



## NOTICE OF MEETING AND AGENDA

**Revised 1/20/23**

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, and Chapter 107 of the Session Acts of 2022, notice is hereby given of a public meeting of the **Massachusetts Gaming Commission**. The meeting will take place:

**Monday | January 23, 2023 | 12:00 p.m.**

**VIA REMOTE ACCESS: 1-646-741-5292**

**MEETING ID/ PARTICIPANT CODE: 111 600 4127**

**All meetings are streamed live at [www.massgaming.com](http://www.massgaming.com).**

Please note that the Commission will conduct this public meeting remotely utilizing collaboration technology. Use of this technology is intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public. If there is any technical problem with the Commission's remote connection, an alternative conference line will be noticed immediately on [www.massgaming.com](http://www.massgaming.com).

All documents and presentations related to this agenda will be available for your review on the morning of the meeting date by visiting our website and clicking on the News header, under the Meeting Archives drop-down.

### **PUBLIC MEETING - #426**

#### **1. Call to Order**

#### **2. Sports Wagering Round Table Discussion with the Players' Association**

*The Players' Association includes the National Football League Players Association (NFLPA), the Major League Baseball Players Association (MLBPA), the National Basketball Players Association (NBPA), the National Hockey League Players Association (NHLPA), and the Major League Soccer Players Association (MLSPA)*

##### **I. Opening Remarks and Introduction of Players Representatives – Cathy Judd-Stein, Chair**

- A. James C. Eisenberg, Pret Strategies
- B. Kris Erikson, Preti Strategies
- C. Steve Fehr, Special Counsel; National Hockey League Players Association
- D. Kevin McGuiness, Chief Operating Officer; Major League Baseball Players Association**
- E. David Foster, Deputy General Counsel; National Basketball Players Association**



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- F. Tom DePaso, General Counsel; National Football Players Association
- G. Ned Erlich, Associate General Counsel; National Football Players Association
- H. Johnny Andris, Staff Counsel; Major League Soccer Players Association

II. Topics of Discussion:

- A. Regulations Protecting Athlete and Family Safety
- B. Collective Bargaining Agreements
- C. Other Considerations

3. Other Business - Reserved for matters the Chair did not reasonably anticipate at the time of posting.

I certify that this Notice was posted as “Massachusetts Gaming Commission Meeting” at [www.massgaming.com](http://www.massgaming.com) and emailed to [regs@sec.state.ma.us](mailto:regs@sec.state.ma.us). Posted to Website: January 19, 2023 | 12:00 a.m. Reposted to Website: January 20, 2023 | 1:30 p.m.

January 19, 2023

*Cathy Judd-Stein*

Cathy Judd-Stein, Chair

*If there are any questions pertaining to accessibility and/or further assistance is needed, please email [crystal.beauchemin@massgaming.gov](mailto:crystal.beauchemin@massgaming.gov).*



Massachusetts Gaming Commission

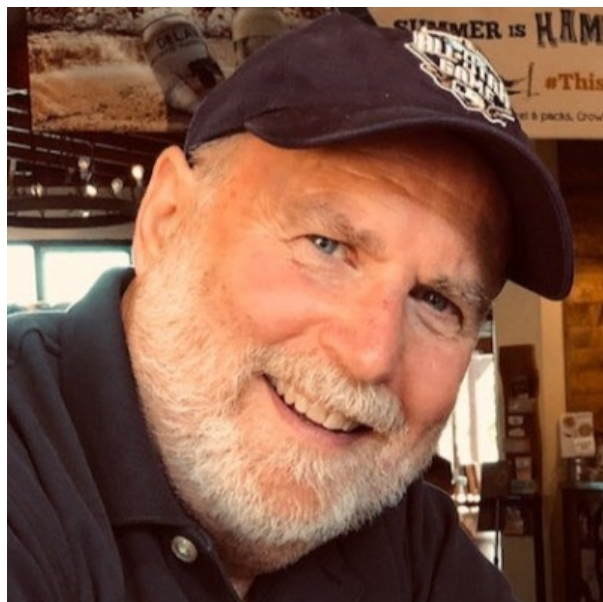
## Steve Fehr, National Hockey League Players Association



