



Testimony Before Special Committee on Federal and State Affairs

December 5, 2018

Scott Ward, Orrick Herrington & Sutcliffe

On behalf of

Major League Baseball, the National Basketball Association, and PGA TOUR

Chairman Estes and Members of the Committee,

My name is Scott Ward, a partner with the firm Orrick, Herrington and Sutcliffe. I am here today as national policy counsel for Major League Baseball, the National Basketball Association and the PGA TOUR. Thank you for the opportunity to speak today.

We welcomed Senate Bill 455 and House Bill 2792, introduced this year in Kansas. These bills included many of the safeguards sought by the sports leagues to help us protect our games, and also recognized that in a regulated sports betting market, the leagues are the entities creating the games upon which the entire enterprise relies. Although there were items in those bills we wanted changed, we remain supportive of the concepts in those bills and look forward to working with the legislature to adopt sensible sports betting legislation in 2019.

I have attached the testimony of the NBA and MLB given at Kansas hearings during the 2018 session for your further review, and to provide our feedback on specific aspects of the introduced bills. Looking forward to 2019, the NBA, MLB and PGA TOUR all encourage you to include the following five principles into sports betting legislation in Kansas. The principles are all aimed at encouraging and incentivizing the collaboration and cooperation among the regulators, the gaming operators, and the leagues that will be needed to ensure the creation of a successful, robust, and safe regulated sports betting market in Kansas.

Integrity Provisions. First, any legislation should include provisions that enable regulators and sports organizations to detect and prevent improper conduct relating to sports betting. To achieve this goal, legislation should require operators to provide real time betting data to the regulators and leagues for purposes of monitoring for suspicious betting activity. It is crucial for the leagues to have access to this data for monitoring

purposes. While we hope the casinos and the lottery here in Kansas will monitor betting inside the state, the leagues are the only organizations currently situated and motivated to monitor for suspicious activity that crosses state lines. What might be viewed as *de minimis* activity here in Kansas could actually be evidence of a larger problematic pattern when analyzed alongside activity in other states. But with no one combining data from multiple states, the ability to spot suspicious activity that crosses state lines would be lost. We want to work with regulators and operators here in Kansas to put ourselves in the best position possible to spot and stop bad actors that may be working in multiple states.

Reasonable Wagering Restrictions. Second, legislation should allow the prohibition of certain types of bets that carry an unacceptably high risk for manipulation or corruption. For example, a bet based solely upon individual conduct – when a player will pick up his first foul, or what the first pitch of a baseball game will be – is far more susceptible to corruption than a more typical bet on a game’s outcome. To be clear, the leagues do not envision acting to prohibit a significant number of wagers, and we agree that the regulator, not the leagues, should be the ultimate decision maker regarding what bets are permitted. But the leagues do need a voice in that process to suggest when particular types of betting have become too risky.

Official League Data. Third, legislation should require operators to use official league data. To be clear, we are not suggesting that operators must use official league data to settle bets on the outcome of a game or the type of over/under bets that constitute the vast majority of betting volume in Las Vegas right now. We are focused on the need for official league data to settle in-game bets, or bets that occur and are resolved based on discrete events during a game. If operators are permitted to use unofficial data to settle these bets, the potential for conflicting or inaccurate resolution of bets becomes significant. These types of bets are the future of sports wagering in the United States and are very popular with consumers. Data sourced directly from the leagues is collected and distributed in real time, increasing the window for in-game betting and decreasing the risk of incorrect results for consumers. The alternative to official data is pirated data: data collected through web scraping or obtained covertly in stadiums. Pirated data collected in stadiums is collected and scored on an ad hoc basis, and is far less reliable than official data, which is assembled by highly trained league employees. Requiring all operators to use a unified, official source of data for in-game betting protects consumers, creates a superior betting experience, and will generate more revenue for betting operators and the State.

Mobile Betting. Fourth, any legislation should include a robust mobile betting option within the state of Kansas. Currently, most illegal sports betting occurs online and via mobile apps; if we truly want to shut down the illegal market, the regulated market will

need a mobile option in order to bring bettors from the illegal to the legal market. Without a mobile option, Kansas bettors who currently use their phone to place bets from the comfort of their couch – perhaps not even realizing it is illegal – will continue to do so, and will not participate in the regulated legal market. In mature betting markets in Europe and Asia, a majority of all betting is done online. That will be true here in Kansas as well. Mobile betting will both help to shut down the black market and also capture significantly more revenue for betting operators and the state.

