
Regulatory Oversight Podcast: Game On: Navigating the Legal Landscape of Sports Wagering**Host: Stephen Piepgrass****Guests: Gene Fishel, Michael Lafleur, Pat Moore, Jared Rinehimer****Stephen Piepgrass:**

Welcome to another episode of *Regulatory Oversight*, a podcast that focuses on providing expert perspective on trends that drive regulatory enforcement activity. I'm Stephen Piepgrass, one of the hosts of the podcast and the leader of the firm's regulatory investigations strategy and enforcement practice group. This podcast features insights from members of our practice group, including its nationally ranked state attorney's general practice, as well as guest commentary from business leaders, regulatory experts, and current and former government officials.

We cover a wide range of topics affecting businesses operating in highly regulated areas. Before we get started today, I want to remind all of our listeners to visit and subscribe to our blog at regulatoryoversight.com so you can stay up to date on developments and changes in the regulatory landscape. Today, two of my colleagues, Gene Fishel and Michael Lafleur, speak with two special guests, Pat Moore and Jared Rinehimer of the Massachusetts Attorney General's Office about how the gambling landscape has been changed by the introduction of legalized sports wagering in that state.

Pat Moore has served as the first assistant attorney general since January of 2023. Before that, he served as deputy general counsel to the 2020 Biden for President Campaign and associate counsel and advisor for presidential personnel at the White House. Jared Rinehimer is the division chief of the Data Privacy and Security Division at the Massachusetts AGs Office, where he's worked for over eight years. He first started out in the Consumer Protection Division as an assistant attorney general. I know we're all looking forward to today's discussion.

Gene Fishel:

Well, thank you, Stephen. It's a pleasure to be joined by my colleague Mike Lafleur as we tackle this topic of sports wagering and the legal and societal implications of it and particularly privacy concerns that are associated specifically with online sports wagering. We are very much excited to have our two esteemed guests from the Massachusetts Attorney General's Office, Pat and Jared, who I know are going to provide some valuable insight specifically on state enforcement. Gentlemen, welcome to the podcast.

Pat Moore:

Thanks so much for having us.

Gene Fishel:

Of course, over the last few years, legalized sports wagering has exploded in states across the country in specifically online sports wagering, and Massachusetts now is one of those states.

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The Massachusetts Legislature in August of 2022 passed the Massachusetts Sports Wagering Act, which legalized sports betting in the Commonwealth of Massachusetts, and now Massachusetts is one of 34 states to have legalized some form of sports betting.

And as part of the implementation of that law, the Massachusetts Gaming Commission is now issuing regulations to address things like licensing smartphone applications, licensing other digital platforms related to sports wagering, advertising restrictions, and also data privacy rules. And, of course, the Massachusetts Attorney General, as is the case with most attorneys general throughout history, have been involved in some form or another of gambling regulation. But with the passing of these new sports wagering laws, attorneys general certainly have new challenges in the enforcement of these laws, and I have new considerations in the safeguarding of consumer interests. So, with that, I'm going to kick it over to Mike to start off our discussion on this topic.

Michael Lafleur:

Thanks, Gene. Jared and Pat, whichever of you caress to take it, I'm curious for your thoughts on how legalized sports wagering has changed the gambling landscape from your point of view.

Pat Moore:

Sure, and thanks, Mike. I think it's changed the landscape in one way that's sort of technical. And then, one way, that has some pretty far-reaching impact. Until January of this year, you couldn't place a legal wager, at least in Massachusetts, on a sporting event. So this is now something that is on the menu of things on which gambling is legal in the Commonwealth, and I'm not sure that changed the landscape markedly. We have casino gaming in the Commonwealth. There are brick-and-mortar facilities where people can make bets. And I'm not sure it is materially different from a sort of protecting consumer perspective as to whether that bet is on an NFL football game or on a blackjack table or at a slot machine.

But then, in March of this year, all part of the same law, it just took a little longer to implement it, the state allowed online sports gaming. It can be online in the sense that people can bet from their computers, but most people are doing it from their smartphone. And so it took an activity in Massachusetts that wasn't small but wasn't pervasive needed to be done in person. It took that activity and made it basically the largest new consumer product available in the Commonwealth this year. Well, over a million people probably by the time we're talking now, over one and a half million people have a sports gaming app on their phone and are wagering in the state. You don't need to go to a casino.