### Biography

Mr. Fehr serves as Special Counsel to the National Hockey League Players Association (NHLPA) where he works with the association on a wide range of matters including contract administration, health and safety, and governmental affairs. In this role, he represented the NHLPA during the owner's lockout in 2012-13 and was one of the lead negotiators in discussions that led to a new collective bargaining agreement reached in January 2013. Previously, Mr. Fehr served as outside counsel to the Major League Baseball Players Association (MLBPA) where his work focused on strikes, collective bargaining, and cases regarding the use of performance enhancing drugs. Mr. Fehr received both a B.A. and a J.D. from the University of Kansas.

## Kevin McGuiness, Major League Baseball Players Association



### Biography

Mr. McGuiness has been the Chief Operating Officer (COO) at the MLBPA since 2014 and has been outside counsel to the association since 1993. His focus with the MBLPA centers on gambling, organizational development, and youth involvement. Mr. McGuiness has a demonstrated history of working in the sports industry and is particularly skilled in government and media relations, coalitions, and grassroots organizing. He has a B.A. from University of California, Irvine, and a J.D. from the George Washington University Law School.

## David Foster, National Basketball Players Association



### Biography

Mr. Foster serves as the National Basketball Players Association (NBPA) Deputy General Counsel and works to drive growth for the association. He works closely with the General Counsel on issues related to collective bargaining, agent regulations and serves as the lead attorney on issues related to technology, public policy, player health and discipline. Mr. Foster joined the NBPA in 2015 after an 11-year career as a prosecutor at both the state and federal levels. Since joining the NBPA, Foster has testified before multiple government bodies on behalf of the union, defended player rights in grievance proceedings, and enforced the regulations that govern all NBPA certified agents. He graduated from Princeton University with a B.A. and received a J.D. from Fordham University School of Law. In 2019, Foster became the first person from the NBPA to earn a Sports Business Journal 40 under 40 award.

## Tom DePaso, National Football Players Association



### Biography

Mr. DePaso has been serving as General Counsel to the National Football League Players Association (NFLPA) since 2012, though he has worked with the NFLPA since 1984. In his role, he protects and defends the rights and contracts of the NFL players. He also serves as the attorney for the Professional Athletes Foundation, a 501 C (3) organization that assists former pro athletes in financial and medical distress. He has previously served as an attorney for the Arena Football League Players Association, the United States Football League Players Association and the NFL Coaches Association. Mr. DePaso taught sports law as an adjunct professor at the George Washington University Law School from 2011 to 2013. He also previously taught at Georgetown University in the Masters in Sports Industry program from 2009 through 2011. He has been a member of the Board of Directors of the Sports

Lawyers Association since May 2013. Mr. DePaso has a degree in Accounting from Penn State University, where he also played football, and a law degree from Catholic University. After graduating from Penn State, Mr. DePaso played linebacker for the Cincinnati Bengals in 1978 and 1979.

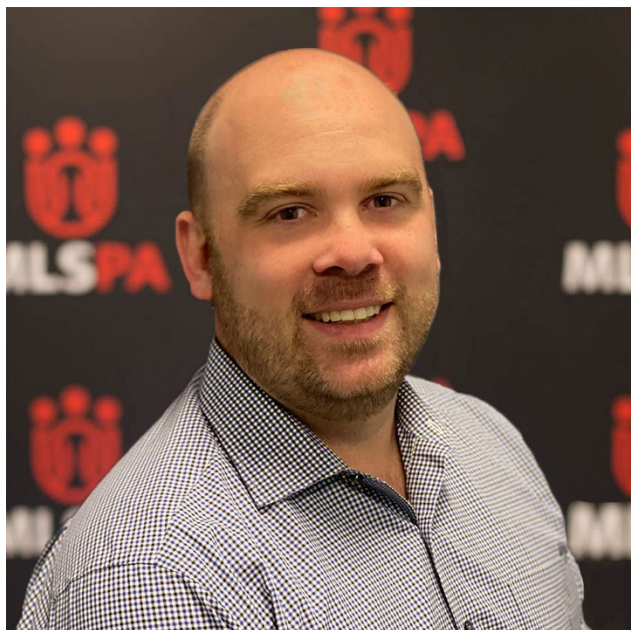
## Ned Erlich, National Football Players Association



### Biography

Mr. Erlich serves as Associate General Counsel to the National Football League Players Association (NFLPA) and has been with them for over 10 years. In this role, he works to protect and enforce the rights of NFL players, the NFLPA and its subsidiaries. In addition to enforcing the collective bargaining agreements and player contracts, Mr. Erlich assists the Executive Department with overseeing all legal matters related to the association.

