVER: Given our deadline of the 9th
8 for that item, I think it's probably incumbent upon
9 us to try and meet that day and to try and keep a
10 small agenda so that we can accommodate that.

11 MR. TROMBETTA: Thank you, sir.

12 CHAIR MACIVER: Anything further,
13 commissioners, for the executive director? Oh, you
14 said there were two items.

15 COMMISSIONER DRAGO: Just one quick comment on
16 that, that I agree, I'm fine with keeping it the way
17 it is. I just want to be sure, again, that it's
18 manageable by staff and everyone can get everything
19 done. It's only a few days after New Years and
20 people have time off and so forth. So I'm not
21 opposed to moving it if that's what everybody wanted
22 to do, but I'm glad to keep it the way it is. I like
23 that stability in the meetings as well, but I know
24 that we're all concerned about and want to keep in
25 mind staff and the ability to get everything done and

1 people are going to be off and so forth.

2 MR. TROMBETTA: Mr. Chair, if it's okay, then
3 let me have an internal meeting with my staff here
4 tomorrow or early next week, and if we think it might
5 be tough, I'll reach out and let you know.

6 VICE-CHAIR YAWORSKY: Thank you, Chair. I would
7 just -- this is to the thought of the Chair as
8 well -- I think at some point in the coming year, it
9 may be a good idea to consider a meeting in a
10 location out of Tallahassee or perhaps even two just
11 for the sake of having presence throughout the state,
12 but also allowing other interested parties that don't
13 reside in Tallahassee -- which is most interested
14 parties probably -- to be afforded an opportunity to
15 attend a meeting. Just throwing that out there as a
16 potential thought in the coming year.

17 CHAIR MACIVER: I believe we've been having the
18 ongoing intent to do that since our -- probably since
19 our formation, but of course we tend to fall into
20 habit. So a point well taken.

21 COMMISSIONER BROWN: Mr. Chair, Mr. Trombetta,
22 have we contemplated when session is in occurrence if
23 we have a secondary facility? My understanding is
24 that we do have another location, but just to confirm
25 that for us.

1 MR. TROMBETTA: Yes, Commissioner Brown. We've
2 reached out, I think it's Betty Easley Center, which
3 is across the street from our new office. I think
4 the PSC has offered the PSC room if it's available,
5 but there's also the secondary hearing room that's
6 over there as well, and I think there are some other
7 options essentially.

8 CHAIR MACIVER: Did everyone notice how
9 Commissioner Brown just sort of coyly glossed over
10 her home turf advantage?

11 COMMISSIONER BROWN: I did.

12 CHAIR MACIVER: Mr. Trombetta, you said you had
13 a second item.

14 MR. TROMBETTA: Yes, sir, thank you. It's
15 really just an update on law enforcement. Just two
16 quick things. On November 7th, we had our second law
17 enforcement officer, our law enforcement manager
18 started, he's working now in the 4070 office with Mr.
19 Harold. And then additionally -- let me get the
20 acronym correct -- the State Law Enforcement Radio
21 System Committee approved FGCC's acceptance onto the
22 state radio system, so it's a big step for our law
23 enforcement officers, and we needed the approval, and
24 that happened, too. So lots of updates for law
25 enforcement, but those are kind of the two big ones

1 that I think would be most important to share at this
2 point.

3 CHAIR MACIVER: And this may be a question for
4 Director Harold, but it's very, very, very critical
5 of course that our agents get a really cool radio
6 designation letter. So Mr. Harold, did -- were we
7 approved for --

8 MR. HAROLD: I would say good morning, but it's
9 already afternoon. But yes, thank you. We were
10 accepted onto the State Law Enforcement Radio System
11 last month, that's certainly very nice, that helps us
12 in all of the interaction with other state agencies
13 and it's pretty instrumental.

14 And to your question about our alpha
15 abbreviation, we're now known as the mic, the mic
16 system. So we'll be mic one, mic two, mic three.
17 That will be our radio designation on the state law
18 enforcement radio system. To that, there's been a
19 lot of work, and the director has spoken about that,
20 a lot of good things going on. So thank you.

21 CHAIR MACIVER: Thank you, Mr. Harold. All
22 right. Mr. Trombetta, if that's everything, I
23 believe we move on to a last round period of public
24 comment. I think everybody I'm seeing here -- well,
25 not everyone, but entirely staff in the room at this

1 point, but the period is open for public comment.

2 Seeing none, let's show the meeting adjourned.

3 (Transcription concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF BROWARD)

I, Shelby Rosenberg, Florida Professional Reporter,
certify that I was authorized to and did
stenographically report the foregoing audio
transcription to the best of my ability and that the
transcript is a true and complete record of my
stenographic notes.

Dated this 30th of January, 2023.



Shelby Rosenberg, Florida Professional Reporter