



Massachusetts Gaming Commission Meeting Minutes

Date/Time: November 14, 2022, 10:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 111 477 4177

The Commission conducted this public meeting remotely utilizing collaboration technology. The use of this technology was intended to ensure an adequate, alternative means of public access to the Commission's deliberations for any interested member of the public.

Commissioners Present:

Chair Cathy Judd-Stein
Commissioner Eileen O'Brien
Commissioner Bradford Hill
Commissioner Nakisha Skinner
Commissioner Jordan Maynard

1. [Call to Order](#) (00:11)

Chair Judd-Stein called to order the 401st Public Meeting of the Massachusetts Gaming Commission ("Commission"). Roll call attendance was conducted. All five commissioners were present for the meeting.

2. [Welcome and Opening Remarks](#) (00:57)

Chair Judd-Stein provided opening remarks for the advertising roundtable, stating that the discussion was to address media and advertising issues related to sports wagering, and take note of specific concerns held by relevant stakeholders. She stated that Commission's legal counsel, the law firm of Anderson and Krieger, would provide guidance on the constitutional limits related to restricting advertising speech.

3. [Commissioners' Round Table related to Sports Wagering Advertising and Media](#) (3:37)

a. Participant Introductions

Chair Judd-Stein introduced Casey Clark, Senior Vice President of Strategic Communications from the American Gaming Association ("AGA"). Mr. Clark stated that his experience focused on the development of public service campaigns related to responsible gaming and research focused on sports wagering.

Chair Judd-Stein introduced Jordan Walton, the Executive Director of the Massachusetts Broadcasting Association. Mr. Walton stated his experience was with advocacy work and regulatory work in Boston, and that he was happy to discuss how gaming and advertising affected broadcasters.

Chair Judd-Stein introduced Sean McGrail, President and CEO of New England Sports Network (“NESN”). Mr. McGrail stated that NESN had a cooperative relationship with AGA.

Chair Judd-Stein introduced Cosmina Schulman, Senior Vice President of Strategic Broadcast and Digital Partnerships with NESN. Ms. Schulman stated that she had a background in advertising and regularly worked with regional sports networks.

Chair Judd-Stein introduced Marquest Meeks, Vice President and Deputy General Counsel with Major League Baseball (“MLB”). Mr. Meeks stated that he was responsible for state and government relations as well as domestic compliance. He stated he oversaw the MLB’s internal integrity initiatives. He stated that the MLB had experience with sports wagering in other jurisdictions and that the organizations wanted to ensure fans engage in sports wagering responsibly. He stated that fans that demonstrate problematic wagering behavior are referred to the National Council on Problem Gambling (“NCPG”) or other resources. He expressed an interest in discussing initiatives the MLB had taken to highlight their focus on sports wagering advertisements.

Chair Judd-Stein introduced Todd Brown, Vice President and General Manager at Boston 25 News. Mr. Brown stated that he had experience with local television stations, and that he had previously worked for a station in Las Vegas.

b. [Anderson & Kreiger: Setting the Stage- High- level guidance on constitutional limits, restricting advertising](#) (9:20)

Chair Judd-Stein stated that the Commission’s outside counsel would present on the limits upon restricting marketing in respect to constitutional limitations due to the First Amendment.

Chair Judd-Stein introduced Mina Makarious and Christina Marshall from Anderson and Krieger. Mr. Makarious stated that beyond his work for the Commission, he had experience with the First Amendment issues related to advertising for public entities, and that he was well acquainted with First Amendment jurisprudence. Ms. Marshall stated that Mr. Makarious would present the general outline of considerations and that she would discuss issues related to the First Amendment in the Communications Decency Act.

