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PUBLIC COMMENT HEARING ON BINGO RULES

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TEXAS LOTTERY COMMISSION

PUBLIC COMMENT HEARING ON BINGO RULES

MAY 11, 2016

10:00 A.M.

TAKEN AT

THE TEXAS LOTTERY COMMISSION

611 EAST 6TH STREET

AUSTIN, TEXAS 78701

STENOGRAPHICALLY RECORDED BY

GENEVA GARCIA, CSR

APPEARANCES

GENERAL COUNSEL..... MR. BOB BIARD
DIRECTOR CHARITABLE BINGO OPERATIONS.. MR. ALFONSO ROYAL

INDEX OF COMMENTERS

MR. WILL MARTIN.....PAGE 5
MS. SHARON IVES.....PAGE 8
MR. MARK CLARK.....PAGE 13
MR. RICHARD BUNKLEY.....PAGE 14
MR. CHARLES HUTCHINGS.....PAGE 16
MS. MELODY GREEN.....PAGE 17
MS. KIMBERLY KIPPLIN.....PAGE 18
MR. STEVEN FENOGLIO.....PAGE 32
MR. STEVE BRESNEN.....PAGE 54
REPORTER'S CERTIFICATE.....PAGE 67

1 PROCEEDINGS

2 MR BIARD: Good morning. We're on the
3 record now. This rule comment hearing is called to
4 order. The time is 10:02 on May 11th, 2016.

5 For the record, my name is Bob Biard. I
6 am general counsel for the Lottery Commission. And my
7 first announcement today is that James Person, who is
8 the attorney who was assigned to this rule making has
9 left the agency to work at the Governor's office as of
10 last Monday.

11 So with his absence, I'll be completing
12 the attorney duties for this rule making proceeding,
13 with the help of Alfonso Royal, who is sitting here to
14 my left, the Director of the Charitable Bingo Operations
15 Division, who is here with me.

16 The purpose of this hearing is to receive
17 public comments on proposed amendments to 29 existing
18 rules and one proposed new rule. These are all in
19 Chapter 402 of Title 16 of the Administrative Code.
20 That's sections 402.103, .200, .203, .205, .210, .300,
21 .301, .303, .324, .325, .400, .404, .407, .411, .420,
22 .424, .451, .500, .504, .506, .511, .514, .600, .602,
23 .603, .703, .706, .707, .708. And the new rule proposed
24 is 402.413.

25 The proposed rule amendments are a result

1 of both the Commission's recent rule review and several
2 stakeholder meetings between Commission staff and
3 various representatives of the bingo community. The
4 Commission solicited from these representatives any
5 proposed rule changes desired by the bingo community;
6 and the proposed changes were discussed in industry
7 stakeholder meetings.

8 Many, but not all, of the bingo
9 community's proposed changes are reflected in this
10 proposal, as are certain other changes identified in the
11 rule review and desired by the Commission.

12 The purpose of the proposed new rule
13 402.413 stems from the Occupations Code, Chapter 55,
14 which requires state agencies to issue occupational
15 licenses to adopt rules and policies pertaining to the
16 licensing of active duty military personnel, their
17 spouses and military veterans.

18 The Commission voted to propose these
19 amendments and the new rule on April 14th. And they
20 were published in the April 29th issue of the Texas
21 Register at 41 TexReg 3050 for the proposed amendments
22 and 41 TexReg 3067 for the proposed new rule. And these
23 were also published on the Commission's website.

24 In addition to this comment hearing, the
25 Commission is accepting written comments on these

1 proposals through May 31st. The comments may be
2 submitted to me at the Commission's mailing address,
3 P.O. Box 16630, Austin, Texas, 78761.

4 Any comments that were sent or are sent
5 to James Person, I will get them as well. You can also
6 submit comments by e-mail at the
7 legal.input@lottery.state.tx.us.

8 I'll be happy to give you that
9 information again if you like.

10 So far I have -- it looks like I have
11 seven witness affirmation forms. If anyone wishing to
12 comment has not turned in a witness affirmation form,
13 please do so now.

14 Okay. And for those wishing to comment,
15 please identify the particular rule or rules you're
16 commenting on if you can. I know there's a lot of rules
17 here, so to the extent you can, that would be helpful.

18 And so with the preliminary statements
19 out of the way, I'll call the first commenter, which is
20 Will Martin.

21 Welcome. You can sit at the table or at
22 the podium, whichever you prefer.

23 MR. MARTIN: Good morning, my name is
24 Will Martin. I'm the Chairman on the Legislative
25 Commission for the American Legion for the State of

1 Texas and I'm also Vice-President for Conservative
2 Texans for Charitable Bingo.

3 This morning I would like to comment on
4 Rule 402.404, License and Registry Fees. The first
5 thing I want to do is establish that the budget for the
6 Bingo Division here all the Texas Lottery Commission is
7 2.7 million dollars annually.

8 On page 11 of the 2015 Charitable Bingo
9 Operations Division Annual Report, it clearly shows
10 total license fees collected from conductors, lessors
11 and workers registry to be \$3,700,764.

12 Next the total license fees collected
13 from manufacturers and distributors was \$75,000.

14 Next was administrative penalties,
15 settlement fees was \$51,494.

16 Next was miscellaneous fees, \$11,612.

17 Then the big one, prize fees and three
18 quarters of rental tax for \$30,175,393.

19 After allocations paid to cities and
20 counties, the net deposited to the state's general
21 revenue fund was \$20,164,772, which is \$17,464,772 more
22 than what it cost to fund the Charitable Bingo Division.

23 I went online and researched license fees
24 in other states. Illinois is \$200 per year. Michigan
25 is \$150 per year. Pennsylvania is \$100 per year. Iowa

1 is \$100 a year. California is \$50 per year. Georgia is
2 \$100 a year. Missouri is \$50. Mississippi is \$50 per
3 year. Florida, \$100 per year.

4 When I see how Texas does license fees,
5 I'm reminded of the statement of the socialist leader
6 that once said, "You have worked hard, saved your money,
7 you've done without while investing wisely, now we want
8 half."

9 In other words, you have managed your
10 bingo hall well, you've done great in raising money for
11 the needy, so now you need to pay more for your license
12 than those that didn't work as hard.

13 In my opinion this is one of most abusive
14 cases of government agencies outright overcharging not
15 just any organization, but from organizations that are
16 dedicated to helping those who are in dire need -- the
17 crippled children and the disadvantaged children who
18 can't afford glasses at schools, veterans groups and on
19 and on.

20 How anyone associated with the Bingo
21 Division can sleep at night is beyond me. It is amazing
22 that our legislative body in the State of Texas is
23 considered a conservative majority, but yet has a state
24 agency that treats the charitable organizations of this
25 state in such a disingenuous manner.

1 The American Legion Department of Texas
2 and the members of Conservative Texans for Charitable
3 Bingo want to see the bingo license fees reduced greatly
4 to a reasonable rate. \$100 per year per charity across
5 the board instead of this socialistic sliding scale that
6 penalizes those that do well in business.

7 Members of the legislature say they want
8 to help charities. Your staff says they want to help
9 charities. Reducing the cost of charities will help
10 charities by allowing them to keep more of their money
11 and help the people of Texas.

12 On behalf of the American Legion and
13 Conservative Texans for Charitable Bingo, I thank you
14 for this time and public comment.

15 MR BIARD: Thank you, Mr. Martin.

16 Next we have Sharon Ives.

17 MS. IVES: I'm going to sit down. I've
18 got quite a few to go through.

19 Good morning. My name is Sharon Ives.
20 And that's I-v-e-s. I'm with Fort Worth Bookkeeping.
21 My office handles the bookkeeping for 16 bingo unit
22 halls.

23 All right. Rule 402.200, I would like to
24 say that I agree with the Texas Charity Advocates'
25 proposed amendments and the Bingo Interest Group.

1 With that being said, (b)(3), deleting
2 the replacement of the set of the individual bingo
3 balls, where they must be documented on the bingo
4 inspection log. And number (5), deleting the inspection
5 log.

6 I believe it was (h)(4) on the same rule,
7 the written game schedule, on deleting the entire number
8 (4).

9 I'm sure Alfonso is aware that all the
10 audits that my office has been going through, every
11 audit has been written up -- or every bingo hall has
12 been written up regarding the game schedule.

13 Every time there is a change on the game
14 schedule, the charities have to order more of them since
15 we are required at this time to attach a copy to each
16 session. And it's a lot of paperwork. They have enough
17 paperwork to keep up with already. Any time there's a
18 change we have to order more programs and game schedules
19 and it's costing the charities money.

20 Rule 402.210, House Rules. I agree with
21 the house rules (e) -- I'm sorry -- paragraph (e). I
22 would like to have some kind of clarity on the language
23 "easily accessible".

24 Rule 402.325, (d)(3), I would like to add
25 "unless the player refuses" on that. I had personally

1 came across a situation where a lady was having a
2 stroke. An ambulance was called and a member of her
3 family came up to the counter to get a refund and she
4 darted out the door. She didn't have a chance to sign
5 any type of voided ticket, but it was noted on the
6 ticket. I just don't want to be in violation knowing
7 that what I did was wrong.

8 Rule 402.401, Temporary License. I agree
9 with the Texas Charity Advocates and the Bingo Interest
10 Group's comments. And I do like the idea of having
11 print on demand. We've had numerous occasions where,
12 whether it be an annual license or temporary licenses
13 being mailed to some unknown address that wasn't ours.
14 So that would be more feasible, being able to print on
15 demand.

16 Rule 402.410, Amendment of a License.
17 Again, to print on demand.

18 Rule 402.41, I agree with the Texas
19 Charity Advocates' amendments and the Bingo Interest
20 Group.

21 Rule 402.506, Disbursement Records
22 Requirements. Again, I agree with the Texas Charity
23 Advocates and the Bingo Interest Group's amendments.
24 Specifically, that would be (e)(2), cash disbursements
25 general required information and deleting the

1 organization or unit name, the taxpayer or unit number
2 in calendar quarter.

3 I don't know about the other bingo
4 businesses in the state, but we use Quickbooks Pro
5 accounting software. Some of those forms are not -- you
6 can't manipulate the titles on those forms. And we are
7 getting written up for that. Nor am I a computer
8 hacker, so I can't go into the system and do it.

9 Okay. Rule 402.511, Required Inventory
10 Records. I agree with the Texas Charity Advocates and
11 Bingo Interest Group proposed amendments in deleting
12 the distributor's name and taxpayer number. And all of
13 the number of tickets per deal, number of tickets sold,
14 missing or damaged by occasion and number of pull-tabs
15 tickets remaining if the deal is closed.

16 Rule 402.600, Bingo Reports and Payments.
17 I guess that would be (1)(3), on rounding the quarter
18 reports. I agree with the language from the Texas
19 Charity Advocates and the Bingo Interest Group as far as
20 just rounding to the whole dollar. And the quarterly
21 report would not be considered inaccurate based on
22 rounding numbers provided that the rounding effect
23 doesn't cause more than \$5 variance when the interests
24 are all summed up.

25 Rule 402.602, Waiver of Penalty. I'd

1 like to go on record that I agree with the Texas Charity
2 Advocates and Bingo Interest Group's proposed
3 amendments.

4 Rule 402.703, Audit Policy. My favorite.
5 The Bingo Division is the only division that takes the
6 records from your place of business.

7 We go through Texas Workforce Commission
8 audit and we go through IRS audits. That state agency
9 and federal agency audit in the office. The Bingo
10 Division is the only one that does not.

11 So I agree with a Texas Charity Advocates
12 and the Bingo Interest Group's amendments on their
13 language.

14 Rule 402.708, Dispute Resolution. I
15 agree with the Texas Charity Advocates and the Bingo
16 Interest Group proposed amendments language. Especially
17 on (c)(4), adding a game inspection. I believe that
18 when an inspector comes out and does a game inspection
19 using the little checklist, why don't we have the right
20 to comment on that. We're basically asked to sign that
21 form, but there's nowhere on there to comment. I'd like
22 to see that changed.

23 That's all I have today.

24 MR BIARD: Thank you. Are you going to
25 be submitting written comments as well?

1 MS. IVES: Yes, I will.

2 MR BIARD: Okay. Thank you.

3 MS. IVES: Thank you.

4 MR. BIARD: Some of those proposals from
5 the Bingo Interest Group, I think some of that might be
6 in some of those proposals.

7 MS. IVES: Okay. Thank you.

8 MR BIARD: Okay. Next we have Mark
9 Clark. Good morning.

10 MR. CLARK: Good morning. My name is
11 Mark Clark, I'm here representing the AMVETS. And I'd
12 like to speak on three of them.

13 Rule 402.210, about house rules being
14 posted. We don't have a problem with the first
15 paragraph, but "easily accessible" in the second
16 paragraph we feel like needs to be clarified. That
17 leaves a lot of room for interpretation and you might
18 get five different auditors out there and five different
19 interpretations.

20 On Rule 402.325, Card-Minding Systems, we
21 are speaking in support of that.

22 And 402.703, while we support the field
23 work that may happen in a licensed business office, we
24 don't have a problem with that. What we have a problem
25 with is keeping the records for five years. That seems

1 to be a little excessive to us and we'd like to have it
2 considered to be cut back to a shorter time frame.

3 And other than that, I'd like to thank
4 the Commission for the opportunity to speak before it.

5 MR BIARD: Thank you very much. Next I
6 have Richard Bunkley.

7 MR. BUNKLEY: Hello, my name is Richard
8 Bunkley with Littlefield Corporation. And, first of
9 all, I'd like to thank the Commission and the current
10 Bingo Division administration for allowing us to have
11 these stakeholder meetings and dialogues. We don't
12 always agree, but that's okay. That's why we have
13 chocolate and vanilla. But the ability to have a
14 dialogue and have a compromise has really been a breath
15 of fresh air. Quite invigorating.

16 Like I said, we came to a great
17 compromise, but I feel like further compromise is needed
18 and I would respectfully request that we reconsider
19 certain section of 402.200 and also 402.300.

20 On 402.300, my key concern is not
21 allowing the language that allows pull-tabs to award a
22 raffle ticket as a prize. In the bingo business in
23 Texas we're trapped in 1982 in terms of dollars and
24 technology. And I'm not aware of any other business
25 that can survive with those constraints.

1 Charitable bingo is scraping along and we
2 need help, and allowing raffle tickets to be awarded as
3 a pull-tab prize, I think would be a big step in the
4 right direction. I'm aware of charities out there that
5 ran similar events before there was an interpretation
6 that this was not allowed and the results were amazing.

7 So I understand that the Commission's
8 hands might be tied to a certain extent on this, so all
9 that I'm asking is that we don't close the door on the
10 issue, we re-investigate it and really make sure we run
11 all the traps and see if there's anything we can do to
12 get this issue re-addressed, whether that's an Attorney
13 General opinion request or whatever we can do. That's
14 way above my head, but I ask that we keep our minds open
15 and continue to consider it.

16 The other issue I'd like to discuss is
17 402.200, prizes of \$50 or less. I think there's a
18 conflict in the way the rule is currently written in the
19 statute. And I'll just for the record read the way the
20 statute is currently worded, Section 201.402, regarding
21 prizes.

22 "Person may not offer or award a single
23 bingo occasion prizes with an aggregate value of more
24 than \$2,500 of all bingo games other than pull-tab bingo
25 or bingo games that award an individual prize of \$50 or

1 less." That seems pretty clear to me.

2 And then we go to 402.200(n), and it
3 reads as follows: "In order for a bingo game to
4 qualify for the exemption on 201.402 (b)(2) of the
5 Occupations Code, the total aggregate amount of the
6 prizes actually awarded for that game must not exceed
7 \$50."

8 So we've got some extra language there,
9 we've got aggregate and actually awarded when in the
10 statute it just says "individual".