The friction that is involved in having to show up in person to place a bet is now gone, and the application operators, consistent with their business practice, try to make it as easy as possible for you to make a wager on your phone, which you can do from your bed or from your couch or from your office desk. Hopefully, not in a state office building, but in any number of settings. At the family dinner table you can place a bet. And so the broadness of the availability, the mass appeal of the product, and the lack of friction involved in using it is something that our state hasn't experienced before period, right. And something that most states, until the past few years, also haven't experienced before because online gambling, by and large, was illegal.

Certainly, online gambling was against federal law where it was wagering on sporting events, and now we have almost three dozen states where you can place a bet on a game or some subset of a game right there on your phone. The lack of friction associated with that and the breadth of the appeal is something that is wildly new and certainly attracted our attention as an AG's Office because of our consumer protection authority and what we felt was a potential exposure for consumers if it was not something that was dealt with actively and on the front end.

Michael Lafleur:

Have you seen or do you anticipate a increase in the number of users of the digital wagering platforms under the new law? Has there any effort been made to sort of track increase in use, whether anecdotally or more formally?

Pat Moore:

The Gaming Commission in the state, which regulates licensed gambling operators, collects data on the number of users. So we get monthly reports as to the number of users, and there was a substantial uptick rate at the beginning of online sports wagering, which was rolled out to coincide with the March Madness NCAA men's and women's basketball tournaments. So there was some early adoption associated with that through the basketball and hockey seasons.

And then, there was another spike in adoption with the beginning of the NFL season in the fall. These are very rough numbers, but it was roughly a million people signed up in the spring, and now we're at roughly a million and a half people. How active that use is depends on what sports are happening. It's more active during the playoff periods of popular sports and then most active during the NFL football season. I'm not familiar with the particulars of other states, but I expect that tracks pretty closely as well.

Michael Lafleur:

Is there any indication that's a larger number of people that are using the digital platform to place sports wagers than were previously visiting brick-and-mortar casinos?

Pat Moore:

We only had basically a three-month period to try that out in Massachusetts. It was rolled out functionally, brick and mortar and digital at the same time. We have much better data as to who's gambling online because you have to create a profile, and the operators track you, and they've got to report that data to the Commission.

You're not trapped if you walk into a casino. At least by the state, you're not. So the exact numbers that are associated with that were not certain. I think it is very safe to say that exponentially more people are betting online than are doing so in casinos. The monthly reports show the handle that is bet online versus bet in person at casinos and is many multiples higher online.

Gene Fishel:

Thank you, Pat. That actually leads into one of the next areas we want to cover and that's the relationship between the smartphone technology and these wagering apps. You mentioned the data is tracked from users of these applications. Can you guys elaborate on what kind of data these applications are collecting from consumers who are using this?

Jared Rinehimer:

I want to back up a second just to highlight one of our concerns around the privacy and the data that's collected. I think a lot of people think about privacy as this right to have people know information about you or not know information about you, right, to collect that data specifically. I think we think of it as a little bit broader than that. It's really about the right to know what information about you is being used and what is being used to make decisions about. And so, in these contexts, one of the big concerns is that because this platform is on a phone, on the computer, there's a lot of information that could be collected by the operators of the platforms, right.

Which bets you make, which things you scroll by, or which things you scroll to and spend a few seconds looking at, which sports teams you're interested in, which types of sports you're interested in, what types of bets are interesting to you. And our real concern for the privacy perspective here is how that information then gets transformed into what the platform does and responds to it. The operators have a business and their business is entertainment, and it's to get people to make bets, right. The bets are part of the way that these operators make money. And so they have an interest in trying to get people to place more bets. And any information that could be used to incentivize people to make more bets may end up being used. And so I don't know if we can... we can't give you a specific answer if like all this data is used or not used.

But I think it's information that the Commission ought to know when they are reviewing what the gaming operators are doing so that it's really transparent as to how specific bets are advertised to people, how specific sports are advertised to people, and also just generally how advertising is done outside of the context of the apps, right. When you might get a notification sent to your phone or when you might get reminded that a game is starting, all those sorts of things are things that I think are worth knowing about, and it's worth knowing what circumstances cause those things to happen. That, I think, is where we're coming from with this.

Gene Fishel:

Those are great points. A follow-up question along those lines, and I don't know if you all know technically how the applications work. But I'm really curious as to the extent these applications are scraping data outside of their application from other areas, say, of a smartphone to compile that data. Do either of the extent to which that occurs because it seems like along the lines of what you were saying, Jared, that would raise some serious privacy implications. I'm more wondering as to the operation of these applications and if they are in fact scraping data.