Mr. Makarious stated that the Sports Wagering Act tasked the Commission with regulating five categories in General Law Chapter 23N Section 4(c)(3). He stated that the five categories regulated were advertising, marketing, branding that is false, deceptive, or misleading; the use of unsolicited pop-ups or text messages directed at those on the Voluntary Self Exclusion (“VSE”)

list; advertising or branding the Commission deems unacceptable or disruptive to the viewer experience at sports events; advertising or marketing branding deemed to appeal directly to a person under twenty-one years old; and advertising on billboards or public signage that fails to comply with federal, state, or local laws.

Ms. Marshall stated that restrictions on advertising qualify as commercial speech, and were governed by the Supreme Court decision in *Central Hudson v. Public Service Commission*, 447 U.S. 557 (1980). She stated that the case found the government may restrict commercial speech if the interest served by the restriction is substantial, and the regulation must pass the balancing test of advancing governmental interest while not being more extensive than necessary to serve the public interest.

Ms. Marshall stated that under the unconstitutional-conditions doctrine the restrictions imposed in a government contract or permit are subject to the same First Amendment scrutiny. She stated that the government has an interest in preventing sports wagering by minors, and that the Supreme Court had accepted the government's substantial interest in reducing social costs of problem gambling, especially if it stems from pathological or compulsive gambling.

Ms. Marshall stated that the Communications Decency Act of 1996 ("CDA") allowed for some immunity to websites whose content at issue was based on information provided from another source. She stated that the trend in courts was to limit the availability of this immunity. She stated that the Supreme Judicial Court of Massachusetts found in *Massachusetts Port Authority v. Turo* that to the extent companies benefit from things published on their website the immunity can be limited, and that scrutiny would be applied by the courts.

Ms. Marshall stated that there was a pending case in the Supreme Court as to whether the Communications Decency Act applied to websites that utilize algorithms to make targeted marketing recommendations. She stated that the Supreme Court would hear the case in 2023, and estimated that the decision would be released sometime in June.

c. [Roundtable Framework](#) (19:31)

Next, Chair Judd-Stein asked the advertisement experts how sports wagering would affect national, regional, and local media markets. Mr. McGrail stated that the national level had already adjusted to sports wagering as it was legal in other jurisdictions. He stated that there may be an issue at the regional level, as the laws and standards differ between states. He explained that the broadcasters tended to treat advertising restrictions on a universal scale and implement them across the board.

Mr. McGrail stated that prior to sports wagering being approved in Massachusetts, his network engaged in campaigns related to gaming education and responsible gaming and had partnered with the AGA. He stated that the network ran over 4,000 responsible gaming advertisements in Connecticut in the past year, and that the same approach would be used in Massachusetts. He added that standards were set by the network to mitigate excessive sports wagering advertisements. Additionally, both the networks and the leagues had limitations on the number of sports wagering advertisements before, during, and after sports events. He stated that national

broadcasters had similar campaigns, and that 87 and 89 percent of the network's viewing audience was over twenty-one years old.

Chair Judd-Stein asked if there was an overlap of national, regional, and local networks and how they coincided. Mr. Meeks stated that the MLB and other sports organizations applied restrictions on the national level, and that affiliated clubs distributed the restrictions at a regional level. Mr. Brown stated that his network was at the local level in the Boston area, and that the top rule was to protect the broadcast license, so the station was mindful of content related to gaming, sports wagering, and alcohol. He stated that the leagues also limited what could be aired during broadcasts.

Mr. Walton stated that the relationship between local broadcasters and networks was unique, and that the local networks had little to no say over what was in the broadcast feed for sports events. He stated that the local broadcaster's affiliate networks had more control than the local networks.

Commissioner O'Brien asked what would occur if an advertisement sent nationally ran afoul of Massachusetts regulations. Mr. Brown stated that it would be hard to say at the local network level, as the local network could not override the affiliation agreement with Fox. Commissioner Hill expressed concern that a national feed with an advertisement that does not comply with Massachusetts regulations could get the advertisement through in the broadcast. Mr. Brown explained that local networks were essentially franchisees, and that the content of advertisements was not under the local affiliates' control.