## Johnny Andris, Major League Soccer Players Association – *To Be Confirmed*



### Biography

Mr. Andris serves as Staff Counsel for the MLSPA and focuses his day-to-day work on a variety of legal matters. These include administration and enforcement of the collective bargaining agreement, general union operations, as well as individual player issues. Prior to joining the MLSPA, Mr. Andris represented labor unions in private practice. Before his legal career he worked in the sports information departments of the Wake Forest University and the University of Kansas Athletic Departments. A Louisville, Ky., native, Johnny is a graduate of Wake Forest University and Catholic University School of Law.



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September 22, 2022

Ms. Cathy Judd-Stein  
Chairwoman, Massachusetts Gaming  
Commission  
101 Federal St., 12th Floor  
Boston, MA 02110

Ms. Nakisha Skinner  
Commissioner, Massachusetts Gaming  
Commission 101 Federal St., 12th Floor  
Boston, MA 02110

Ms. Eileen O'Brien  
Commissioner, Massachusetts Gaming  
Commission  
101 Federal St., 12th Floor  
Boston, MA 02110

Mr. Jordan Maynard  
Commissioner, Massachusetts Gaming  
Commission  
101 Federal St., 12th Floor  
Boston, MA 02110

Mr. Bradford R. Hill  
Commissioner, Massachusetts Gaming  
Commission  
101 Federal St., 12th Floor  
Boston, MA 02110

***Re: Administration and Promulgation of Regulations Pursuant to Section 4 of Chapter 23N of the General Laws ( "Massachusetts Sports Wagering Act")***

Dear Madam Chair and Commissioners:

We are writing on behalf of our client, the Players' Associations (collectively, the "Players") of the five major league sports organizations in the U.S., which include the National Football League Players Association (NFLPA), the Major League Baseball Players Association (MLBPA), the National Basketball Players Association (NBPA), the National Hockey League Players Association (NHLPA), and the Major League Soccer Players Association (MLSPA) and their collective interest in language administering the new sports wagering law in the Commonwealth of Massachusetts. As professionals who have devoted their lives to pursuit of excellence in their sport, their members believe that protecting the integrity of the game and ensuring they and their families are safe is paramount in any discussion of the prospect of administering legalized sports betting.

Representatives of the Players engaged with legislative leaders throughout the multi-year process by which the bill became a law. The Players are grateful that the Legislature included many of the important requests they made including:

- The prohibition on the use of any biometric data (use or purchase);
- Inclusion of Players Associations definition;
- Prohibition of in-game bets and demeaning bets (player injuries, discipline, etc.);
- The right to petition the Massachusetts Gaming Commission ("MGC") to prohibit additional types of bets;
- Permits working with the MGC on disclosure of investigations.

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While working with legislative leaders on other aspects of the legislation, those representatives indicated to us that they did not possess the expertise to include some provisions that were being requested and that they wanted to leave certain specifics to the expertise of the professionals of the MGC.

To that end, we write today to outline those outstanding issues and urge the Commission's consideration to include these protections into the regulations currently under development. We also respectfully request a meeting with you to discuss these issues in greater detail. We will be reaching out shortly to request these meetings with each Commissioner and staff. We previously had the opportunity and appreciated meeting with Executive Director Karen Wells and General Counsel Todd Grossman in the summer of 2021 and would appreciate continuing that discussion now that the legislation is law.