Jared Rinehimer:

I think, in recent years, both Apple and Android have really tried to do more to inform consumers about the type of information that apps might be using about them that they didn't know about in

advance, right. So Apple in particular has really put out a lot of notices about the types of information that's coming off of people's phones. I can't say that there's anything that would tell us whether these operators are scraping information that people might not be aware of off of their phone that isn't involved with actually using the app itself.

The operators are probably getting a lot of information from the apps themselves. There's a lot of information to be had from the way that you use their platform and that I think is really valuable. There's also a lot of information that's just required to be collected as a part of signing up for a sports betting account. You need to give your social security number to verify that you are who you say you are. You need to give that to do a background check. So there's a lot of information that needs to be given in advance, and I think the operators are sitting on a fair amount of it. We just want to know how it's being used.

Gene Fishel:

Yeah. And I would presume as part of that information, not only your social security number, they need some sort of financial information because these are monetary transactions. I presume consumers are giving credit card or something like that.

Jared Rinehimer:

Yeah, Massachusetts credit cards are not allowed to be used for sports betting purposes, so it's typically done through a bank account, is my understanding. But yeah, there is a bank account that needs to be set up in order to fund the sports betting account in the first place to make bets.

Gene Fishel:

Right. And so my last question on this information that is collected is age verification. I presume you have to be a certain age under the Massachusetts law to wager. Any idea how these gaming companies are going about verification of their users?

Jared Rinehimer:

Yeah. You do have to be 21 to use them. There are some external third-party verification services that the operators use to verify that the information supplied is accurate and they have submitted that information to the Gaming Commission, so I think it may be accessible that way. But yeah, they do use these services to verify that info.

Michael Lafleur:

I think one of the things that you've been talking about so articulately, which I appreciate, is the themes around why this new market is different than what came before, but perhaps Jared or Pat, one of you wouldn't mind putting a finer point on that.

I think Pat, you went into it a little bit before, but what is different about the legalization of sports wagering? Is it only the introduction of the smartphone, digital platform, smartphone apps? Is that the most significant aspect, the new thing that potential for expanding the consumer base, if you will? Or are there other aspects of this new market that are also different from what came before?

Pat Moore:

It is an enormous new market, and it's an enormous new market about which we don't have a lot of experience as a country. There is some experience in Europe, some experience in Australia experience that is not necessarily positive in terms of addictive use, but the sports that are being wagered on are quite different too. And I think that relates to another way that this market is different. So when the operators and other advocates for legalization of sports wagering more in state Houses throughout the country over the past handful of years after the Supreme Court decision a few years ago, they argue, "Look, people are betting on sports to the tune of billions of dollars.

There is a black market. People are doing it in ways that are harmful to themselves. There's no tax revenue that's collected. There are gambling addiction issues, and there's no real public benefit. So why don't you, states, take this huge black market that we all agree exists and make it a legal and regulated market." And so, that's fine as far as it goes, but if you probe at that a little bit, there was a black market. We're in Boston, right. You could go to a neighborhood bar, in all likelihood, over the past number of years and bet on the Patriots game. You might even be able to bet on the Red Sox game. You couldn't bet on whether the next pass was going to be complete or incomplete, and you couldn't bet on whether the next batter was going to get a hit or not. You can do those things now, right.

So these in-game so-called prop bets and what will happen next in a game is a markedly different thing than exists. It's much more instant in all of the data on addiction. It's much more like a slot machine effect than it is gambling on a game. Like when I was younger and I was going to Las Vegas, my dad was like, "Hey, bet on sports because the game takes three hours. There's only so much money you can lose during those three hours." That's not true if you're betting on every pass or every shot or every bat in a game. So you're taking that, and you're putting it on a phone. You're eliminating what used to be friction in a system. You're introducing a whole lot of shorter-term bets that the data suggests are more addictive.

You're doing that in the United States with sports that are particularly well-attuned to those types of bets. Soccer, you can't bet on whether the team's going to score on the next drive or whether the next pass is going to be complete or whether the next at bat is going to be successful. It's a lot easier to do that in football, in baseball. Even there are bets on who's going to make the next run in basketball. And the operators are all looking to make all of those experiences more integrated into the watching experience. So you could watch in a number of years from now on a smart TV and basically tap if you think the player's going to make the shot that they're about to take or not.