Chair Judd-Stein asked for feedback on how the Commission could properly reconcile national and regional advertising campaigns for sports wagering. Mr. Clark stated that operators could buy available advertising inventory, and that standards were set by the leagues regarding the content of advertising. He expressed concern that there were not as many limitations placed on the times before and after the sporting event was active.

Commissioner Hill inquired if the MLB had run into this issue in any other jurisdictions. Mr. Meeks stated that the MLB had set internal guidelines for advertisements and broadcast partners, and they also must comply with the laws of their jurisdiction. He explained that there was a significant overlap in restrictions put in place by many authorities, so the league had not run into problems with this issue. He stated that the Commission's restriction on advertisements deemed to be "unacceptable" or "disruptive to the viewing experience" was unique, so the Commission likely would not have guidance from other jurisdictions. Chair Judd-Stein clarified the provision was for advertisements that were unacceptable or disruptive to patrons at a sporting event, not television viewers.

Ms. Schulman stated that restrictions on advertising already existed in regional sports networks and that sports leagues self-regulate very well. She shared that the National Basketball Association, National Hockey Association and National Football Association had restrictions similar to the MLB.

Commissioner Hill asked if a national commercial that would be limited by regulation could be replaced by a local commercial. Ms. Schulman stated that the regional network did not have the

same affiliation contracts as Fox 25, and that Mr. Brown would be more suited to answer this question. Mr. Brown stated that the local networks did not have the ability in the broadcast chain to run an advertisement “on top of” the national broadcast.

Mr. Clark added that the industry had worked together to set voluntary standards and restrictions for advertisements as well. Mr. McGrail stated that most regulations were ubiquitous across platforms, and that regional networks could respond and implement on a state-by-state basis. He stated that advertisements were reviewed at different levels and a process was in place to flag questionable advertisements.

Chair Judd-Stein stated that a national broadcast representative was not available today but confirmed that they had been asked to submit feedback to the Commission.

Mr. Meeks stated that the MLB guidelines did not permit sports wagering advertisements that feature people under the legal age to sports bet. Commissioner Maynard asked if that rule included athletes under the age of twenty-one. Mr. Meeks stated it had been a complete ban on those under the age of twenty-one, but within their collective bargaining agreement, players had certain rights to negotiate deals with sportsbooks. He stated that there had not been an issue with underage players to date, but it would be prohibited unless a rule change occurred to permit it.

Chair Judd-Stein noted that the Commission had expressed concern related to the frequency and intensity of advertisements and market saturation. Mr. McGrail stated that the sports leagues and broadcast partners were cognizant of the issue as well, and that only six advertisement slots were available during a three-hour baseball game. Mr. Walton stated that most broadcasters had internal rules, as they do not want to deter or lose potential viewers by inundating them with advertisements for a single industry.

Mr. Meeks agreed, stating that a balance must be maintained between fan engagement and saturation of advertisements. He added that the MLB allowed two additional sports wagering advertisements, if they contained responsible gaming messages. He noted that only legal sports wagering operators responded to investigation requests and explained that it was in the MLB’s interest to draw consumers to legal sports wagering operators.

Commissioner O’Brien sought clarification as to what qualified as a responsible gaming message. Mr. Meeks explained that no parameters had been set forward, but explained that the MLB reviewed the responsible gaming messages. Commissioner O’Brien asked how the advertisement was vetted. Mr. Meeks stated that the advertisements were reviewed through the league front office including the compliance team, business team, and legal team. Mr. Clark agreed that every sports wagering advertisement disseminated nationally should include responsible gaming messages and helpline resources.

Commissioner Hill asked how the networks would comply with not showing multiple sports wagering advertisements in a row with the potential of fifteen companies operating sports wagering business in Massachusetts. Mr. McGrail explained that advertisement inventory was offered to four operators per broadcast, and ads were evenly distributed throughout the

broadcast. He stated that NESN included at least one responsible gaming message in every professional sports broadcast.