11 So I'd also like to point out that I
12 think the legislature is keenly aware of the distinction
13 because they use that -- some of that language. They
14 actually use the word "aggregate" when they limit the
15 aggregate value of prizes for occasion at \$2,500.

16 That concludes my comments. And, again,
17 I thank the Commission for allowing to hear us today.

18 MR BIARD: Thank you. Next is Charles
19 Hutchings.

20 MR. HUTCHINGS: Good morning. My name is
21 Charles Hutchings and I represent AMVETS.

22 Rule 402.200, we oppose the rule.
23 Charitable bingo would like changes that have been made
24 by the Charitable Bingo Advocates. Section 1, the
25 requirement for the inspection of the bingo balls and

1 maintaining a log of the inspections. This is basically
2 unneeded and should be eliminated as proposed by the
3 Charitable Bingo Groups. So please consider an
4 amendment to the provisions.

5 Rule 402.200(f) should be amended to
6 allow raffle tickets to be awarded for bingo prizes.
7 That would be a great assistance.

8 Rule 202.200 (h)(4) and (5) should have
9 been revised as requested by the Charitable Bingo Group
10 to streamline the requirements for game schedules.
11 Bingo operators don't need to be told how to run a bingo
12 game. They will use a game schedule if they want to and
13 they give the customers the information they need to run
14 the games without micro-managing from the Lottery.

15 The rules should be revised to say the
16 charitable must keep a record of all items sold and
17 prizes paid.

18 Number (4), back to what was commented on
19 before, if a game is for \$100 and two people win \$50
20 per person, that shouldn't count against the cap. Thank
21 you.

22 MR BIARD: Thank you. Next is Melodye
23 Green.

24 MS. GREEN: I'd like to speak on a rule
25 that's very near and dear to me, because I just wrote a

1 check for \$1,200 on this -- and that's the rule 402.602,
2 Waiver of Penalty, Settlement of Prize Fees. We oppose
3 the proposed rule.

4 Recently the Commission has been asking
5 people to pay money for shortages in the application of
6 prize fees dating back nearly 20 years. I have one at
7 21 years. But the Commission does not have any
8 documentation to back up these debts.

9 So we're asking if you have no
10 documentation to back up the debt, there should be no
11 debt. And do not hold up the license renewals if you
12 have no documentation to back up the debt.

13 We're asking you to accept the rules
14 proposed by Kim, by Mr. Bunkley and by the Bingo
15 Advocates. Thank you.

16 This is really serious. 21 years, I
17 mean, come on.

18 MR BIARD: Thank you. Next is Kim
19 Kiplin.

20 MS. KIPLIN: Good morning. For the
21 record, my name is Kimberly Kiplin. I'm an attorney
22 here in Austin.

23 I'm here today on behalf of the
24 Department of Texas Veterans of Foreign Wars. We
25 appreciate the opportunity to comment on the proposed

1 amendments to the existing charitable bingo rules and
2 the new rule, military service members, military
3 veterans and military spouses.

4 By way of background, this rule making is
5 a result of the statutory required rule review that each
6 agency must undertake every four years. As part of that
7 rule review process, the VFW did submit comments,
8 including proposed amendments to the existing rules.

9 In connection with the rule review
10 project, the Bingo Division convened several work group
11 meetings with bingo industry stakeholders. And the VFW
12 did participate in those meetings.

13 And I do want to echo what you heard
14 earlier, I really appreciate the opportunity to be a
15 part of that process in frank and candid discussions. I
16 think it was very, very helpful and we would like to see
17 that continue in the future.

18 Some of the VFW's proposed amendments
19 were accepted and are now incorporated in the proposed
20 rule amendments that were approved by the Commission for
21 public comment as part of this current rule making
22 proceeding. Many of the proposed amendments were not
23 accepted.

24 And the gist of many of your proposed
25 amendments was to streamline burdensome rules or to

1 eliminate unnecessary paperwork. And I'm planning on
2 addressing each rule separately so you can keep a pretty
3 good tally.

4 So I'm going to start with 402.103,
5 Training Program. We support the proposed amendment to
6 402.103. It eliminates a reference to an obsolete
7 division publication.

8 402.200, we proposed amendments to
9 eliminate performing of a bingo ball console and
10 flashboard inspection log. In subsections (b)(3) and
11 (5) they were not accepted. We would like those
12 requirements deleted. These logs are an unnecessary
13 requirement and they add a burden to organizations to
14 maintain these records for 48 months. We also think it
15 sets up a trap for the organizations to get dinged for
16 noncompliance.

17 We have no objection to subsection
18 (b)(6), proposed amendment requiring an organization to
19 make its procedures on addressing problems available to
20 players upon request. But by way of clarification, if
21 an organization posted these procedures in a hall, that
22 should satisfy this requirement making these procedures
23 available upon request.

24 We'd like you to confirm that in your
25 agency response or comments.

1 We proposed amendments to subsection
2 (h)(4) and (5) that eliminates the requirements of a
3 game schedule. While it may make good sense for an
4 organization to keep a game schedule, we would prefer
5 the agency allow an organization to make its own
6 business decisions without paternalistic regulatory
7 approach.

8 We request that section (h)(4) be revised
9 to say the charity must keep a record of all items sold
10 and prizes paid.

11 We request subsection (h)(5) be revised
12 to reflect that if a licensed authorized organization
13 uses a game schedule, it may amend it during the bingo
14 occasion. We support the following proposed amendments
15 to 402.200, subsection (e), (f), (h)(3), (5), (k)(4) and
16 (o).

17 We request subsection (n) be revised to
18 make is clear that prizes awarded under \$50 do not count
19 towards the \$2,500 occasion cap, regardless of whether
20 that prize that was announced was more than \$50.

21 This addresses the issue of splitting
22 prizes among winners in a game. This language is
23 consistent with the statutory language.

24 402.203, we have no objection to the
25 proposed amendments, which appear to be cleaning up the

1 language.

2 402.205, we support to proposed amendment
3 in subsection (f)(2) and have no objection to subsection
4 (g)(7) and (i).

5 402.210, we question the phrase "easily
6 accessible to all patrons," because we believe this is
7 open to interpretation on what it means and could be
8 construed differently by individual inspectors. We
9 would like clarification on the use of this phrase.

10 402.300, we support the proposed
11 amendments regarding the design of the pull-tab because
12 they will allow for more flexibility on ticket design.

13 We support the proposed amendment that
14 allows bingo equipment to be awarded as prizes.

15 We are opposed to the inclusion of the
16 word "offensive" in subsection (b)(3)(g), in connection
17 with the Commission approval of the artwork. It is just
18 too subjective and vague and doesn't provide meaningful
19 guidance on what is considered offensive and what is
20 not.

21 We seek clarification on the use of the
22 word "occasion" in subsection (g)(2). This has to do
23 with the occasion cash reports. Some organizations may
24 not record all of the required information on a single
25 report that may be captured on a schedule that rolls up

1 into the occasion cash report.

2 We'd like confirmation that so long as
3 the information is captured in a schedule that then
4 rolls into cash report, that the organization is in
5 compliance with this requirement. Please confirm that
6 the daily schedule of prizes is part of the occasion
7 cash report.

8 We also seek confirmation that if the
9 form number which is proposed in the language is on the
10 daily schedule of prizes, it satisfies the requirement
11 of the form number actually being on the occasion cash
12 report. And if it doesn't satisfy the requirement, it
13 will require some organizations to have to now modify
14 their reporting format, which is a cost to the
15 organizations.

16 402.301, we oppose the use of the word
17 "offensive" in subsection (b)(3) for the same reasons we
18 are opposed to it in 402.300.

19 402.303, we have no objection to the
20 deletion of subsection (b)(6). It is deleting obsolete
21 language.

22 We support the deletion of the language
23 in subsection (e) because it is eliminating unnecessary
24 paperwork.

25 402.324, we support the proposed

1 amendments because they eliminate unnecessary steps in
2 the card-minding system approval process.

3 402.325, we support the elimination of
4 the requirement in subsection (d)(2) of a player being
5 required to provide address and phone number on the
6 refund for a void transaction because we believe it
7 protects the player's privacy.

8 We support the elimination of the
9 prohibition of reserving card-minding devices for
10 players. It is good business and develops player
11 loyalty to be able to cater to regular players who lack
12 assurances that there will be a card-minder available
13 for them.

14 402.400, we propose amendments that would
15 require the Commission to streamline its license review
16 process. These amendments were not included in this
17 rule making. We request the language we previously
18 submitted as part of the rule review process be
19 included.

20 Additionally, we request subsection
21 (a)(3) be deleted. Subsection (a)(3) provides that an
22 application is incomplete if the applicable license fee
23 is not provided.

24 Currently the division takes the position
25 that an application will be returned unprocessed if it

1 is incomplete. The problem is that if there's a
2 legitimate dispute regarding the fee amount, the
3 applicant has no meaningful way to challenge what the
4 division claims it owes.

5 Under the division's practice of
6 returning applications unprocessed if they are
7 incomplete, this is actually inconsistent with
8 subsection (e), which provides that the Commission will
9 notify an applicant if an application is incomplete.

10 402.404, we request that subsection
11 (h)(2)(b), Refunds, be amended to make it clear that the
12 reference to any other outstanding bingo liabilities to
13 the state means liabilities that have been established,
14 not simply by virtue of a notice of outstanding
15 liabilities due being sent.

16 Currently the division is issuing such
17 notices to licensees for alleged liabilities that in
18 some cases go back to the mid 1990's. If the division
19 cannot establish the liability through the source
20 documents that support the alleged liability, the
21 current or former licensee should not be blocked from
22 receiving a refund.

23 402.407, we have no objection to the
24 proposed amendments.

25 402.411, we oppose the proposed amendment

1 that shortens the time within which the division will
2 accept a renewal application, which is currently 90 days
3 and is now being proposed to be 60.

4 Additionally, we proposed amendments to
5 provide the renewal application is not considered
6 incomplete based on a failure to submit license renewal
7 fee. As I stated earlier, the division's position is
8 that it will return the application unprocessed if it's
9 incomplete. The division has taken the position that a
10 renewal application is incomplete if the renewal fee the
11 division believes is the correct fee doesn't accompany
12 the application.

13 The problem with this approach is that
14 there are hard deadlines for license renewals. Missing
15 a renewal deadline can cause either additional fees,
16 meaning a late fee, or in the case of a grandfathered
17 lessor license, an outright loss of the license which
18 cannot now be obtained.

19 We also propose amendments that the
20 Commission shall not delay issuance of a license renewal
21 solely due to an obligation the Commission believes is
22 delinquent unless the obligation has been finally
23 determined to be delinquent. We request this language
24 be included.

25 What is currently occurring at the

1 division highlights the need for this language. As I
2 previously stated, the division is issuing these notices
3 of outstanding liabilities for debts that, as I said, go
4 back in some cases to the 1990's.

5 The division is giving the licensee 30
6 days to pay what it says the licensee owes,
7 notwithstanding the fact that the division doesn't have
8 the source documents to support its position. And if
9 the licensee doesn't pay the alleged debt, the division
10 is reporting these debts to the comptroller public
11 accounts. The comptroller will place these persons on
12 warrant hold, which means they can't receive a payment
13 from the state.

14 By that way, the comptroller's position
15 on having a report made to them is that placing the
16 person on warrant hold is ministerial and they have no
17 discretion, so it's left with the Commission.

18 Ultimately, I do believe the division
19 will refer these obligations to the Attorney General.
20 Then when the organization's license is up for renewal,
21 the division will deny the license renewal application.
22 We think this is wrong and fundamentally unfair because
23 the division denied the person due process on first
24 establishing that the debt or obligation existed, and we
25 think the division should afford due process. And this

1 process should be a process separate and apart from the
2 license renewal process.

3 402.420, we request the Commission
4 include language in the chart, which is part of the rule
5 to clarify an organization must have had at least three
6 years of tax exempt status before filing the
7 application.

8 Currently I am aware of an application
9 the division denied because the organization Habitable
10 Spaces did not have three years tax exempt status. It
11 did have tax exempt status at the time it submitted its
12 application. I believe the division is applying a new
13 interpretation of the Bingo Enabling Act license
14 eligibility statutes for fraternal organizations.

15 And I do believe the earlier
16 interpretation applied by the division was that an
17 organization must obtain tax exempt status prior to the
18 filing of its application to conduct bingo.

19 So applying a new interpretation to past
20 applicants who relied on earlier interpretation in that
21 they've paid a license fee which is now not going to be
22 refunded, the Commission should put all interested
23 persons on notice of its interpretation of license
24 eligibility criteria so applicants don't pay a pretty
25 substantial license fee of \$3,300 only to be denied

1 because of an interpretation that they didn't have
2 notice of.

3 402.424, we have no objection to the
4 proposed amendments.

5 402.451, no objection to the proposed
6 amendments.

7 402.500, no objection to the proposed
8 amendments.

9 402.506, we support the proposed
10 amendments.

11 402.511, we support most of the proposed
12 amendments. Under subsection (d)(2) we propose
13 amendments to eliminate the requirement that the
14 perpetual inventory contain the distributor's name and
15 taxpayer number because this is unnecessary and
16 burdensome, and we request the deletion of this
17 requirement.

18 402.514, we support the proposed
19 amendments.

20 402.600, we support the proposed
21 amendments.

22 402.602, we oppose the language in
23 subsection (b) that the failure to produce documents
24 supporting the delinquency determination does not limit
25 the division's ability to collect the debt. As I

1 previously stated, this goes back to the issue of notice
2 of outstanding liabilities due for alleged debts with no
3 source documents to support the allegation.

4 By the way, in some cases these alleged
5 debts, they're for pennies -- they're actually pennies.

6 We request the language be added to this
7 rule that the Commission may not pursue collecting on a
8 debt it can't establish. And the Commission may not
9 deny a licensed application due to the Commission's
10 belief a debt is owed if it can't establish it.

11 It's not fair for the Commission to
12 allege a debt, not be able to establish the debt, then
13 wait for the license renewal to deny the license
14 renewal, which as a result of the license renewal shifts
15 the burden of proof to the application -- to the
16 applicant to prove it doesn't owe the debt. We think
17 that's just fundamentally unfair.

18 402.603, we don't oppose the proposed
19 amendments in principal, but we want the Commission to
20 understand that there will be a financial impact on
21 licensees who have been paying their prize fees on time
22 and have a zero bond amount now to have to go get a
23 bond, even if that bond amount is in the amount of \$100.

24 And this one I do want to take a moment to
25 say this was the -- probably the most controversial of

1 the rules that we discussed. And I really do appreciate
2 the candor, the back and forth, the dialog on this by
3 the staff and also by the industry stakeholders.

4 402.703, we support the amendment that
5 allows field work to occur at the licensee's business
6 office bingo premises, bookkeeper's office or
7 accountant's office instead of a place the auditor
8 identifies. But we also requested that the rule be
9 revised to shorten the time an audit can remain open,
10 which is now five years. Five years is just too long.
11 The time frame should be much shorter.

12 402.706, we seek clarification on the
13 proposed language in subsection (a), which seems to
14 suggest that the Commission may impose sanctions on
15 non-licensees and on folks who are not on the registered
16 bingo workers.

17 If this is the Commission's position, we
18 request the Commission articulate its authority for this
19 position. We also oppose the increased sanction of a
20 possible revocation of license for a first violation of
21 the Game of Chance Rule. This seems very harsh.

22 The Commission's primary responsibility
23 is to administer and regulate bingo so that bingo is
24 fairly conducted and the proceeds derived from bingo are
25 used for authorized purposes. The Commission should

1 focus on violations of the active rules that directly
2 relate to this responsibility in terms of establishing
3 more harsh penalties.

4 402.707, we support the proposed
5 amendments.