And those are all new flavors of bets. They're all much shorter in time, and now there's no friction. You can do it from your couch, right. And all of this what it all looks like. We don't have a great degree of information. We don't have a lot of experience in the United States. We don't have a lot of experience elsewhere, and we're still at the forefront of researching how addictive that is and what are we going to do about it. At the same time, Gene and Jared were just talking about the data that's collected. Well, all of that spins off a ton of data, and that data actually could be used for positive ends too.

One of our goals as an AGs Office is to make sure that it's these operators now can tell with some degree of specificity whether their patrons are in a bad spot, right. Are you chasing

losses? Are you depositing money into your account? Are you routinely overdrawing your account? Are your bets escalating? All of those things produce markers to demonstrate that you might be in a problem period or might be having a problem with gambling addiction. New Jersey and Colorado are trying to figure this out. Everybody's at the front end of this, trying to figure out how that data can be used to actually stop problem gaming.

Because the operators say with some degree... I do not want to suggest that we take them at face value on this, but with some degree of persuasiveness, that they don't want problem gambling either. They don't want people who are addictively using their platform. I think the way we might define that, and they might define it, would differ substantially, but we want to hold them to that. So use the data you have to a good ad. One of the things we as an office are aware of different design choices in these apps in any number of consumer-facing applications that are made to addict people to the app. And we want to make sure that those design choices are not being made in this context where you've got gambling, which is addictive, to begin with.

If you're trying to addict people to the app or draw them back to it, that's where our antenna are up, and that's where we've paired with the Gaming Commission to adopt some regulations to prevent what we think is problematic behavior. And we don't want to be living in a world where you have people who are interested in sports gambling but do it for a time, try to put it aside, and who are being pushed, notified or alerted back into, "Hey, the game's about to start. You used to bet on these games. Why aren't you betting now?" With all the data, they know, right, if you are a sports gambler.

The platform knows if you're watching a particular team and if you like to bet on that team or that particular sport, that data can be used to get you to go back and back to the platform. And there's ways to do it that are commercially responsible, and there's ways to do it that foster addiction. We need to make sure that the operators are only in the first and not in the second. While, at the same time, using all the data that they do have to act responsibly and to foster responsible conduct and perhaps to intercede where there are all these indicators that a problem may be occurring.

Jared Rinehimer:

From the security aspect, I think there's a lot of information that these platforms are getting. And so our view is that these entities are subject to the same data security laws that apply to every other entity in the Commonwealth, and they're collecting really sensitive information like we're talking about social security numbers, bank information. They're collecting location information because they have to use that to verify that the person is located within Massachusetts. And so they really need to have their security really, really top-notch because we've seen a lot of incidents happen in the last two years, right.

We just need to make sure that there's low risk of that type of information getting released. It's also very sensitive information, right. It's not something you go and tell everybody you know about. "Hey, I went and bet this much money on the Patriots winning." You might tell some of your buddies, but it's not like you want that released everywhere to your workplace or any other place that might see that information should it be breached, right. So these things are sensitive and personal to some degree, and so I think that council's in favor of having a lot more security concerns. As to the privacy concerns, I think that also goes the same way, right.

These platforms are, in some sense, very personal. You are interacting with the app. You are betting your hard-earned money to try and win some more, and there can be a lot of emotion tied up with that, and there can be a lot of feelings tied up with that. And so it's really important to make sure that information stays private. And so I think it's really important to think about those things. The Gaming Commission also has tried to put in a privacy regulation, and that is in the process of being implemented right now.

And that privacy regulation goes beyond what we require as a general matter in Massachusetts. And we think it's great regulation to habits effective and goes towards addressing a lot of these concerns by talking about the nature of consent, talking about breach reporting, talking about what information can be used for, and talking about the type of reporting that has to be done by the platforms to the Gaming Commission. So all of those things, I think, are great and help. Just make sure that the operators are working within the confines that people really expect of them. People come to these apps, and I think, sometimes, think about it as if they were walking into a casino and trying to place a bet, but there's a lot more information involved than that, and so we want to try to protect that.

Gene Fishel:

And I would presume there are a lot of Massachusetts laws that might intersect with the wagering, whether it's for each notification, as you said, Personal Information Protection Act, Consumer Protection Act. So I would imagine that there are lots of avenues for these gaming apps to consider and lots of laws they must comply with.

Jared Rinehimer:

Yeah, it's a highly regulated industry, and I think that's for good reason. There can be a lot of harms that can come to people from... They're using their own money to do these things, right, and you can lose a lot of money doing this. And so it's one of those things that probably should be watched closely to make sure that people are protected.