There are a few issues in which we respectfully request the Commission's consideration including:

## **Athlete and Family Safety**

The Players know that they will be targeted by potential losing sports betters, and importantly, know that their family members will also be targeted. These instances have already occurred in different parts of the U.S. and other countries, and they and their families should be protected by Massachusetts regulations. In fact, there have been several well-publicized incidents over the last year involving unruly fan behavior in which players' safety has been at risk including one at the TD Garden.

To help ensure that a player's physical safety will always be prioritized, the Players' respectfully request your consideration of the following language for the development of regulations:

*If the Commission determines reports of violence, threats or other acts of intimidation against players, coaches, officials or their families to be credible, or other prohibited conduct as defined CMR XXX-XXX, said determination shall constitute sufficient cause for exclusion from a sporting event pursuant to the provisions of Section 11(b).*

This regulation would hold accountable and incentivize leagues, teams, and sporting arenas to ensure that athletes and their families are protected against violence.

The Players also respectfully request your consideration of including regulations that would further clarify those actions that will be prohibited against both a player and a family member by ensuring that more robust protections be contained within in regulation.

We propose the following language be used to develop said regulation:

*"Prohibited conduct" includes any statement, action, and other communication intended to influence, manipulate, or control a betting outcome of a sporting contest or of any individual occurrence or performance in a sporting contest in exchange for financial gain or to avoid financial or physical harm. "Prohibited conduct" includes statements, actions, and communications made to a covered person by a third party, such as a family member or through social media. "Prohibited conduct" does not include statements, actions, or communications made or sanctioned by a team or sports governing body.*

It is important to note that all of these definitions have made their way into many other states' sports

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wagering laws including Virginia and Illinois. The Players are hopeful that the MGC will recognize the importance of providing these protections in the definitions in regulations administering the new sports wagering law.

While the Players generally support the regulatory framework for investigation established in the law, we respectfully request your consideration of developing regulations based on the following language which would further define prohibited actions:

*Any potential breach of a sports governing body's rules and codes of conduct pertaining to sports betting, to the extent that such rules and codes of conduct are provided to and known by the permit holder;*

*Any conduct that may alter the outcome of an athletic event for purposes of financial gain, including match fixing; and*

*Suspicious or illegal wagering activities, including using funds derived from illegal activity to place bets, using bets to conceal or launder funds derived from illegal activity, using agents to place bets, and using false identification to place bets.*

As previously stated, the Players' first and foremost priority is to ensure the safety of players, and their families. Further, the Players understand that the sports wagering law charged the MGC with developing the processes for player safety, prohibitions and investigations. And we now respectfully request that these basic level protections are included in regulation.

## **Collective Bargaining Agreements**

Finally, the Players seek inclusion of the following two additional definitions to be promulgated in regulation:

*"Unless otherwise described in law or regulation, on any charge involving the conduct of a professional athlete, the commission shall consider and where possible, give deference to, rules collectively negotiated between a league and its Players Association governing player safety, misuse of personal biometric data, coordination with inquiries in other states, and the investigation and resolution of a gambling related charge involving a professional athlete."*

*"Covered person" means athletes; umpires, referees, and officials; personnel associated with clubs, teams, leagues, and athletic associations; medical professionals and athletic trainers who provide services to athletes and players; and the immediate family members and associates of such persons."*

Providing deference to rules collectively negotiated between a league and its Players Association governing player safety, misuse of personal biometric data, coordination with inquiries in other states, and the investigation and resolution of a gambling related charge involving a professional athlete is both important and practical. It ensures that Players and the Leagues are protected by collectively bargaining rules and procedures, while also ensuring that the unique aspects of each collective bargaining agreement, which differ among the sports, can be accommodated. As the legislation did not codify all of the individual protections enumerated above, inclusion of these definitions as part of the regulations would

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provide a safety net and would avoid any potential challenges where it could be argued that state law conflicts with provisions within a collective bargaining agreement.

Finally, with respect to safety regulations, the Players hope the Commission will adopt clear definitions delineating the various parties and stakeholders, including but not necessarily limited to, players, staff and their immediate families.

We greatly appreciate your consideration of these requests. Please do not hesitate to contact us should we be able to provide additional context to these important protections.

Respectfully yours,



James C. Eisenberg  
Preti Strategies



Kris Erickson  
Preti Strategies

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