6 402.708, we support the proposed
7 amendments.

8 New rule 402.403, we support the proposed
9 new rule. We appreciate the recognition by the Texas
10 Legislature and the Commission of the service to our
11 country by our veterans. And so we are, in fact, behind
12 this rule.

13 And that does conclude my comments.
14 Thank you.

15 MR. BIARD: You'll be submitting that in
16 writing as well?

17 MS. KIPLIN: I'll be happy to, but you've
18 got a court reporter. I'll be happy to. Thank you.

19 MR. BIARD: And next I have Steve
20 Fenoglio.

21 MR. FENOGLIO: Good morning. For the
22 record, my name is Steve Fenoglio and I have some
23 handouts.

24 THE REPORTER: Can I get your last name
25 spelled, please.

1 MR. FENOGLIO: Sure. It's Steve
2 Fenoglio, F-e-n-o-g-l-i-o.

3 I represent the Texas Charity Advocates
4 and its members and over 350 other charitable and
5 business organization involved directly in charitable
6 bingo.

7 I've handed out a series of documents,
8 some of which are comparisons of what Texas Charity
9 Advocates and VFW and Bingo Interest Group submitted
10 during this extensive comment period, side by side with
11 what the Commission rules have been published and
12 reflect. And I'm going to go through some of them in
13 detail.

14 These are some of the comments that, for
15 example, Ms. Ives said, we support what Bingo Interest
16 Group or Texas Charity Advocates support, so we've got
17 specific documentation. The same is true I believe of
18 Mr. Hutchings. And Mr. Clark made some of the same
19 comments.

20 So on 402.200, General Restrictions on
21 the Conduct of Bingo, there was a comment earlier about
22 replacement of bingo balls in the documentation. We
23 don't see a good business reason for that requirement.
24 Specifically it's on page 1 of my handout, subparagraph
25 (b)(3), as well as (b)(5).

1 It is getting more into the detail of
2 what a charitable organization is doing. We don't think
3 there's any compelling business reason for the
4 organization to have to maintain the documentation
5 required, including for a period of 48 months.

6 On subparagraph (b)(6), you see our
7 provision versus what the Charitable Bingo Division
8 proposed or the Commissioners voted to adopt for
9 publication made available to the players upon request.
10 It is made available, but again, why are we having it in
11 a rule?

12 This is a customer-business relationship,
13 it doesn't have anything to do with the regulation
14 aspect of it.

15 There was comment earlier by Mr. Bunkley
16 about raffle tickets, and that's subparagraph (f). And
17 there's another rule that I'll get to in a moment, but I
18 want to put some meat on the bone on what that means.

19 I have a particular client in East Texas
20 that conducted a reverse raffle back in 2009, a series
21 of them. The benefit to the bottom line of the
22 charities in that situation was incredible.

23 Let me just give you some numbers. So
24 for a period of time -- for a week period of time before
25 the reverse raffle occurred, they ran numbers and they

1 found that they had an average attendance of 109 and an
2 average deposit of \$2,849 per occasion. And they sold
3 instant tickets of \$9,143.

4 During the week of the raffle, they went
5 from 109 to 125 customers on average session for the
6 week. Their deposits went up over \$2,200 for each and
7 every session of that week.

8 Again, we're not just looking at one day
9 because we know on business if you just look at one day,
10 we run the reverse raffle on May 11th and we look at
11 May 4th, you're not capturing enough because there may
12 be some fall-off two days before, for example, the
13 reverse raffle occurs, because you're bringing in a lot
14 more people for the reverse raffle. So that's why we
15 went with a week, doing a week comparison.

16 And by the way, we went the same time
17 frame for a year before. The instant sales went up
18 \$2,000. That was the first time they did it.

19 The last time they did it, it was a
20 little better. 130 average attendance. Average deposit
21 was \$5,945 versus \$2,900 for 15 sessions for that week.
22 And in the instant sales on one particular day where
23 they ran the reverse raffle, it was \$46,000 in instant
24 sales. Instant ticket sales.

25 Again, average was \$9,300. That gives

1 you an idea about what a reverse raffle will do when
2 properly conducted under the Charitable Raffle Enabling
3 Act and what it will mean for charities.

4 If the Commission wanted to do one thing
5 to help charities, it would allow charities to offer as
6 a merchandise prize a raffle ticket conforming to
7 Occupations Code 2002 without question. And I have
8 clients that have done the same thing in South Texas, in
9 North Texas and in deep East Texas and the same results
10 occurred.

11 It takes a little while to learn how to
12 do it right. There's a lot of promotion and aggressive
13 selling that has to occur, but if they do it right, the
14 reward is substantial.

15 Do they have some fall-off on a couple of
16 other days? Yes, they do. But the bottom line, again,
17 when we look at a week comparison, big plus to the
18 charities.

19 And I think it goes without saying, but
20 the advantage of getting two to five more customers on
21 an occasion basis is that money -- those sales, those
22 incremental sales, go directly to the bottom line.

23 Why? Because all of the other costs are
24 fixed with one exception, and that's the cost of the
25 actual ticket, which can be pennies on the dollar, and

1 is pennies on the dollar.

2 For example, a deal of tickets might cost
3 \$80 to \$100 for 2,000 to 4,000 tickets. So if you're
4 selling that many more, you see where the profit center
5 is. That same notion of incremental sales is true for a
6 restaurant, for a convenience store, for a Wal-Mart.

7 Wal-Mart stores, the largest retailer in
8 the world, does not make any money the first 20 days of
9 the month. It loses money because of all the fixed
10 costs. It's those last ten days -- sometimes it may be
11 the last day or two of the month that they actually turn
12 a profit. And that is the case with retail customers
13 all over the board all over the world.

14 We have some similar comments -- or not
15 similar, but other comments that are similar to what
16 others have said about utilizing a game schedule on
17 page 4 of the handout. And then the announcements, the
18 caller requirements on page 5.

19 We do appreciate that in that case, on
20 (k)(4), the staff agreed with most of our comments and
21 we appreciate that.

22 I also agree with the observations -- and
23 I think Mr. Bresnen is going to speak on this -- of the
24 \$50 games that Richard Bunkley stated on subparagraph
25 (n). We believe the state of the law is very clear and

1 we think that subparagraph (n) needs to be amended.

2 We did not show that in our amendment. I
3 will do a supplement on that.

4 Turning now to 402.210, we disagree with
5 the new language in subparagraph (e).

6 402.300, same observations I just made on
7 reverse raffle concerning subparagraph (8)(a), the
8 definition of merchandise. Same example. We think our
9 proposed amendments are superior to what the staff has
10 proposed. Although we do note and acknowledge that
11 during the extensive give and take that occurred with I
12 guess four meetings, the staff agreed with many of our
13 comments and put language in there to that effect.

14 I also share Ms. Kiplin's observation on
15 subparagraph (b)(3)(g), what is offensive. The
16 observation is, you know, what's offensive to me may not
17 be offensive to Bob Biard; and likewise, what's
18 offensive to Bob Biard may not be offensive to me. And
19 it seems to be an extremely gray area for what that
20 means.

21 By the way, we do support the language
22 striking alcoholic beverage and weapons. That was a
23 comment I made over 12 years ago. And we're glad to see
24 that Mr. Royal recognized that those alcoholic beverage
25 symbols are on Lottery scratch off tickets. And so it

1 ain't fair if the Lottery can do it -- by the way,
2 bingo's biggest competitor could do it, but the
3 charities could not.

4 We would also, on the same comment or
5 same subsection as determined by the Commission, we'd
6 like to have a procedure in place where there could be
7 an expedited challenge to that. For example, if a group
8 of charities or distributor worked with the
9 manufacturers to submit a ticket and it was rejected.
10 We'd like to have a procedure in place where there could
11 be an expedited quasi judicial process in place to reach
12 a determination. Today there is not.

13 We think the time has come for bar codes,
14 which is on page 8 of my handout. So many other
15 products, as a matter of fact, in most retail
16 establishments today the only way that you can ring up a
17 sale is with a bar code. And if you don't have a bar
18 code on your merchandise, it shuts the retail cashier
19 down while they go chase and determine what the
20 appropriate bar code is.

21 There's another reference to bar code on
22 subparagraph 9. And we'll provide some additional
23 written comments on that in order to save time.

24 Subparagraph 402.325, again, we provided
25 a handout on our changes versus what the -- what was

1 published. And I want to highlight subparagraph (d)(3),
2 the language "unless the player refuses, the player must
3 write his or her name," etc.

4 In discussions with staff, we also agreed
5 to delete the words, "address and telephone number,"
6 which we're glad to see the staff listened to us and
7 struck. But we would like to have the language "unless
8 the player refuses" because players will refuse.

9 And, again, this is a situation between
10 the customer and the merchant, in this case the
11 charitable bingo licensee conducting bingo shouldn't
12 concern the Commission.

13 402.400, General Licensing Provisions.
14 We think it's appropriate for the language that we
15 submitted in subparagraph (a), the Commission would
16 review its basic procedures, its applications, its
17 instructions and schedules and update them. Annually
18 preferably.

19 We also have some additional language in
20 subparagraph (d) that we support. Again, we'd like to
21 get the licensing process expedited. And Mr. Royal has
22 done that to a significant degree, but we think it can
23 be made even better.

24 402.411, License Renewal. And I made
25 some additional comments -- I made some similar comments

1 to what I'm going to make to the commissioners that I'm
2 going to make here today. And I've attached, Bob and
3 Alfonso, the handout I provided that puts meat on the
4 bone on this issue of the Commission spreadsheet showing
5 that there's a liability due.

6 And then the charity has a Hobson's
7 choice, they can pay what the spreadsheet says. Bear in
8 mind, there's no underlying documentation, and you can
9 see that by the attachment I handed out, because we
10 asked. We paid the funds under protest, \$7.92. We
11 asked for the supporting documentation. It took us
12 three times requesting it before we actually got it.
13 And what we got is a spreadsheet with no underlying
14 documentation.

15 In discussions with staff initially they
16 said, "Well, we wrote three different hot checks."

17 I don't know that -- I represented the
18 Arc of the Capital Area for 20-something areas, I've
19 been a board chair, I've been a board member for over
20 ten, a board chair for three, and I'm unaware of any
21 insufficient funds check they've ever written. But
22 certainly the Commission didn't have any documentation
23 in it. It was just, "Well, the spreadsheet says you owe
24 \$7.92, so pay it or else."

25 And the "or else" is you lose your

1 license, or you go to hearing on \$7.92.

2 And to put this in the proper frame work,
3 I have a tongue in cheek exhibit that I want to go
4 through. And this is what it would look like from the
5 state accountancy board to send a letter to one of your
6 commissioners that says, "Our spreadsheet shows you owe
7 \$278 going back to 1998. Pay it or else."

8 You can imagine what Commissioner
9 Candelario would say.

10 By the way, in order to refute that you'd
11 have to have documentation. Who keeps records going
12 back to '98?

13 The second issue is a letter to Ms. Heeg,
14 who has been licensed by the State Bar for over 30
15 years. And she owes \$1,081 going back to 1997. These
16 are made up examples. But surely you have documentation
17 going back to 1997 to show that you paid the appropriate
18 fees to the State Bar.

19 And I'm smiling at Bob because Bob is
20 licensed -- and I think he's licensed about the same
21 time I am. I was licensed in '85, so it may have been a
22 couple years later, but I don't have any documentation
23 for the State Bar dues that I paid. And this is the
24 same issue.

25 The next example is Chairman Krause, and

1 he owes \$2,096 since '87 on his bar license. And on his
2 accountant's license, he is a CPA, and he goes back to
3 '81, he owes \$62. And if you don't pay, we're not going
4 to you give your license.

5 The final examples are Doug Lowe, who was
6 licensed I believe in '97. He owes \$759 going back to
7 '83.

8 And then the final example is Ms. Pyka,
9 the controller, she is a CPA, and she owes \$1,230 from
10 '93 to '95.

11 I would suggest to you that no one of
12 these individuals has any documentation going back that
13 far. Nonetheless, that's what they're confronted with
14 when they get a letter in the case of the Arc that you
15 owe money going back many years ago, and you can either
16 pay it or forfeit your license. We suggest that that
17 would be offensive to any reasonable person and any
18 reasonable taxpayer. And we think the process ought to
19 stop.

20 You will also recall that I handed out in
21 one of my initial handouts the penny request going back
22 to 1997. And how do you have documentation to show you
23 did or didn't pay it?

24 402.511, Required Inventory Records.
25 We've deleted several requirements in the rule because

1 we think it's irrelevant information because the
2 information is already available in other sources. And
3 it's a trap for the unwary -- or for the weary.

4 402.602, Waiver of Penalty. The same is
5 true for the example I gave for the Arc of the Capital
6 Area. Under subparagraph (b) language, and we believe
7 that the Commission should provide all supporting
8 documentation that it has. And if it doesn't have
9 anything other than a spreadsheet, then the Commission
10 can't -- under a classic litigation case the Commission
11 can't meet its own burden of proof. So why is it out
12 sending letters saying "pay up or else."

13 402.703, I agree with the comments
14 earlier on the audit policy. One suggestion is under
15 page 3, subparagraph (d)(4), timely completion of the
16 audit. And we also have some language in subparagraph
17 (d) that we believe should be put into bingo.

18 And then under subparagraph (e), the last
19 several sentences -- and this came up in an audit where
20 a charity in San Antonio was confronted during an audit,
21 and the auditor said, "We believe you're in violation of
22 a rule." And the charity disputed that.

23 The audit hung around for two years --
24 and this was before Mr. Royal came on. And then they
25 were going to sanction the charity, notwithstanding

1 there was never any documentation about what was needed
2 to correct the problem.

3 And so our suggestion is the language
4 that we provided is during an audit, if an auditor
5 believes a licensee has not complied with one of the
6 administrative rules, then they should be notified in
7 writing. That way two years later you don't get
8 penalized for multiple violations.

9 Now, Mr. Royal in some conversations has
10 suggested, well, wait a minute I don't know that I want
11 the auditor on the fly to make that call. And we
12 understand that because the decision should rest on his
13 shoulders, nonetheless the concept still applies within
14 a short period of time, the auditor should have a
15 conversation with senior staff; and if the decision is,
16 yes, this is, in fact, a violation, then they should
17 give some timely notice to the licensee so that they can
18 if they choose to agree, correct the situation there and
19 not wait for two years down the road and then the
20 Commission holds over them the fact that for two years
21 each and every day there's been a violation. Our
22 penalty matrix says we can establish a penalty of \$50 a
23 day or \$500 a day, and threaten the charity that if you
24 don't write the check, we'll go to hearing.

25 And if it's a \$500 a day penalty for two

1 years, you see where you get. And that situation has
2 happened in contested cases.

3 Under subparagraph (g)(1), under the
4 audit report, and this has been a complicating factor
5 when I've gotten involved in an audit, is that
6 there's -- a draft audit report is issued and it says
7 that a charity has violated certain provisions. And
8 they send it to me, and during this process the auditor
9 has requested and has obtained all of the documentation
10 from the charity, for a quarter or a year. And I'm
11 asking the charity, "Well, let me see the documentation
12 so that I can determine if I believe it's a violation."

13 And so I ask the client, the charity,
14 "Where's your documentation?"

15 "The agency has it."

16 And so it's difficult for me or
17 impossible to decide whether I agree or disagree with
18 the auditor's findings because there's no documentation.
19 And so our language is provide us with that specific
20 documentation. We're not asking that you provide us
21 with a copy of the audit, the entire three months worth,
22 whether it's a quarterly audit or an annual report, but
23 the substantive documentation that would either prove
24 the auditor's case that there's a violation or that I
25 can look it at and say I agree or disagree. It's just

1 common sense.