Michael Lafleur:

To pick up on a point that you all have made just really remarking, I suppose, on the fact that we are speaking with the first assistant of the Massachusetts Attorney General's Office and the chief of the Data Privacy and Security Division there.

In comparison to what had come before, again, back to the point about this is an emerging new market, an emerging perhaps social experiment that seems to be occurring or it is occurring state by state and really under the purview of state attorneys general, it has occurred to me anyways that one of the ways that this could be different than what came before and has already sort of exemplified in the fact that there is now the Gaming Commission promulgating data privacy rules and privacy regulations and things like that, where before gaming enforcement was perhaps more focused on activities occurring in a physical premises whereas I'm not aware of, at least in Massachusetts, any previous consumer protection enforcement activity.

Perhaps there was some focused at gaming. I'm wondering if you all could speak to whether and how the opening of online sports wagering on late sports betting as a state law matter could

change the nature of how the Attorney General in Massachusetts or elsewhere conducts gaming enforcement.

Pat Moore:

It's an interesting question, Mike. I think with the legalization of gambling in the Commonwealth, which is about seven years old at this stage. It has not been a long time since gaming has been legal in more than theory in the sense of the licensees have actually built and opened their casinos. The enforcement of the AG's Office was mostly around breaking up illegal gambling rings. This sort of rings of bookmakers that we're talking about. When that's done at a large scale often has substantial overlap with organized crime and presents a serious public safety concern for the Commonwealth, and our office has stepped in and broken up those gambling rings from a criminal enforcement perspective.

Sports gaming and the fact that it is so widely available in such a consumer product, I think, opens avenues for consumer protection-oriented enforcement in a number of different ways. There is a lot of marketing of these applications to the general public. There is marketing that sometimes suggests that they're risk-free in nature, which they're not. There is sometimes marketing that tries to leverage the appearance of expertise in a way that we wouldn't really allow in any other setting.

So, for example, you'll have prominent athletes or prominent former athletes who are announcers and who are known by consumers as announcers with perceived expertise and even perceived inside information recommending bets, right. That's not something that we allow in the securities market, for example, and we're dealing with potentially less educated on that type of issue, consumers. And so that struck us as something that unless we stand up and protect consumers, there might be after-effects that we're all going to have to address as the social ills from problem gambling are going to be born by all of us. We'll see as that goes on.

That operators are sort of all scrambling for market share at this point, and they soon will be working to basically deepen the market share that they have, and that is another time where we may see some irresponsible conduct where we can stand up and prevent that. We also though have a number of civil tools at our disposal. The operators and we're going to hold them to very high standards, which I hope is clear from our comments here, and we've said that directly to them, but they pay a lot of money to the Commonwealth. They pay licensing fees. They pay tax revenue. It is not up to the Attorney General's Office whether we should have legalized sports gaming.

That was a policy decision made by the legislature, and we are here to implement the policy and to enforce the law. They, by and large, are responsible actors. If they're not, we're going to hold them to account. We're aware, though, that there's an enormous black market as well of folks who aren't licensed, who aren't abiding by the various regulations on data privacy and consumer protection that the Gaming Commission and that we are demanding of the operators. We've got these black market operators who don't do any of that, right, and there needs to be civil enforcement around that now. It's going to be different. It's going to look different than breaking up gambling rings looks 20 or 30 years ago.

Many of the operators are offshore, so we have to do bank-shot things like work with ISPs to get the sites taken down or work with credit or debit card processing companies to make sure that

they're processing transactions that are only with legalized operators. But there's a civil enforcement avenue there that we need to explore to be fair to the operators of whom we're asking a lot and that we need to explore to be fair to consumers. We do think that there's a lot of risk in this space. We think that it can be done responsibly. We're demanding that licensed actors do it responsibly, so we've got to make sure that those unlicensed actors are not permitted to operate without consequence in the Commonwealth.

Michael Lafleur:

Thank you so very much to you both. This has been a very interesting conversation. We appreciate your time and look forward to seeing what Massachusetts does as legalized sports wagering continues to be rolled out in the Commonwealth.

Stephen Piegrass:

Gene and Mike, thank you for sharing your conversation with Pat and Jared. I know, like me, our listeners enjoyed your candid remarks and valuable insights. I want to thank our audience for tuning in today as well. Please make sure to subscribe to this podcast via Apple Podcast, Google Play, Stitcher, or whatever platform you choose to use. We look forward to having you join us again next time.

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