Ms. Schulman stated that the network did not have enough inventory to allow all fifteen operators to advertise. Mr. Brown stated that news stories would cover responsible gaming when sports wagering was legalized as well.

Mr. Meeks reiterated that the MLB wanted to shift consumers away from the illegal market, and that MLB also had in-venue restrictions on advertisements. Mr. Clark acknowledged that illegal markets had a multi-decade head start, with no consumer protections or responsible gaming provisions.

Chair Judd-Stein asked if there had been innovations related to restrictions on advertisements from other sports leagues, and if there was collaboration amongst leagues on this issue. Mr. Meeks stated that the MLB was the first major sports league to partner with the NCPG and AGA. He stated that the various leagues collaborated, but approaches to advertising differ due to the difference in game length between the NBA and the MLB.

Chair Judd-Stein asked if there were innovations from other jurisdictions the Commission could implement. Mr. Clark stated that there was not always a technological solution to the issues, but that collaboration and education of consumers did work well. He stated there was an opportunity to use advertisement spots to disseminate responsible gaming messaging.

Commissioner O'Brien inquired about how to approach minors seeing online advertisements as opposed to traditional broadcasting commercials. Mr. Clark stated that operators held themselves accountable for all media, including digital ads. He further explained that targeted advertisements online made it easier to carve out minor and college-owned media assets. He stated that digital advertisements were included in the existing self-regulation in the industry.

Mr. McGrail stated that the NESN website had a rigorous signup process required for targeted digital advertisement. Chair Judd-Stein asked what percentage of advertisements were digital. Mr. McGrail stated that NESN ran multiple platforms in New England and all platforms were widely used. He stated that the guidelines and standards related to advertising were the same for each platform.

Commissioner Hill asked how the MLB and other sports leagues approached advertising on Facebook and other social media sites. Mr. Meeks stated that the restriction requirements applied across the board to all advertising media controlled by the MLB or affiliated clubs. He added that the MLB must approve partnerships between clubs and sportsbooks.

Commissioner O'Brien asked how networks planned to mitigate advertisement outside of sporting events broadcast runtime. Mr. Brown stated that the issue was self-regulated in broadcasting, but advertisements such as billboards or bus-boards could pose an issue. Commissioner O'Brien sought suggestions of groups the Commission could reach out to for further information. Mr. Brown suggested the Mass DOT Office of Outdoor Advertising and

Signage, but noted that there were a lot of advertising categories at play, and it could be difficult to find a regulatory body that addresses each of the aforementioned categories.

Commissioner Hill asked if there was a member of Fox from New York that could discuss the Commission's concerns related to advertisement. Mr. Brown offered to provide contact information for a member of the New York office of Fox. Ms. Schulman added that regional networks were committed to their regions and mindful of circulating responsible gaming messages.

Commissioner O'Brien suggested starting a dialogue with Mass DOT's Office of Outdoor Advertising and Signage. Chair Judd-Stein noted that the Massachusetts Department of Transportation had regulatory authority over billboards on the highway, and that they were currently addressing the issue of advertisements for other states' casinos, not inclusive of responsible gaming messages as required by Massachusetts.

The Chair and Commissioners thanked the roundtable participants for their time and contributions.

4. [Other Business](#) (1:42:00)

Hearing no other business, Chair Judd-Stein asked for a motion to adjourn.

Commissioner Hill moved to adjourn. Commissioner O'Brien seconded.

Roll call vote:

Commissioner O'Brien: Aye.

Commissioner Hill: Aye.

Commissioner Skinner: Aye.

Commissioner Maynard: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously. Meeting Adjourned.

List of Documents and Other Items Used

1. Notice of Meeting and Agenda dated November 9, 2022, revised on November 11, 2022
2. [Commissioners' Packet](#) from the November 14, 2022, meeting (posted on massgaming.com)