2 402.600, throughout this the staff has
3 written in quarterly reports supplements and payments,
4 etc. And you can see on the right-hand side of my
5 handout the language supplements. I've looked at it and
6 I attached the current application for a quarterly
7 report for charity and I don't see the word "supplement"
8 anywhere. And this is as of, by the way, 5/11 of 16.

9 And my comment on this is, "Well, what is
10 a supplement? How does a charity know?" The Texas
11 Bingo Quarterly Report form ID-68 is a two-page
12 document. And there's a form ID-129 that is a
13 charitable distribution's detail. And there's no word
14 "supplement" anywhere here.

15 So what is it you're talking about? Are
16 we going to see new attachments or new forms? We'd like
17 to know what they are before we agree or disagree.

18 We've also struck the language on page 3,
19 enumerated 3 of subparagraph E for the same reasons that
20 we've discussed in this case, that we don't think we
21 should be denying a bingo application or revoking a
22 license under that situation.

23 We do agree with the language in
24 subparagraph (m). And I'll pay a shout out to James,
25 who has now left for greener pastures at the Governor's

1 office for coming up with the notion of rounding. We
2 think that is a better language than ours. He said he
3 pulled it off the IRS website, which is good because in
4 a prior case because of rounding the division wanted the
5 charities at River City Bingo to basically rely on their
6 quarterly report to round up and they refused. So this
7 solves that problem.

8 My last handout was the July 17 letter
9 from the Commission to the Jewish Women International.
10 And that was the one penny for the fourth quarter of
11 1996. I think if we had a rounding, we wouldn't have
12 had this issue. But the same comment on the Arc proves
13 this point for the Arc equally and its comments on rules
14 402.600, 602 and 411.

15 I've thought a lot about this ledger
16 project, and it seems to me that one thing the
17 Commission could do is put, which is similar to what's
18 required on the quarterly report, is a statement that
19 says, "I declare that the information in this document
20 is true and correct," so that we know who's making that
21 statement and we could actually go ask that person how
22 they know.

23 That ledger project doesn't have -- my
24 suspicion is for over 90 percent there's no underlying
25 documentation. If the shortage, let's call it that,

1 occurred in the last four years, I fully expect the
2 Charitable Bingo Division to have records to support
3 that. And those records could be provided. But if it
4 goes back more than five years, having filed open
5 records request recently, the division says under our
6 document destruction policy, I guess it's five years,
7 those records go away.

8 And as I stated earlier, well, the bingo
9 rules require charities to keep records for four years.
10 Most charities to my knowledge keep them for five in its
11 growing destruction policy. In the case of the Arc of
12 the Capital Area or Jewish Women International, they
13 don't have any records.

14 And so, again, under the concept of fair
15 case in court or in SOAH, the Office of Administrative
16 Hearings, the agency could not prevail because they
17 don't have any underlying documentation. What they have
18 is a spreadsheet that they're not even sure who authored
19 all of the spreadsheet. And so we think that we ought
20 to stop the process.

21 Now, finally -- and I agree with
22 Ms. Kiplin's observation on the bond issue. And we've
23 had a fair amount of discussion in the series of
24 meetings -- actually even one meeting before we started
25 this rule review process on 402.603.

1 And Ms. Shankel at the time thought it
2 would be a good idea for all charities to have a bond in
3 the amount of initially two quarters of what their
4 liability would be, which would be 60 to \$100,000. And
5 I asked her at the time, "Do you have any idea what a
6 bond like that would cost?" Answer no.

7 "Do you know of any companies that
8 require a bond like that?" No.

9 "Well, shouldn't you know before you have
10 this requirement?"

11 And I'm glad to see that Mr. Royal said,
12 no, we're not going to do that for people who were on
13 the good guy list. And that's good, what's been
14 proposed, the \$100. In the case of the five charities
15 at River City Bingo, they would pay a \$500 cash bond and
16 be done with it. Actually, it wouldn't be a bond, it
17 would just be \$500.

18 For a new charity coming in, that would
19 be \$7,000 if it's operating in what I call a commercial
20 hall that's usually conducting at least 14 sessions a
21 week. If you've got five charities, that's \$35,000.

22 I've had some discussions with insurance
23 companies, and some insurance companies will write a
24 \$7,000 bond for a charity that they have an established
25 business relationship with. Others if they don't have

1 it, they want financials.

2 We've asked, "Well, what specifically are
3 you looking for?" Well, standard income statement
4 balance sheet.

5 Well, what's the threshold by which
6 you'll say yes to a \$7,000 bond or no? They don't tell
7 you. And others have said the only way we'll write that
8 bond is if someone gives a personal guarantee, that
9 means in the case of a nonprofit, they've got to find a
10 board member who is willing to write a personal
11 guarantee. And in some instances they then ask for the
12 financials for that individual. You can see the problem
13 that can occur.

14 Highlight that with what I requested from
15 this division, how much money has the state -- the
16 Lottery Commission collected from the charities since
17 2001 in prize fees? Almost \$369,000 -- I'm sorry --
18 \$360,000,000.

19 During that period of time I also asked
20 how many times have y'all sued a charity, have you made
21 a referral to the Attorney General for collection?
22 None.

23 Collecting almost \$370,000,000 with zero
24 liability in that 15-year period, so part of me is why
25 are we even having a discussion other than a nominal

1 amount that Mr. Royal has correctly pointed out the
2 statute does require a bond in the language, some sort
3 of guarantee that the money will be paid. But if you
4 look at it from the standpoint of exposure, you're
5 collecting \$369,000,000 and you've had zero losses --
6 Las Vegas would like to be in on that game and all of
7 Wall Street would like to be in on that game based on
8 virtually zero risk.

9 And I understand that there have been
10 some recent examples where one or two locations have
11 failed to pay, not surprising. But what is shocking is
12 you get \$369,000,000 for 15 years and you have zero
13 liability.

14 As I said, we'll be filing some
15 additional written comments. I appreciate your time.
16 I'll be happy to respond to any questions.

17 And I do appreciate, Mr. Royal, your
18 attention to this and your staff's attention. It is an
19 extraordinary undertaking. And I just wish that James
20 could be here to see the finished product, although I'm
21 sure he's glad he's not here.

22 MR BIARD: I agree with that part. Can I
23 ask you a question? And this is mainly perhaps for
24 written comments later on. Perhaps you don't have an
25 opinion on it, but the Bingo Act, 2001.416, Other Games,

1 allows a raffle conducted under Chapter 2002 during a
2 bingo occasion.

3 And we have an AG opinion JC480, which
4 says a raffle ticket can't be offered as a prize in a
5 bingo game. Can those be reconciled?

6 MR. FENOGLIO: I don't see how you can.
7 It seems to me that section 2001.416 is clear on its
8 face as to what's allowed, with the exception if someone
9 is conducting a raffle not under the Charitable Raffle
10 Enabling Act, Chapter 2002 of Texas Occupations Code.
11 But short of that, it seems 416 is directly telling the
12 Commission a charitable raffle is an approved game of
13 chance -- or is not considered a game of chance under
14 that prohibition.

15 So when the opinion was handed out, it
16 made no sense to me. When we had this discussion, we
17 looked at it again and it makes no sense.

18 I understand Mr. Cornyn's language -- I
19 mean, you can read it and it makes sense from the
20 English language, but the conclusion is crazy for just
21 the simple reasons of what the Bingo Enabling Act
22 says.

23 MR BIARD: Thank you. Okay. And the
24 last commenter is Steve Bresnen.

25 MR. BRESNEN: Thank you very much. My

1 name is Steve Bresnen and I'm here on behalf of the
2 Bingo Interest Group. I want to compliment Alfonso
3 Royal and James and other members of the staff,
4 Ms. Glenn, and others who participated in these work
5 groups. It's a long and tedious line by line process,
6 but you're willing to do it and we very much appreciate
7 it.

8 I'm going to supply extra written
9 comments on some rules that I'm not going to address in
10 the interest of brevity. Just to supplement your
11 discussion about the raffle issue, Bob, the Bingo
12 Enabling Act also says -- and I don't have the provision
13 right here in front of me, but it says pull-tab bingo
14 may be conducted under rules allowed by the Commission.

15 I think that's a very broad grant of
16 authority. And I see no conflict between anything else
17 in the Act and that broad grant of authority to be able
18 to authorize a raffle ticket as a prize. So not only do
19 I think there's a conflict between 416, but there's a
20 conflict in the narrowing of the Commission's authority
21 under the broad grant of authority to conduct -- to
22 allow the conduct of pull-tab bingo.

23 So just hitting tree tops real quick, on
24 402.200 there's much in that rule to support, but
25 overall we oppose it because of some of the absence of

1 some provisions that either that we wanted in it or the
2 way some of the provisions were executed.

3 Do I assume that the documents that
4 Mr. Fenoglio gave, including the side by side that
5 included the TCA Bingo Interest Group and to some extent
6 the VFW proposals will be included in the record as part
7 of our comments?

8 MR BIARD: Yes.

9 MR. BRESNEN: So if it's on the left side
10 of that document, we are for it. And to the extent that
11 it's not reflected on the right side of the document, we
12 would urge reconsideration of the items on the left.

13 With respect to 402.200, subsection
14 (b)(3) and (5), this relates to the inspection of the
15 bingo balls, this is one of those deals where people are
16 doing it, but it basically serves no public policy
17 purpose. You're not getting anything out of this. The
18 customers are not getting anything out of it. And it's
19 just an example of a trap.

20 If you don't do one day or you failed to
21 note that you did it one day or you don't say who did it
22 one day, then, you know, you're in the ditch or you're
23 in violation of the rules. If there were some benefit
24 to it, that would be fine. But nobody I know who is
25 actually in a bingo hall doing the work everyday

1 believes that there's any benefit whatsoever to the
2 public or to the Commission in terms of its regulatory
3 interest. So we would urge our suggested amendments to
4 those two subsections.

5 We've already talked about 402.200 (f),
6 so I won't go into that.

7 402.200 (f)(4) and (5) has to do with the
8 game schedules. It makes no sense to first require a
9 game schedule and then say, but if you deviate from it,
10 you just have to document that you deviated from it and
11 to still have a rule that requires the game schedule to
12 begin with, because all you're doing is asking people to
13 put something on the wall. They know based on market
14 conditions, preferences of the players, fewer players
15 show up that day, all the conditions that exist in the
16 marketplace, that there are going to be variations from
17 the schedule, and all they have to do is note them,
18 which they're going to do if that rule would simply say
19 that the charity must keep a record of all items sold
20 and prizes paid, all of the other documentation that's
21 currently required will support that and the Commission
22 will know what games were actually conducted and under
23 what conditions.

24 Now, nearest and dearest to my heart is
25 402.200 (n).

1 Mr. Royal, I would request that the
2 letter from Chairman Thompson and former Senator Leticia
3 Van De Putte be entered into the record. If I need to
4 do it myself just for procedural reasons, I would glad
5 to do it because I think it supports my position. And I
6 would direct the Commission to the Bingo Enabling Act in
7 section 2001.420. I think Mr. Bunkley misspoke earlier
8 and said 2001.402, but it's 420.

9 And I would note that it says that prizes
10 of \$50 or less don't count towards the \$2,500 cap in
11 bingo games that award individual prizes. If the word
12 "actual" was before award, it would not change the
13 meaning of that sentence. It's awarded. Prizes
14 awarded.

15 The existing rule can be read in only one
16 way. And that is prizes offered. The legislature would
17 have chosen the word "offered" if it meant offered. And
18 what it said was awarded.

19 Under any circumstance, you're going to
20 have a record of the prize actually awarded. And the
21 correspondence from Chairman Thompson and Senator
22 Van De Putte reflect this fact. So to the extent you
23 had to bring legislative intent into it, I believe
24 everything about the passage of this would support what
25 I'm saying primarily because I worked like a dog to get

1 this passed. And so, you know, to the extent I can
2 contribute to legislative intent, there it is.

3 But the statutory rule of construction is
4 you don't deviate, you don't need to go to legislative
5 intent if the plain language of the statute supports --
6 is clear and unambiguous, and I believe it is clear and
7 unambiguous in that regard.

8 So we would like to see in final rule
9 402.200 (n) to be amended in the manner that I have
10 delivered and with the language that I delivered in the
11 work group meeting, which I think might have been the
12 last work group meeting.

13 Again, if I need to submit that again
14 with written comments, let me know. Otherwise, I would
15 request that it be part of the record.

16 Not to be completely negative about
17 402.200, we support subsections (b)(6), (e), (f), (i),
18 (k)(4) and (o).

19 In 402.210, I would echo what others have
20 said. We're a little bit concerned about the phrase
21 "easily accessible" for the posting of the house rules,
22 just because your staff person in Odessa may have a
23 different view of what's easily accessible than say the
24 staff person in East Texas. We think that's going to
25 cause administrative problems for y'all and headaches

1 for the organizations.

2 We support providing the house rules to
3 the inspectors -- I mean to the customers and the
4 inspectors when they come in so the house rules are
5 known.

6 402.300, a great deal has been done in
7 that rule that we support that should broaden the array
8 of products that are available for use in conducting
9 bingo. With respect to pull-tabs, we strongly support
10 those things where we're getting some of the
11 micro-management detail out of the way. We very much
12 appreciate y'all doing that.

13 I want to raise a concern -- and we'll do
14 this in writing as well, but if you look at the way
15 402.300 (e) is worded, it's not clear that the existing
16 authority to sell pull-tabs during an intermission,
17 instant pull-tabs, is maintained.

18 There is a provision in that area of the
19 rule that says that event tickets can be sold during an
20 intermission, but there's no corresponding authority for
21 that during an intermission involving instant pull-tab
22 tickets.

23 I am told that this may be because there
24 is no intermission in terms of the license times, that
25 they may butt up together. But it would be helpful I

1 think if we would all take a deep breath and look at
2 what we're doing there, it's kind of a complicated
3 section. We don't want to restrict the organizations
4 from being able to do anything that they're currently
5 doing, and we don't believe that that was the intention
6 of the amendments of this rule.

7 And by the way, those amendments were in
8 our side of the rule as well. So I think we all need to
9 stop and look at what we're doing. Ms. Kiplin and
10 Mr. Fenoglio, the real lawyers in the room, will know
11 how to look at it and decide whether anybody is in
12 jeopardy or not on that.

13 I hate to bring it up because I don't
14 want y'all to duck below the desks up there, but the
15 Commission issued a letter saying that video
16 confirmation of instant pull-tabs was within its
17 authority and was legal. We made the recommendation
18 that that be included to go beyond event tickets, it's
19 not included in the Commission's proposals, and we would
20 like to see that restored. And we would like to see
21 also restored relative to our proposals. And also the
22 use of bar codes on those products.

23 We very much appreciate the amendment to
24 402.325 that allows reservation of card-minders. This
25 is another example of a rule that's been around since

1 the beginning of time -- or the beginning of
2 card-minders any way that made sense at the time because
3 of the limitations in the market. There weren't enough
4 card-minders available. Now we seem to be drowning in
5 card-minders.

6 So striking that and allowing a loyal
7 customer to be shown some deference by reserving their
8 seat and their access to the card-minder is an excellent
9 thing to do.

10 402.400, we don't object to what's in the
11 proposal, but there were some things that we'd like to
12 have in it. I understand the concern about that there
13 are management decisions that go into the time frames
14 within which licenses and renewals are handled, but at
15 times past things have gone on and on and on and on.

16 And while the current administration has
17 shown a sensitivity towards that, Mr. Royal is not going
18 to live forever and neither am I, so we'd like some
19 consideration at the commissioner level.

20 And if you're not going to amend the
21 rule, then we would like for you to actively promulgate
22 some policies that are known and communicated to the
23 public that you'll take certain steps within certain
24 amounts of time. That way it won't be necessarily
25 enforceable by a rule, but you'll at least have some

1 metrics that your performance can be judged by.

2 And I think the performance standards in
3 the appropriations bill may be -- that method of gauging
4 your performance may be about to go out the window. So
5 if that's the case, you're going to be sitting here with
6 no metrics and nothing but a bunch of anecdotes of
7 people who are not happy because their applications
8 were not promptly addressed.

9 402.511, I support the comments that
10 other people make. You can streamline this rule and not
11 require the inclusion of things in this record that are
12 available by other documentation that's required to be
13 kept. And all it does to require it to be transposed is
14 allow -- somebody is going to make a typo, somebody is
15 going to forgot to carry something over, when there is
16 an ample audit capability there because the records are
17 kept in another place.

18 402.602, this is the second nearest and
19 dearest to my heart. It should go without saying that
20 if you cannot make a case, that you should not require
21 it. Otherwise, you're asking for money from these
22 charities -- it's not the lessor you're asking money
23 for. On a rare occasion there may be some rental tax or
24 something, but that's going away. It's these charities
25 you're going to take the money from.

1 And if you can't make the case, then you
2 shouldn't be trying to collect the money. Otherwise,
3 I've got some people that are calling members of my
4 family right now and trying to get them to pay money on
5 debts that they don't owe. It's just a phishing scam.
6 And if you guys can't make the case, you're not really
7 doing much better than these scamsters on the internet
8 and on the telephone trying to collect this money.

9 And also now I've become aware -- I don't
10 want to speak for anybody, especially since they're not
11 in the room, but I've become aware that some of these
12 amounts are quite large from the '90s and might very
13 well be worth bringing a lawsuit on behalf of. And the
14 money in term of cost of litigation for the agency, that
15 money s going to get eaten up in a deposition.

16 So I know the commissioners have asked
17 y'all to look at this, and I hope you'll look at it
18 very diligently because it's kind of outrageous.
19 Although it is the best thing I've got going for me up
20 at the capital building right now.

21 With respect to audit policy, I just
22 can't believe you can leave an audit open for five
23 years. Whether that's actually happened or not -- I
24 know in the past it's gone on and on and on. And I
25 would urge the commissioners -- not you, Mr. Royal, but

1 the commissioners to look at this. And if nothing else,
2 put a shorter date in there to show people out here that
3 they expect that their business will be done in a more
4 reasonable time. And that's 402.703, the audit policy.

5 And I would agree with what -- I believe
6 it was Ms. Kiplin said about 402.706, the reference to
7 other persons. We don't know what other persons other
8 then licensees and registrants that would be subject to
9 sanction by the Commission or that could be referred to
10 in that schedule of sanctions. And so we think it ought
11 to be explicit as to who other persons are.

12 If you don't mind, just give me just one
13 minute. I'm going to hit just a couple of other things
14 without citing the rules by number.

15 I really appreciate what you've done on
16 merchandise prizes. We've made good progress there. To
17 the extent we think it could have gone a little further,
18 we'll follow up with written comments.

19 As a strong believer in the 2nd
20 amendment, we appreciate you eliminating the prohibition
21 against having any picture of weapons on pull-tabs.

22 As an appreciator of fine Italian wines,
23 I appreciate you including alcoholic beverages in what
24 can show on pull-tabs.

25 I very much appreciate on behalf of all

1 the folks and all the veterans organizations that
2 participate at the locations of the Bingo Interest Group
3 members the military -- the new rule on the military.

4 I think if you could, I'd like to see you
5 stretch that to include where maybe the licensee, if
6 it's a corporation that's wholly owned by a licensee who
7 would otherwise meet the standards in a rule, that that
8 be expanded.

9 If you don't think that -- you follow
10 what I'm talking about? If you don't think the
11 legislation would allow you to do that, then we will go
12 up and take a stab at that.

13 You have a troubled look on your face,
14 you want me to explain? Because I may misunderstand --

15 MR. ROYAL: No. I understand
16 whole-heartedly.

17 MR. BRESNEN: Okay. Thank you. You need
18 to strike the word "offensive" in the pull-tab rule. I
19 don't know how in the world you're ever going to enforce
20 that if somebody wants to fight about it.

21 And I especially appreciate addressing
22 the rounding issue in 402 -- I believe it's 600.

23 That concludes my comments. I appreciate
24 you all giving us ample time to make our record today.
25 And we will -- we will come back to it and have some

1 additional comments.

2 I would expect that most of the
3 additional written comments that I would provide would
4 be in support of those parts of the rules that we didn't
5 address today with a few exceptions.

6 MR BIARD: Thank you. Okay. That is all
7 the witness affirmation forms I have.

8 I'm going to ask for -- there is a
9 transcript being made of this, so I'm going to ask for
10 an expedited transcript, which I imagine we'll probably
11 have the first part of next week for those of you that
12 would like a copy of that.

13 And, you know, I also look forward to
14 getting written comments as well. And we'll go look at
15 all of them, and as the law requires, we will summarize
16 them and respond to them in a document that we bring
17 before the Commission for adoption.

18 Unless anybody else wishes to speak --
19 does anybody else have anything to say?

20 (No response.)

21 MR BIARD: Then I will adjourn this
22 hearing at 11:40. Thank you for coming.

23 (Proceedings concluded at 11:40 a.m.)
24
25

1 STATE OF TEXAS *

2
3 REPORTER'S CERTIFICATE
4

5 I, Geneva Garcia, a Certified Shorthand Reporter in
6 and for the State of Texas, do hereby certify that the
7 foregoing contains a true and correct transcription of
8 all portions of the above-referenced meeting to be
9 included in the transcript of said meeting before me,
10 and were reported by me and were thereafter reduced to
11 writing to the best of my ability.

12 Given under my hand and seal of office on this the
13 26th day of May, 2016.
14

15
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<hr/>	\$7.92 41:10,24 42:1	(h)(5) 21:11
<hr/> \$ <hr/>	\$75,000 6:13	(i) 22:4 58:17
\$1,081 42:15	\$759 43:6	(k)(4) 21:15 37:20 58:18
\$1,200 18:1	\$80 37:3	(l)(3) 11:17
\$1,230 43:9	\$9,143 35:3	(m) 47:24
\$100 6:25 7:1,2,3 8:4 17:19 30:23 37:3 50:14	\$9,300 35:25	(n) 21:17 37:25 38:1 56:25 58:9
\$100,000 50:4	<hr/> (<hr/>	(o) 21:16 58:18
\$11,612 6:16	(4) 9:8 17:18	<hr/> 1 <hr/>
\$150 6:25	(5) 9:4 17:8 20:11 21:2,15 55:14 56:7	1 16:24 33:24
\$17,464,772 6:21	(8)(a) 38:7	109 35:1,5
\$2,000 35:18	(a) 31:13 40:15	10:02 3:4
\$2,096 43:1	(a)(3) 24:21	11 6:8
\$2,200 35:6	(b) 29:23 44:6	11:40 66:22,23
\$2,500 15:24 16:15 21:19 57:10	(b)(2) 16:4	11th 3:4 35:10
\$2,849 35:2	(b)(3) 9:1 20:10 23:17 33:25 55:14	12 38:23
\$2,900 35:21	(b)(3)(g) 22:16 38:15	125 35:5
\$20,164,772 6:21	(b)(5) 33:25	130 35:20
\$200 6:24	(b)(6) 20:18 23:20 34:6 58:17	14 50:20
\$278 42:7	(c)(4) 12:17	14th 4:19
\$3,300 28:25	(d) 40:20 44:17	15 35:21 52:12
\$3,700,764 6:11	(d)(2) 24:4 29:12	15-year 51:24
\$30,175,393 6:18	(d)(3) 9:24 40:1	16 3:19 8:21 47:8
\$35,000 50:21	(d)(4) 44:15	16630 5:3
\$360,000,000 51:18	(e) 9:21 21:15 23:23 25:8 38:5 44:18 58:17 59:15	17 48:8
\$369,000 51:17	(e)(2) 10:24	1982 14:23
\$369,000,000 52:5,12	(f) 21:15 34:16 56:5 58:17	1990's 25:18 27:4
\$370,000,000 51:23	(f)(2) 22:3	1996 48:11
\$46,000 35:23	(f)(4) 56:7	1997 42:15,17 43:22
\$5 11:23	(g)(1) 46:3	1998 42:7
\$5,945 35:21	(g)(2) 22:22	<hr/> 2 <hr/>
\$50 7:1,2 15:17,25 16:7 17:19 21:18,20 37:24 45:22 57:10	(g)(7) 22:4	2,000 37:3
\$500 45:23,25 50:15,17	(h)(2)(b) 25:11	2.7 6:7
\$51,494 6:15	(h)(3) 21:15	20 18:6 37:8
\$62 43:3	(h)(4) 9:6 17:8 21:2,8	20-something 41:18
\$7,000 50:19,24 51:6		

200 3:20	402 3:19 65:22	64:4
2001 51:17	402.103 3:20 20:4,6	402.706 31:12 64:6
2001.402 57:8	402.200 8:23 14:19 15:17 16:22	402.707 32:4
2001.416 52:25 53:7	20:8 21:15 33:20 54:24 55:13 56:5, 7,25 58:9,17	402.708 12:14 32:6
2001.420 57:7	402.200(f) 17:5	404 3:21
2002 36:7 53:1,10	402.200(n) 16:2	407 3:21
2009 34:20	402.203 21:24	41 4:21,22
201.402 15:20 16:4	402.205 22:2	411 3:21 48:14
2015 6:8	402.210 9:20 13:13 22:5 38:4	416 53:11 54:19
2016 3:4	58:19	420 3:21 57:8
202.200 17:8	402.300 14:19,20 22:10 23:18 38:6	424 3:22
203 3:20	59:6,15	451 3:22
205 3:20	402.301 23:16	48 20:14 34:5
21 18:7,16	402.303 23:19	4th 35:11
210 3:20	402.324 23:25	
29 3:17	402.325 9:24 13:20 24:3 39:24	<hr/> 5 <hr/>
29th 4:20	60:24	
2nd 64:19	402.400 24:14 40:13 61:10	5 37:18
<hr/> 3 <hr/>	402.401 10:8	5/11 47:8
	402.403 32:8	500 3:22
3 44:15 47:18,19	402.404 6:4 25:10	504 3:22
30 27:5 42:14	402.407 25:23	506 3:22
300 3:20	402.41 10:18	511 3:22
301 3:21	402.410 10:16	514 3:22
303 3:21	402.411 25:25 40:24	55 4:13
3050 4:21	402.413 3:24 4:13	<hr/> 6 <hr/>
3067 4:22	402.420 28:3	
31st 5:1	402.424 29:3	60 26:3 50:4
324 3:21	402.451 29:5	600 3:22 65:22
325 3:21	402.500 29:7	602 3:22 48:14
350 33:4	402.506 10:21 29:9	603 3:23
<hr/> 4 <hr/>	402.511 11:9 29:11 43:24 62:9	<hr/> 7 <hr/>
	402.514 29:18	
4 37:17	402.600 11:16 29:20 47:2 48:14	703 3:23
4,000 37:3	402.602 11:25 18:1 29:22 44:4	706 3:23
400 3:21	62:18	707 3:23
	402.603 30:18 49:25	708 3:23
	402.703 12:4 13:22 31:4 44:13	

78761 5:3	active 4:16 32:1	air 14:15
<hr/>	actively 61:21	alcoholic 38:22,24 64:23
8	actual 36:25 57:12	Alfonso 3:13 9:9 41:3 54:2
<hr/>	add 9:24 20:13	allegation 30:3
8 39:14	added 30:6	allege 30:12
81 43:3	adding 12:17	alleged 25:17,20 27:9 30:2,4
83 43:7	addition 4:24	allocations 6:19
85 42:21	additional 26:15 39:22 40:19,25 52:15 66:1,3	allowed 15:6 53:8 54:14
87 43:1	Additionally 24:20 26:4	allowing 8:10 14:10,21 15:2 16:17 61:6
<hr/>	address 5:2 10:13 24:5 40:5 54:9 66:5	amazing 7:21 15:6
9 39:22	addressed 62:8	ambulance 10:2
90 26:2 48:24	addresses 21:21	amend 21:13 61:20
90s 63:12	addressing 20:2,19 65:21	amended 17:5 25:11 38:1 58:9
93 43:10	adjourn 66:21	amendment 10:16 17:4 20:5,18 22:2,13 25:25 31:4 38:2 60:23 64:20
95 43:10	administer 31:23	amendments 3:17,25 4:19,21 8:25 10:19,23 11:11 12:3,12,16 19:1,8,18,20,22,25 20:8 21:1,14,25 22:11 24:1,14,16 25:24 26:4,19 29:4,6,8,10,12,13,19,21 30:19 32:5,7 38:9 56:3 60:6,7
97 43:6	administration 14:10 61:16	American 5:25 8:1,12
98 42:12	administrative 3:19 6:14 45:6 49:15 58:25	amount 16:5 25:2 30:22,23 49:23 50:3 52:1
<hr/>	adopt 4:15 34:8	amounts 61:24 63:12
A	adoption 66:17	ample 62:16 65:24
<hr/>	advantage 36:20	AMVETS 13:11 16:21
a.m. 66:23	Advocates 10:9,23 11:10,19 12:2, 11,15 16:24 18:15 33:3,9,16	anecdotes 62:6
ability 14:13 29:25	Advocates' 8:24 10:19	announced 21:20
absence 3:11 54:25	affirmation 5:11,12 66:7	announcement 3:7
abusive 7:13	afford 7:18 27:25	announcements 37:17
accept 18:13 26:2	AG 53:3	annual 6:9 10:12 46:22
accepted 19:19,23 20:11	agencies 4:14 7:14	annually 6:7 40:17
accepting 4:25	agency 3:9 7:24 12:8,9 19:6 20:25 21:5 46:15 49:16 63:14	Antonio 44:20
access 61:8	aggregate 15:23 16:5,9,14,15	applicable 24:22
accessible 9:23 13:15 22:6 58:21, 23	aggressive 36:12	applicant 25:3,9 30:16
accompany 26:11	agree 8:24 9:20 10:8,18,22 11:10, 18 12:1,11,15 14:12 37:22 44:13 45:18 46:17,25 47:17,23 49:21 52:22 64:5	applicants 28:20,24
accountancy 42:5	agreed 37:20 38:12 40:4	application 18:5 24:22,25 25:9
accountant's 31:7 43:2		
accounting 11:5		
accounts 27:11		
acknowledge 38:10		
Act 28:13 36:3 52:25 53:10,21 54:12,17 57:6		

26:2,5,8,10,12 27:21 28:7,8,12,18
30:9,15 47:6,21

applications 25:6 40:16 62:7

applied 28:16

applies 45:13

applying 28:12,19

appreciator 64:22

approach 21:7 26:13

appropriations 62:3

approval 22:17 24:2

approved 19:20 53:12

April 4:19,20

Arc 41:18 43:14 44:5 48:12,13
49:11

area 38:19 41:18 44:6 49:12 59:18

areas 41:18

array 59:7

articulate 31:18

artwork 22:17

aspect 34:14

assigned 3:8

assistance 17:7

assume 55:3

assurances 24:12

attach 9:15

attached 41:2 47:6

attachment 41:9

attachments 47:16

attendance 35:1,20

attention 52:18

attorney 3:8,12 15:12 18:21 27:19
51:21

audit 9:11 12:4,8,9 31:9 44:14,16,
19,20,23 45:4 46:4,5,6,21,22 62:16
63:21,22 64:4

auditor 31:7 44:21 45:4,11,14 46:8

auditor's 46:18,24

auditors 13:18

audits 9:10 12:8

Austin 5:3 18:22

authored 49:18

authority 31:18 54:16,17,20,21
59:16,20 60:17

authorize 54:18

authorized 21:12 31:25

average 35:1,2,5,20,25

award 14:21 15:22,25 57:11,12

awarded 15:2 16:6,9 17:6 21:18
22:14 57:13,14,18,20

aware 9:9 14:24 15:4 16:12 28:8
63:9,11

B

back 14:2 17:18 18:6,8,10,12
25:18 27:4 30:1 31:2 34:20 42:7,
12,15,17 43:2,6,12,15,21 49:4
65:25

background 19:4

balance 51:4

ball 20:9

balls 9:3 16:25 33:22 55:15

bar 39:13,17,20,21 42:14,18,23
43:1 60:22

based 11:21 26:6 52:7 56:13

basic 40:16

basically 12:20 17:1 48:5 55:16

basis 36:21

Bear 41:7

begin 56:12

beginning 61:1

behalf 8:12 18:23 54:1 63:13 64:25

belief 30:10

believer 64:19

believes 26:11,21 45:5 56:1

benefit 34:21 55:23 56:1

beverage 38:22,24

beverages 64:23

Biard 3:2,5 8:15 12:24 13:2,4,8
14:5 16:18 17:22 18:18 32:15,19
38:17,18 52:22 53:23 55:8 66:6,21

big 6:17 15:3 36:17

biggest 39:2

bill 62:3

bingo 3:14 4:3,5,8 6:2,6,8,22 7:10,
20 8:3,13,21,25 9:2,3,11 10:9,19,
23 11:3,11,16,19 12:2,5,9,12,15
13:5 14:10,22 15:1,23,24,25 16:3,
23,24,25 17:3,6,9,11 18:14 19:1,
10,11 20:9 21:13 22:14 25:12
28:13,18 31:6,16,23,24 33:6,9,15,
21,22 34:7 40:11 44:17 47:11,21
48:5 49:2,8 50:15 52:25 53:2,5,21
54:2,11,13,22 55:5,15,25 57:6,11
59:9 65:2

bingo's 39:2

bit 58:20

blocked 25:21

board 8:5 37:13 41:19,20 42:5
51:10

Bob 3:5 38:17,18 41:2 42:19 54:11

body 7:22

bond 30:22,23 49:22 50:2,6,8,15,
16,24 51:6,8 52:2

bone 34:18 41:4

bookkeeper's 31:6

bookkeeping 8:20,21

bottom 34:21 36:16,22

Box 5:3

breath 14:14 60:1

Bresnen 37:23 53:24,25 54:1 55:9
65:17

brevity 54:10

bring 57:23 60:13 66:16

bringing 35:13 63:13

broad 54:15,17,21

broaden 59:7

budget 6:5

building 63:20

bunch 62:6

Bunkley 14:6,7,8 18:14 34:15
37:24 57:7

burden 20:13 30:15 44:11

burdensome 19:25 29:16

business 8:6 12:6 13:23 14:22,24
21:6 24:10 31:5 33:5,23 34:3 35:9
50:25 64:3

businesses 11:4

butt 59:25

C

calendar 11:2

California 7:1

call 5:19 45:11 48:25 50:19

called 3:3 10:2

caller 37:18

calling 63:3

Candelario 42:9

candid 19:15

candor 31:2

cap 17:20 21:19 57:10

capability 62:16

capital 41:18 44:5 49:12 63:20

captured 22:25 23:3

capturing 35:11

card-minder 24:12 61:8

card-minders 60:24 61:2,4,5

card-minding 13:20 24:2,9

carry 62:15

case 26:16 37:12,19 40:10 43:14
44:10 46:24 47:20 48:4 49:11,15
50:14 51:9 62:5,20 63:1,6

cases 7:14 25:18 27:4 30:4 46:2

cash 10:24 22:23 23:1,4,7,11
50:15

cashier 39:18

cater 24:11

center 37:4

chair 41:19,20

Chairman 5:24 42:25 57:2,21

challenge 25:3 39:7

chance 10:4 31:21 53:13

change 9:13,18 57:12

changed 12:22

Chapter 3:19 4:13 53:1,10

charitable 3:14 6:2,8,22 7:24 8:2,
13 15:1 16:23,24 17:3,9,16 19:1
33:4,5 34:2,7 36:2 40:11 47:13
49:2 53:9,12

charities 8:8,9,10 9:14,19 15:4
34:22 36:3,5,18 39:3,8 48:5 49:9,
10 50:2,14,21 51:16 62:22,24

charity 8:4,24 10:9,19,22 11:10,19
12:1,11,15 21:9 33:3,8,16 41:6
44:20,22,25 45:23 46:7,10,11,13
47:7,10 50:18,24 51:20 56:19

Charles 16:18,21

chart 28:4

chase 39:19

check 18:1 41:21 45:24

checklist 12:19

checks 41:16

cheek 42:3

children 7:17

chocolate 14:13

choice 41:7

choose 45:18

chosen 57:17

circumstance 57:19

cities 6:19

citing 64:14

City 48:5 50:15

claims 25:4

clarification 20:20 22:9,21 31:12

clarified 13:16

clarify 28:5

clarity 9:22

Clark 13:9,10,11 33:18

classic 44:10

cleaning 21:25

clear 16:1 21:18 25:11 37:25 53:7
58:6 59:15

client 34:19 46:13

clients 36:8

close 15:9

closed 11:15

code 3:19 4:13 16:5 36:7 39:17,18,
20,21 53:10

codes 39:13 60:22

collect 29:25 63:2,8

collected 6:10,12 51:16

collecting 30:7 51:23 52:5

collection 51:21

comment 3:3 4:24 5:12,14 6:3
8:14 12:20,21 18:25 19:21 33:10,
21 34:15 38:23 39:4 47:9 48:12

commented 17:18

commenter 5:19 53:24

commenting 5:16

comments 3:17 4:25 5:1,4,6
10:10 12:25 16:16 19:7 20:25
32:13 33:14,19 37:14,15,20 38:13
39:23 40:25 44:13 48:13 52:15,24
54:9 55:7 58:14 62:9 64:18 65:23
66:1,3,14

commercial 50:19

Commission 3:6 4:2,4,11,18,25
5:25 6:6 12:7 14:4,9 16:17 18:4,7
19:20 22:17 24:15 25:8 26:20,21
27:17 28:3,22 30:7,8,11,19 31:14,
18,25 32:10 33:11 36:4 39:5 40:12,
15 41:4,22 44:7,9,10 45:20 48:9,17
51:16 53:12 54:14 56:2,21 57:6
60:15 64:9 66:17

Commission's 4:1,23 5:2 15:7
30:9 31:17,22 54:20 60:19

commissioner 42:8 61:19

commissioners 34:8 41:1 42:6
63:16,25 64:1

common 47:1

communicated 61:22
community 4:3,5
community's 4:9
companies 50:7,23
comparison 35:15 36:17
comparisons 33:8
compelling 34:3
competitor 39:2
completely 58:16
completing 3:11
completion 44:15
compliance 23:5
complicated 60:2
complicating 46:4
complied 45:5
compliment 54:2
compromise 14:14,17
comptroller 27:10,11
comptroller's 27:14
computer 11:7
concept 45:13 49:14
concern 14:20 40:12 59:13 61:12
concerned 58:20
conclude 32:13
concluded 66:23
concludes 16:16 65:23
conclusion 53:20
conditions 56:14,15,23
conduct 28:18 33:21 54:21,22
conducted 31:24 34:20 36:2 53:1 54:14 56:22
conducting 40:11 50:20 53:9 59:8
conductors 6:10
confirm 20:24 23:5
confirmation 23:2,8 60:16
conflict 15:18 54:16,19,20
conforming 36:6

confronted 43:13 44:20
connection 19:9 22:16
conservative 6:1 7:23 8:2,13
consideration 61:19
considered 7:23 11:21 14:2 22:19 26:5 53:13
consistent 21:23
console 20:9
constraints 14:25
construction 58:3
construed 22:8
contested 46:2
continue 15:15 19:17
contribute 58:2
controller 43:9
controversial 30:25
convened 19:10
convenience 37:6
conversation 45:15
conversations 45:9
copy 9:15 46:21 66:12
Cornyn's 53:18
corporation 14:8 65:6
correct 26:11 45:2,18 48:20
correctly 52:1
correspondence 57:21
cost 6:22 8:9 23:14 36:24 37:2 50:6 63:14
costing 9:19
costs 36:23 37:10
counsel 3:6
count 17:20 21:18 57:10
counter 10:3
counties 6:20
country 32:11
couple 36:15 42:22 64:13
court 32:18 49:15

CPA 43:2,9
crazy 53:20
crippled 7:17
criteria 28:24
current 14:9 19:21 25:21 47:6 61:16
customer 40:10 61:7
customer-business 34:12
customers 17:13 35:5 36:20 37:12 55:18 59:3
cut 14:2

D

daily 23:6,10
damaged 11:14
darted 10:4
date 64:2
dating 18:6
day 35:8,9,22 37:11 45:21,23,25 55:20,21,22 56:15
days 26:2 27:6 35:12 36:16 37:8, 10
De 57:3,22
deadline 26:15
deadlines 26:14
deal 11:13,15 37:2 59:6
deals 55:15
dear 17:25
dearest 56:24 62:19
debt 18:10,11,12 27:9,24 29:25 30:8,10,12,16
debts 18:8 27:3,10 30:2,5 63:5
decide 46:17 60:11
decision 45:12,15
decisions 21:6 61:13
declare 48:19
dedicated 7:16
deep 36:9 60:1

deference 61:7	difficult 46:16	documented 9:3
definition 38:8	diligently 63:18	documents 25:20 27:8 29:23 30:3 33:7 55:3
degree 40:22	dinged 20:15	dog 57:25
delay 26:20	dire 7:16	dollar 11:20 36:25 37:1
delete 40:5	direct 57:6	dollars 6:7 14:23
deleted 20:12 24:21 43:25	direction 15:4	door 10:4 15:9
deleting 9:1,4,7 10:25 11:11 23:20	directly 32:1 33:5 36:22 53:11	Doug 43:5
deletion 23:20,22 29:16	Director 3:14	draft 46:6
delinquency 29:24	disadvantaged 7:17	drowning 61:4
delinquent 26:22,23	disagree 38:4 46:17,25 47:17	duck 60:14
delivered 58:10	Disbursement 10:21	due 25:15 26:21 27:23,25 30:2,9 41:5
demand 10:11,15,17	disbursements 10:24	dues 42:23
denied 27:23 28:9,25	discretion 27:17	duties 3:12
deny 27:21 30:9,13	discuss 15:16	duty 4:16
denying 47:21	discussed 4:6 31:1 47:20	
Department 8:1 18:24	discussion 49:23 51:25 53:16 54:11	<hr/> E <hr/>
deposit 35:2,20	discussions 19:15 40:4 41:15 50:22	e-mail 5:6
deposited 6:20	disingenuous 7:25	earlier 19:14 26:7 28:15,20 33:21 34:15 44:14 49:8 57:7
deposition 63:15	dispute 12:14 25:2	easily 9:23 13:15 22:5 58:21,23
deposits 35:6	disputed 44:22	East 34:19 36:9 58:24
derived 31:24	distinction 16:12	eaten 63:15
design 22:11,12	distribution's 47:13	echo 19:13 58:19
desired 4:5,11	distributor 39:8	effect 11:22 38:13
desks 60:14	distributor's 11:12 29:14	eligibility 28:14,24
destruction 49:6,11	distributors 6:13	eliminate 20:1,9 24:1 29:13
detail 33:13 34:1 47:13 59:11	ditch 55:22	eliminated 17:2
determination 29:24 39:12	division 3:15 6:6,9,22 7:21 12:5, 10 14:10 19:10 20:7 24:24 25:4,16, 18 26:1,9,11 27:1,2,5,7,9,18,21,23, 25 28:9,12,16 34:7 48:4 49:2,5 51:15	eliminates 20:6 21:2
determine 39:19 46:12	division's 25:5 26:7 29:25	eliminating 23:23 64:20
determined 26:23 39:5	document 47:12 48:19 49:6 55:10,11 56:10 66:16	elimination 24:3,8
develops 24:10	documentation 18:8,10,12 33:17, 22 34:4 41:8,11,14,22 42:11,16,22 43:12,22 44:8 45:1 46:9,11,14,18, 20,23 48:25 49:17 56:20 62:12	Enabling 28:13 36:2 53:10,21 54:12 57:6
deviate 56:9 58:4		enforce 65:19
deviated 56:10		enforceable 61:25
devices 24:9		English 53:20
dialog 31:2		entered 57:3
dialogue 14:14		
dialogues 14:11		
differently 22:8		

entire 9:7 46:21		flexibility 22:12
enumerated 47:19	<hr/> F <hr/>	Florida 7:3
equally 48:13	F-e-n-o-g-l-i-o 33:2	fly 45:11
equipment 22:14	face 53:8 65:13	focus 32:1
establish 6:5 25:19 30:8,10,12 45:22	fact 27:7 32:11 39:15 45:16,20 57:22	folks 31:15 65:1
established 25:13 50:24	factor 46:4	follow 64:18 65:9
establishing 27:24 32:2	failed 52:11 55:20	Foreign 18:24
establishments 39:16	failure 26:6 29:23	forever 61:18
event 59:19 60:18	fair 30:11 39:1 49:14,23	forfeit 43:16
events 15:5	fairly 31:24	forgot 62:15
everyday 55:25	fall-off 35:12 36:15	form 5:12 12:21 23:9,11 47:11,12
examples 42:16 43:5 52:10	family 10:3 63:4	format 23:14
exceed 16:6	favorite 12:4	forms 5:11 11:5,6 47:16 66:7
excellent 61:8	feasible 10:14	Fort 8:20
exception 36:24 53:8	federal 12:9	forward 66:13
exceptions 66:5	fee 24:22 25:2 26:7,10,11,16 28:21, 25	found 35:1
excessive 14:1	feel 13:16 14:17	fourth 48:10
executed 55:2	fees 6:4,10,12,15,16,17,23 7:4 8:3 18:2,6 26:15 30:21 42:18 51:17	frame 14:2 31:11 35:17 42:2
exempt 28:6,10,11,17	Fenoglio 32:20,21,22 33:1,2 53:6 55:4 60:10	frames 61:13
exemption 16:4	fewer 56:14	frank 19:15
exhibit 42:3	field 13:22 31:5	fraternal 28:14
exist 56:15	fight 65:20	fresh 14:15
existed 27:24	filed 49:4	front 54:13
existing 3:17 19:1,8 57:15 59:15	filing 28:6,18 52:14	fully 49:1
expanded 65:8	final 43:5,8 58:8	fund 6:21,22
expect 49:1 64:3 66:2	finally 26:22 49:21	fundamentally 27:22 30:17
expedited 39:7,11 40:21 66:10	financial 30:20	funds 41:10,21
explain 65:14	financials 51:1,12	future 19:17
explicit 64:11	find 51:9	<hr/> G <hr/>
exposure 52:4	findings 46:18	game 9:7,12,13,18 12:17,18 16:3,6 17:10,12,19 21:3,4,13,22 31:21 37:16 52:6,7 53:5,12,13 56:8,9,11
extensive 33:10 38:11	fine 55:24 64:22	games 15:24,25 17:14 37:24 52:25 56:22 57:11
extent 5:17 15:8 55:5,10 57:22 58:1 64:17	finished 52:20	gauging 62:3
extra 16:8 54:8	fixed 36:24 37:9	gave 44:5 55:4
extraordinary 52:19	flashboard 20:10	
extremely 38:19		

general 3:6 6:20 10:25 15:13
27:19 33:20 40:13 51:21

Georgia 7:1

gist 19:24

give 5:8 17:13 34:23 38:11 43:4
45:17 64:12

giving 27:5 65:24

glad 38:23 40:6 50:11 52:21 57:4

glasses 7:18

Glenn 54:4

good 3:2 5:23 8:19 13:9,10 16:20
18:20 20:3 21:3 24:10 32:21 33:23
48:3 50:2,13 64:16

government 7:14

Governor's 3:9 47:25

grandfathered 26:16

grant 54:15,17,21

gray 38:19

great 7:10 14:16 17:7 59:6

greatly 8:3

Green 17:23,24

greener 47:25

group 8:25 10:20 11:11,19 12:16
13:5 17:9 19:10 33:9,16 39:7 54:2
55:5 58:11,12 65:2

Group's 10:10,23 12:2,12

groups 7:18 17:3 54:5

growing 49:11

guarantee 51:8,11 52:3

guess 11:17 38:12 49:6

guidance 22:19

guy 50:13

guys 63:6

H

Habitable 28:9

hacker 11:8

half 7:8

hall 7:10 9:11 20:21 50:20 55:25

halls 8:22

handed 33:7 41:9 43:20 53:15

handled 61:14

handles 8:21

handout 33:24 37:17 39:14,25
41:3 47:5 48:8

handouts 32:23 43:21

hands 15:8

happen 13:23

happened 46:2 63:23

happy 5:8 32:17,18 52:16 62:7

hard 7:6,12 26:14

harsh 31:21 32:3

hate 60:13

haw 47:25

head 15:14

headaches 58:25

hear 16:17

heard 19:13

hearing 3:3,16 4:24 42:1 45:24
66:22

Hearings 49:16

heart 56:24 62:19

Heeg 42:13

helpful 5:17 19:16 59:25

helping 7:16

highlight 40:1 51:14

highlights 27:1

hit 64:13

hitting 54:23

Hobson's 41:6

hold 18:11 27:12,16

holds 45:20

hope 63:17

hot 41:16

house 9:20,21 13:13 58:21 59:2,4

hung 44:23

Hutchings 16:19,20,21 33:18

I

I-v-e-s 8:20

ID-129 47:12

ID-68 47:11

idea 10:10 36:1 50:2,5

identified 4:10

identifies 31:8

identify 5:15

Illinois 6:24

imagine 42:8 66:10

impact 30:20

impose 31:14

impossible 46:17

inaccurate 11:21

include 28:4 65:5

included 24:16,19 26:24 55:5,6
60:18,19

including 19:8 34:5 55:4 64:23

inclusion 22:15 62:11

income 51:3

incomplete 24:22 25:1,7,9 26:6,9,
10

inconsistent 25:7

incorporated 19:19

increased 31:19

incredible 34:22

incremental 36:22 37:5

individual 9:2 15:25 16:10 22:8
51:12 57:11

individuals 43:12

industry 4:6 19:11 31:3

information 5:9 10:25 17:13
22:24 23:3 44:1,2 48:19

initial 43:21

initially 41:15 50:3

inspection 9:4 12:17,18 16:25 20:10 55:14	items 17:16 21:9 55:12 56:19	law 37:25 66:15
inspections 17:1	Ives 8:16,17,19 13:1,3,7 33:15	lawsuit 63:13
inspector 12:18	<hr/> J <hr/>	lawyers 60:10
inspectors 22:8 59:3,4	James 3:7 5:5 47:24 52:19 54:3	leader 7:5
instances 51:11	JC480 53:3	learn 36:11
instant 35:3,17,22,23,24 59:17,21 60:16	jeopardy 60:12	leave 63:22
instructions 40:17	Jewish 48:9 49:12	leaves 13:17
insufficient 41:21	judged 62:1	ledger 48:15,23
insurance 50:22,23	judicial 39:11	left 3:9,14 27:17 47:25 55:9,12
intent 57:23 58:2,5	July 48:8	legal 60:17
intention 60:5	<hr/> K <hr/>	legal.input@lottery.state.tx.us. 5:7
interest 8:25 10:9,19,23 11:11,19 12:2,12,16 13:5 33:9,15 54:2,10 55:5 56:3 65:2	keenly 16:12	Legion 5:25 8:1,12
interested 28:22	keeping 13:25	legislation 65:11
interests 11:23	key 14:20	legislative 5:24 7:22 57:23 58:2,4
intermission 59:16,20,21,24	Kim 18:14,18	legislature 8:7 16:12 32:10 57:16
International 48:9 49:12	Kimberly 18:21	legitimate 25:2
internet 63:7	kind 9:22 60:2 63:18	lessor 26:17 62:22
interpretation 13:17 15:5 22:7 28:13,16,19,20,23 29:1	Kiplin 18:19,20,21 32:17 60:9 64:6	lessors 6:10
interpretations 13:19	Kiplin's 38:14 49:22	Leticia 57:2
inventory 11:9 29:14 43:24	knowing 10:6	letter 42:5,13 43:14 48:8 57:2 60:15
investing 7:7	knowledge 49:10	letters 44:12
invigorating 14:15	Krause 42:25	level 61:19
involved 33:5 46:5	<hr/> L <hr/>	liabilities 25:12,13,15,17 27:3 30:2
involving 59:21	lack 24:11	liability 25:19,20 41:5 50:4 51:24 52:13
Iowa 6:25	lady 10:1	license 6:4,10,12,23 7:4,11 8:3 10:8,12,16 18:11 24:15,22 26:6,14, 17,20 27:20,21 28:2,13,21,23,25 30:13,14 31:20 40:24 42:1 43:1,2, 4,16 47:22 59:24
irrelevant 44:1	language 9:22 11:18 12:13,16 14:21 16:8,13 21:22,23 22:1 23:9, 21,22 24:17 26:23 27:1 28:4 29:22 30:6 31:13 38:5,13,21 40:2,7,14,19 44:6,16 45:3 46:19 47:5,18,23 48:2 52:2 53:18,20 58:5,10	licensed 13:23 21:12 30:9 42:14, 20,21 43:6
IRS 12:8 48:3	large 63:12	licensee 25:21 27:5,6,9 40:11 45:5,17 65:5,6
issuance 26:20	largest 37:7	licensee's 31:5
issue 4:14,20 15:10,12,16 21:21 30:1 41:4 42:13,24 48:12 49:22 54:11 65:22	Las 52:6	licensees 25:17 30:21 64:8
issued 46:6 60:15	late 26:16	licenses 4:15 10:12 61:14
issuing 25:16 27:2		
Italian 64:22		

licensing 4:16 40:13,21
likewise 38:17
limit 16:14 29:24
limitations 61:3
list 50:13
listened 40:6
litigation 44:10 63:14
Littlefield 14:8
live 61:18
locations 52:10 65:2
log 9:4,5 17:1 20:10
logs 20:12
long 23:2 31:10 54:5
looked 47:5 53:17
lose 41:25
loses 37:9
loss 26:17
losses 52:5
lot 5:16 9:16 13:17 35:13 36:12 48:15
Lottery 3:6 6:6 17:14 38:25 39:1 51:16
Lowe 43:5
loyal 61:6
loyalty 24:11

M

made 16:23 27:15 33:18 34:9,10 38:6,23 40:23,24,25 42:16 51:20 53:16 60:17 61:2 64:16 66:9
mailed 10:13
mailing 5:2
maintain 20:14 34:4
maintained 59:17
maintaining 17:1
majority 7:23
make 15:10 20:19 21:3,5,18 25:11 37:8 41:1,2 45:11 62:10,14,20 63:1,6 65:24

makes 53:17,19 56:8
making 3:8,12 19:4,21 20:22 24:17 48:20
managed 7:9
management 61:13
manipulate 11:6
manner 7:25 58:9
manufacturers 6:13 39:9
Mark 13:8,11
market 56:13 61:3
marketplace 56:16
Martin 5:20,23,24 8:15
matrix 45:22
matter 39:15
meaning 26:16 57:13
meaningful 22:18 25:3
means 22:7 25:13 27:12 34:18 38:20 51:9
meant 57:17
meat 34:18 41:3
meet 44:11 65:7
meeting 49:24 58:11,12
meetings 4:2,7 14:11 19:11,12 38:12 49:24
Melodye 17:22
member 10:2 41:19 51:10
members 8:2,7 19:2 33:4 54:3 63:3 65:3
merchandise 36:6 38:8 39:18 64:16
merchant 40:10
method 62:3
metrics 62:1,6
Michigan 6:24
micro-management 59:11
micro-managing 17:14
mid 25:18
military 4:16,17 19:2,3 65:3

million 6:7
mind 41:8 64:12
minds 15:14
ministerial 27:16
minute 45:10 64:13
miscellaneous 6:16
missing 11:14 26:14
Mississippi 7:2
Missouri 7:2
misspoke 57:7
misunderstand 65:14
modify 23:13
moment 30:24 34:17
Monday 3:10
money 7:6,10 8:10 9:19 18:5 36:21 37:8,9 43:15 51:15 52:3 62:21,22,25 63:2,4,8,14,15
month 37:9,11
months 20:14 34:5 46:21
morning 3:2 5:23 6:3 8:19 13:9,10 16:20 18:20 32:21
multiple 45:8

N

narrowing 54:20
nearest 56:24 62:18
necessarily 61:24
needed 14:17 45:1
needy 7:11
negative 58:16
net 6:20
night 7:21
nominal 51:25
non-licensees 31:15
noncompliance 20:16
nonetheless 43:13 45:13
nonprofit 51:9

North 36:9
note 38:10 55:21 56:17 57:9
noted 10:5
notice 25:14 28:23 29:2 30:1 45:17
notices 25:17 27:2
notified 45:6
notify 25:9
notion 37:5 48:1
notwithstanding 27:7 44:25
number 9:4,7 11:1,12,13,14 17:18
23:9,11 24:5 29:15 40:5 64:14
numbers 11:22 34:23,25
numerous 10:11

O

object 61:10
objection 20:17 21:24 22:3 23:19
25:23 29:3,5,7
obligation 26:21,22 27:24
obligations 27:19
observation 38:14,16 49:22
observations 37:22 38:6
obsolete 20:6 23:20
obtain 28:17
obtained 26:18 46:9
occasion 11:14 15:23 16:15
21:14,19 22:22,23 23:1,6,11 35:2
36:21 53:2 62:23
occasions 10:11
occupational 4:14
Occupations 4:13 16:5 36:7
53:10
occur 31:5 36:13 51:13
occurred 34:25 36:10 38:11 49:1
occurring 26:25
occurs 35:13
Odessa 58:22
offensive 22:16,19 23:17 38:15,
16,17,18 43:17 65:18

offer 15:22 36:5
offered 53:4 57:16,17
office 3:9 8:21 9:10 12:9 13:23
31:6,7 48:1 49:15
online 6:23
open 15:14 22:7 31:9 49:4 63:22
operating 50:19
Operations 3:14 6:9
operators 17:11
opinion 7:13 15:13 52:25 53:3,15
opportunity 14:4 18:25 19:14
oppose 16:22 18:2 23:16 25:25
29:22 30:18 31:19 54:25
opposed 22:15 23:18
order 3:4 9:14,18 16:3 39:23 42:10
organization 7:15 11:1 20:18,21
21:4,5,12 23:4 28:5,9,17 33:5 34:2,
4
organization's 27:20
organizations 7:15,24 20:13,15
22:23 23:13,15 28:14 59:1 60:3
65:1
outrageous 63:18
outright 7:14 26:17
outstanding 25:12,14 27:3 30:2
overcharging 7:14
owe 30:16 41:23 42:6 43:15 63:5
owed 30:10
owes 25:4 27:6 42:15 43:1,3,6,9
owned 65:6

P

P.O. 5:3
paid 6:19 17:17 21:10 28:21 41:10
42:17,23 52:3 56:20
paperwork 9:16,17 20:1 23:24
paragraph 9:21 13:15,16
part 19:6,15,21 23:6 24:18 28:4
51:24 52:22 55:6 58:15 66:11

participate 19:12 65:2
participated 54:4
parts 66:4
passage 57:24
passed 58:1
past 28:19 61:15 63:24
pastures 47:25
paternalistic 21:6
patrons 22:6
pay 7:11 18:5 27:6,9 28:24 41:7,24
42:7 43:3,16,23 44:12 47:24 50:15
52:11 63:4
paying 30:21
payment 27:12
payments 11:16 47:3
penalized 45:8
penalizes 8:6
penalties 6:14 32:3
penalty 11:25 18:2 44:4 45:22,25
pennies 30:5 36:25 37:1
Pennsylvania 6:25
penny 43:21 48:10
people 8:11 17:19 18:5 35:14
50:12 55:15 56:12 62:7,10 63:3
64:2
percent 48:24
performance 62:1,2,4
performing 20:9
period 33:10 34:5,24 45:14 51:19,
24
perpetual 29:14
person 3:7 5:5 15:22 17:20 27:16,
23 43:17 48:21 58:22,24
personal 51:8,10
personally 9:25
personnel 4:16
persons 27:11 28:23 64:7,11
pertaining 4:15
phishing 63:5

phone 24:5	57:20	25:24,25 26:3,4 29:4,5,7,9,11,18, 20 30:18 31:13 32:4,6,8 34:8 38:9, 10 50:14
phrase 22:5,9 58:20	prizes 15:17,21,23 16:6,15 17:6,17 21:10,18,22 22:14 23:6,10 56:20 57:9,11,13,16 64:16	protects 24:7
picture 64:21	Pro 11:4	protest 41:10
place 12:6 27:11 31:7 39:6,10,11 62:17	problem 13:14,24 25:1 26:13 45:2 48:7 51:12	prove 30:16 46:23
placing 27:15	problems 20:19 58:25	proves 48:12
plain 58:5	procedural 57:4	provide 22:18 24:5 26:5 39:22 44:7 46:19,20 66:3
planning 20:1	procedure 39:6,10	provided 11:22 24:23 39:24 41:3 45:4 49:3
player 9:25 24:4,10 40:2,8	procedures 20:19,21,22 40:16	providing 59:2
player's 24:7	proceeding 3:12 19:22	provision 34:7 54:12 59:18
players 20:20 24:10,11 34:9 40:8 56:14	proceedings 3:1 66:23	provisions 17:4 40:13 46:7 55:1,2
podium 5:22	proceeds 31:24	public 3:17 8:14 19:21 27:10 55:16 56:2 61:23
point 16:11 48:13	process 19:7,15 24:2,16,18 27:23, 25 28:1,2 39:11 40:21 43:18 46:8 49:20,25 54:5	publication 20:7 34:9
pointed 52:1	produce 29:23	published 4:20,23 33:11 40:1
policies 4:15 61:22	product 52:20	pull-tab 15:3,24 22:11 54:13,22 59:21 65:18
policy 12:4 44:14 49:6,11 55:16 63:21 64:4	products 39:15 59:8 60:22	pull-tabs 11:14 14:21 59:9,16,17 60:16 64:21,24
position 24:24 26:7,9 27:8,14 31:17,19 57:5	profit 37:4,12	pulled 48:3
posted 13:14 20:21	Program 20:5	purpose 3:16 4:12 55:17
posting 58:21	programs 9:18	purposes 31:25
practice 25:5	progress 64:16	pursue 30:7
prefer 5:22 21:4	prohibition 24:9 53:14 64:20	put 28:22 34:18 38:13 42:2 44:17 48:17 56:13 64:2
preferably 40:18	project 19:10 48:16,23	puts 41:3
preferences 56:14	promotion 36:12	Putte 57:3,22
preliminary 5:18	promptly 62:8	Pyka 43:8
premises 31:6	promulgate 61:21	
pretty 16:1 20:2 28:24	proof 30:15 44:11	
prevail 49:16	proper 42:2	
previously 24:17 27:2 30:1	properly 36:2	
primarily 57:25	proposal 4:10 61:11	
primary 31:22	proposals 5:1 13:4,6 55:6 60:19, 21	
principal 30:19	propose 4:18 24:14 26:19 29:12	
print 10:11,14,17	proposed 3:17,18,23,25 4:5,6,9, 12,21,22 8:25 11:11 12:2,16 17:2 18:3,14,25 19:8,18,19,22,24 20:5, 8,18 21:1,14,25 22:2,10,13 23:9,25	
prior 28:17 48:4		
privacy 24:7		
prize 6:17 14:22 15:3,25 18:2,6 21:20 30:21 36:6 51:17 53:4 54:18		

Q

quality 16:4
quarter 11:2,17 46:10 48:10
quarterly 11:20 46:22 47:3,6,11
48:6,18
quarters 6:18 50:3
quasi 39:11

question 22:5 36:7 52:23	20:14 42:11 43:24 49:2,3,5,7,9,13 62:16	renewals 18:11 26:14 61:14
questions 52:16		rental 6:18 62:23
quick 54:23	reduced 8:3	replacement 9:2 33:22
Quickbooks 11:4	Reducing 8:9	report 6:9 11:21 22:25 23:1,4,7,12 27:15 46:4,6,22 47:7,11 48:6,18
<hr/>		
R		
<hr/>		
raffle 14:22 15:2 17:6 34:16,20,25 35:4,10,13,14,23 36:1,2,6 38:7 53:1,4,9,12 54:11,18	reference 20:6 25:12 39:21 64:6	reporter 32:18,24
raise 59:13	referral 51:21	reporting 23:14 27:10
raising 7:10	referred 64:9	reports 11:16,18 22:23 47:3
ran 15:5 34:25 35:23	reflect 21:12 33:12 57:22	represent 16:21 33:3
rare 62:23	reflected 4:9 55:11	representatives 4:3,4
rate 8:4	refund 10:3 24:6 25:22	represented 41:17
re-addresssd 15:12	refunded 28:22	representing 13:11
re-investigate 15:10	Refunds 25:11	request 14:18 15:13 20:20,23 21:8,11,17 24:17,20 25:10 26:23 28:3 29:16 30:6 31:18 34:9 43:21 49:5 57:1 58:15
reach 39:11	refuse 40:8	requested 17:9 31:8 46:9 51:14
read 15:19 53:19 57:15	refused 48:6	requesting 41:12
reads 16:3	refuses 9:25 40:2,8	require 23:13 24:15 49:9 50:8 52:2 56:8 62:11,13,20
real 54:23 60:10	refute 42:10	required 9:15 10:25 11:9 19:5 22:24 24:5 34:5 43:24 48:18 56:21 62:12
reason 33:23 34:3	regard 58:7	requirement 16:25 20:13,22 23:5, 10,12 24:4 29:13,17 33:23 50:10
reasonable 8:4 43:17,18 64:4	Register 4:21	requirements 10:22 17:10 20:12 21:2 37:18 43:25
reasons 23:17 47:19 53:21 57:4	registered 31:15	requires 4:14 56:11 66:15
recall 43:20	registrants 64:8	requiring 20:18
receive 3:16 27:12	registry 6:4,11	researched 6:23
receiving 25:22	regular 24:11	reservation 60:24
recent 4:1 52:10	regulate 31:23	reserving 24:9 61:7
recently 18:4 49:5	regulation 34:13	Resolution 12:14
recognition 32:9	regulatory 21:6 56:2	respect 55:13 59:9 63:21
recognized 38:24	rejected 39:9	respectfully 14:18
recommendation 60:17	relate 32:2	respond 52:16 66:16
reconciled 53:5	relates 55:14	response 20:25 66:20
reconsider 14:18	relationship 34:12 50:25	responsibility 31:22 32:2
reconsideration 55:12	relative 60:21	rest 45:12
record 3:3,5 12:1 15:19 17:16 18:21 21:9 22:24 32:22 55:6 56:19 57:3,20 58:15 62:11 65:24	relied 28:20	restaurant 37:6
records 10:21 11:10 12:6 13:25	rely 48:5	
	remain 31:9	
	remaining 11:15	
	reminded 7:5	
	renewal 26:2,5,6,10,15,20 27:20, 21 28:2 30:13,14 40:24	

restored 60:20,21	61:21,25 62:10 65:3,7,18	sense 21:3 47:1 53:16,17,19 56:8 61:2
restrict 60:3	rules 3:18 4:15 5:15,16 9:20,21 13:13 17:15 18:13 19:1,8,25 31:1 32:1 33:11 45:6 48:13 49:9 54:9,14 55:23 58:21 59:2,4 64:14 66:4	sensitivity 61:17
Restrictions 33:20		sentence 57:13
result 3:25 19:5 30:14	run 15:10 17:11,13 35:10	sentences 44:19
results 15:6 36:9		separate 28:1
retail 37:12 39:15,18	<hr/> S <hr/>	separately 20:2
retailer 37:7		series 33:7 34:20 49:23
return 26:8	sale 39:17	serves 55:16
returned 24:25	sales 35:17,22,24 36:21,22 37:5	service 19:2 32:10
returning 25:6	San 44:20	session 9:16 35:5,7
revenue 6:21	sanction 31:19 44:25 64:9	sessions 35:21 50:20
reverse 34:20,25 35:10,13,14,23 36:1 38:7	sanctions 31:14 64:10	set 9:2
review 4:1,11 19:5,7,9 24:15,18 40:16 49:25	satisfies 23:10	sets 20:15
revised 17:9,15 21:8,11,17 31:9	satisfy 20:22 23:12	settlement 6:15 18:2
revocation 31:20	save 39:23	Shankel 50:1
revoking 47:21	saved 7:6	share 38:14
reward 36:14	scale 8:5	Sharon 8:16,19
Richard 14:6,7 37:24	scam 63:5	sheet 51:4
right-hand 47:4	scamsters 63:7	shifts 30:14
ring 39:16	schedule 9:7,12,14 17:12 21:3,4, 13 22:25 23:3,6,10 37:16 56:9,11, 17 64:10	shocking 52:11
risk 52:8	schedules 9:18 17:10 40:17 56:8	short 45:14 53:11
River 48:5 50:15	schools 7:18	shortage 48:25
road 45:19	scraping 15:1	shortages 18:5
rolls 22:25 23:4	scratch 38:25	shorten 31:9
room 13:17 60:10 63:11	seat 61:8	shortens 26:1
round 48:6	section 14:19 15:20 16:24 21:8 53:7 57:7 60:3	shorter 14:2 31:11 64:2
rounding 11:17,20,22 48:1,4,11 65:22	sections 3:20	shoulders 45:13
Royal 3:13 38:24 40:21 44:24 45:9 50:11 52:1,17 54:3 57:1 61:17 63:25 65:15	seek 22:21 23:8 31:12	shout 47:24
rule 3:3,8,12,18,23,25 4:1,5,11,12, 19,22 5:15 6:4 8:23 9:6,20,24 10:8, 16,18,21 11:9,16,25 12:4,14 13:13, 20 15:18 16:22 17:5,8,24 18:1,3 19:2,4,5,7,9,20,21 20:2 24:17,18 28:4 30:7 31:8,21 32:8,9,12 34:11, 17 43:25 44:22 49:25 54:24 56:11, 18 57:15 58:3,8 59:7,19 60:6,8,25	sell 59:16	show 38:2 42:17 43:22 56:15 64:2, 24
	selling 36:13 37:4	showing 41:4
	Senator 57:2,21	shown 61:7,17
	send 42:5 46:8	shows 6:9 42:6
	sending 44:12	shuts 39:18
	senior 45:15	side 33:10 47:4 55:4,9,11 60:8
		sign 10:4 12:20

significant 40:22	58:22,24	struck 40:7 47:18
similar 15:5 37:14,15 40:25 48:17	staff's 52:18	subject 64:8
simple 53:21	stakeholder 4:2,7 14:11	subjective 22:18
simply 25:14 56:18	stakeholders 19:11 31:3	submit 5:6 19:7 26:6 39:9 58:13
single 15:22 22:24	standard 51:3	submitted 5:2 24:18 28:11 33:9 40:15
sit 5:21 8:17	standards 62:2 65:7	submitting 12:25 32:15
sitting 3:13 62:5	standpoint 52:4	subparagraph 33:24 34:6,16 37:24 38:1,5,7,15 39:22,24 40:1, 15,20 44:6,15,16,18 46:3 47:19,24
situation 10:1 34:22 40:9 45:18 46:1 47:22	start 20:4	subsection 20:17 21:1,11,15,17 22:3,16,22 23:17,20,23 24:4,20,21 25:8,10 29:12,23 31:13 39:5 55:13
sleep 7:21	started 49:24	subsections 20:10 56:4 58:17
sliding 8:5	state 4:14 5:25 7:22,23,25 11:4 12:8 25:13 27:13 37:25 42:5,14,18, 23 51:15	substantial 28:25 36:14
smiling 42:19	state's 6:20	substantive 46:23
SOAH 49:15	stated 26:7 27:2 30:1 37:24 49:8	sued 51:20
socialist 7:5	statement 7:5 48:18,21 51:3	suggest 31:14 43:11,16
socialistic 8:5	statements 5:18	suggested 45:10 56:3
software 11:5	states 6:24	suggestion 44:14 45:3
sold 11:13 17:16 21:9 35:2 56:19 59:19	statue 15:19	summarize 66:15
solely 26:21	status 28:6,10,11,17	summed 11:24
solicited 4:4	statute 15:20 16:10 52:2 58:5	superior 38:9
solves 48:7	statutes 28:14	supplement 38:3 47:7,10,14 54:10
sort 52:2	statutory 19:5 21:23 58:3	supplements 47:3,5
source 25:19 27:8 30:3	stems 4:13	supply 54:8
sources 44:2	step 15:3	support 13:21,22 20:5 21:14 22:2, 10,13 23:22,25 24:3,8 25:20 27:8 29:9,11,18,20 30:3 31:4 32:4,6,8 33:15,16 38:21 40:20 49:2 54:24 56:21 57:24 58:17 59:2,7,9 62:9 66:4
South 36:8	steps 24:1 61:23	supporting 29:24 41:11 44:7
Spaces 28:10	Steve 32:19,22 33:1 53:24 54:1	supports 57:5 58:5
speak 13:12 14:4 17:24 37:23 63:10 66:18	stop 43:19 49:20 60:9	surely 42:16
speaking 13:21	store 37:6	surprising 52:11
specific 33:17 46:19	stores 37:7	survive 14:25
specifically 10:24 33:24 51:2	streamline 17:10 19:25 24:15 62:10	suspicion 48:24
spelled 32:25	Street 52:7	symbols 38:25
splitting 21:21	stretch 65:5	
spouses 4:17 19:3	strike 65:18	
spreadsheet 41:4,7,13,23 42:6 44:9 49:18,19	striking 38:22 61:6	
stab 65:12	stroke 10:2	
staff 4:2 8:8 31:3 37:20 38:9,12 40:4,6 41:15 45:15 47:2 54:3	strong 64:19	
	strongly 59:9	

system 11:8 24:2	18,19 39:13,23 42:21 45:14 50:1,5	undertake 19:6
Systems 13:20	51:19 52:15 61:1,2,13,24 64:4	undertaking 52:19
	65:24	unfair 27:22 30:17
<hr/>		unit 8:21 11:1
T	timely 44:15 45:17	unknown 10:13
<hr/>	times 41:12 51:20 59:24 61:15	unnecessary 20:1,12 23:23 24:1
table 5:21	Title 3:19	29:15
takes 12:5 24:24 36:11	titles 11:6	unneeded 17:2
talked 56:5	today 3:7 12:23 16:17 18:23 39:12,	unprocessed 24:25 25:6 26:8
talking 47:15 65:10	16 41:2 65:24 66:5	unweary 44:3
tally 20:3	told 17:11 59:23	update 40:17
tax 6:18 28:6,10,11,17 62:23	tongue 42:3	urge 55:12 56:3 63:25
taxpayer 11:1,12 29:15 43:18	tops 54:23	utilizing 37:16
TCA 55:5	total 6:10,12 16:5	
technology 14:24	Training 20:5	<hr/>
tedious 54:5	transaction 24:6	V
telephone 40:5 63:8	transcript 66:9,10	<hr/>
telling 53:11	transposed 62:13	vague 22:18
temporary 10:8,12	trap 20:15 44:3 55:19	Van 57:3,22
ten 37:10 41:20	trapped 14:23	vanilla 14:13
term 63:14	traps 15:11	variance 11:23
terms 14:23 32:2 56:2 59:24	treats 7:24	variations 56:16
Texans 6:2 8:2,13	tree 54:23	Vegas 52:6
Texas 4:20 5:3 6:1,6 7:4,22 8:1,11,	troubled 65:13	versus 34:7 35:21 39:25
24 10:9,18,22 11:10,18 12:1,7,11,	true 33:17 37:5 44:5 48:20	veterans 4:17 7:18 18:24 19:3
15 14:23 18:24 32:9 33:3,8,16	turn 37:11	32:11 65:1
34:19 36:8,9 47:10 53:10 58:24	turned 5:12	VFW 19:7,11 33:9 55:6
Texreg 4:21,22	Turning 38:4	VFW'S 19:18
thing 6:5 36:4,8 48:16 61:9 63:19	two-page 47:11	Vice-president 6:1
things 59:10 61:11,15 62:11 64:13	type 10:5	video 60:15
Thompson 57:2,21	typo 62:14	view 58:23
thought 48:15 50:1		violated 46:7
threaten 45:23	<hr/>	violation 10:6 31:20 44:21 45:16,
threshold 51:5	U	21 46:12,24 55:23
	<hr/>	violations 32:1 45:8
ticket 10:5,6 14:22 22:12 35:24	Ultimately 27:18	virtually 52:8
36:6,25 39:9 53:4 54:18	unambiguous 58:6,7	virtue 25:14
tickets 11:13,15 15:2 17:6 34:16	unaware 41:20	void 24:6
35:3 37:2,3 38:25 59:19,22 60:18	underlying 41:8,13 48:24 49:17	voided 10:5
tied 15:8	understand 15:7 30:20 45:12 52:9	
time 3:4 8:14 9:13,15,17 14:2 26:1	53:18 61:12 65:15	
28:11 30:21 31:9,11 34:24 35:16,		

voted 4:18 34:8

W

wait 30:13 45:10,19

Waiver 11:25 18:2 44:4

Wal-mart 37:6,7

wall 52:7 56:13

wanted 36:4 48:4 55:1

warrant 27:12,16

Wars 18:24

weapons 38:22 64:21

weary 44:3

website 4:23 48:3

week 34:24 35:4,6,7,15,21 36:17
50:21 66:11

whatsoever 56:1

whichever 5:22

whole-heartedly 65:16

wholly 65:6

win 17:19

window 62:4

wines 64:22

winners 21:22

wisely 7:7

wishes 66:18

wishing 5:11,14

Women 48:9 49:12

word 16:14 22:16,22 23:16 47:7,13
57:11,17 65:18

worded 15:20 59:15

words 7:9 40:5

work 3:9 7:12 13:23 19:10 31:5
42:2 54:4 55:25 58:11,12

worked 7:6 39:8 57:25

workers 6:11 31:16

Workforce 12:7

world 37:8,13 65:19

worth 8:20 46:21 63:13

write 40:3 45:24 50:23 51:7,10

writing 32:16 45:7 59:14

written 4:25 9:7,11,12 11:7 12:25
15:18 39:23 41:21 47:3 52:15,24
54:8 58:14 64:18 66:3,14

wrong 10:7 27:22

wrote 17:25 41:16

Y

y'all 51:20 58:25 59:12 60:14 63:17

year 6:24,25 7:1,2,3 8:4 35:17
46:10

years 13:25 18:6,7,16 19:6 28:6,10
31:10 38:23 42:15,22 43:15 44:23
45:7,19,20 46:1 49:1,4,6,9 52:12
63:23