League Compensation. Fifth and finally, legislation should provide a modest 0.25% royalty to the leagues on the amount bet on their contests. That is twenty-five cents for every \$100 bet, paid by the operator to the league whose games upon which the bets are made. Compensating sports leagues draws upon precedent from both U.S. horse racing and international sports betting. And this royalty not only compensates the sports leagues for their significant investments in the games themselves, but it also incentivizes the leagues to engage in Kansas to help promote and grow the overall sports betting market. We firmly believe that the leagues' engagement will ultimately create more revenue for Kansas and operators. Assuming joint efforts by sports betting operators and the leagues to promote and support the Kansas sports betting market increases the handle as little as 5% – a very conservative estimate – the royalty would pay for itself. This is a win-win situation.

Thank you again for the opportunity to testify here today. We look forward working with the legislature, the lottery, and the sports betting operators to ensure that sports betting in Kansas is safe and successful. I would be happy to answer any questions.



Testimony of Bryan Seeley
Senior Vice President & Deputy General Counsel - Major League Baseball
Kansas Legislature, Senate Federal & State Affairs Committee
Hearing on Senate Bill 455, April 4, 2018

My name is Bryan Seeley, and my work at Major League Baseball focuses on investigating and combating threats to the integrity of the game. One of these threats comes from sports betting. I appreciate the opportunity to share Major League Baseball's views on Senate Bill 455, which, although a work in progress, contains many important regulations and consumer protections that are essential to a legal sports betting framework. We support the framework of SB 455, with the caveat that we are still working with stakeholders to create a more comprehensive and effective bill in regards to several key areas of concern, as expressed below.

Major League Baseball has an obligation to our fans and our sport to ensure any sports betting law does not damage our game. To manage the significant integrity risks posed by legalized sports betting, states must enact comprehensive regulations requiring airtight coordination and partnership between the state, the casino operators and the sports leagues to closely monitor wagers and enforce regulations to prevent potential manipulation. I am going to detail some of the areas of concern, and how they can be comprehensively addressed through policy.

Our ability to protect our sport from undue influence and manipulation is only as good as the quality of information we receive. One of the primary benefits of a regulated sports betting industry would be increased transparency into what is currently a black box – the betting data in the illegal market. This would provide access to billions of points of data, which could be aggregated, analyzed and acted upon in real time to protect games from outside influences. To ensure this data is available to be put to proper use, SB 455 requires operators to quickly share data with sports leagues, cooperate with league investigations, and report abnormal betting activity.

Certain types of betting pose greater integrity risks than others. For example, bets on the outcome of a single, controllable act – a bet on who commits the first foul in a basketball game or if the first pitch of an inning is a ball or a strike – are more susceptible to outside influence. The sports leagues know what types of betting impose the greatest integrity risks; therefore we must be able to work with regulators to opt out of the forms of betting that are problematic. This is one area where SB 455 is currently insufficient to protect the integrity of sports leagues, and as such, Major League Baseball cannot support it as currently written. However, we hope to work with the legislature to address this issue.

It is also critical that sports betting operators rely on verified, uniform sources of statistics and data. Sports betting has evolved far beyond simple wagers on the final score of a contest.

Today, in-game bets – on anything from the number of runs scored in an inning to the result of a specific at-bat – are the fastest-growing form of sports wagers. Imagine some operators marking a batted ball as a hit and others scoring it as an error, followed by a cascading series of bets reliant on that original subjective outcome. The possibilities for real or perceived manipulation are innumerable and would undermine the public trust in sports betting, and the sports themselves. The only way to ensure uniformity, fairness and accuracy of outcomes is to require – by statute – that all sports betting operators use the official and indisputable data and statistics provided by sports leagues like Major League Baseball. While SB 455 contains such a requirement, we must address this point with greater specificity for the benefit of both state regulators and sports leagues.

Any sports betting legislation should also recognize that, without the professional sports leagues, who make massive investments to create a compelling product, there would be no sports betting. Sports leagues assume all of the risks associated with sports betting, and the damage from even a hint of scandal will hurt the sports leagues far worse than anyone else. It is therefore reasonable to compensate the sports leagues through the mechanism provided in SB 455, which gives sports leagues a 0.25% share of sports betting dollars as consideration for the leagues’ investment to create a compelling product, the risk to reputation and integrity that accompanies sports betting, and the expenses the leagues will incur to rigorously protect and police integrity. Remember, greater sports betting volume, along with a massive increase in the amount of data available to review, means vastly higher costs to the sports leagues to ensure the integrity of sports and protect leagues’ hard-earned reputations. Unfortunately, SB 455 also contains a provision that further limits the compensation a league may receive, which we do not support.

Major League Baseball also supports the additional consumer protections in SB 455, which include age restrictions, reasonable advertising restrictions such as prohibitions against advertising geared towards minors, and self-exclusion programs for problem gamblers.

Lastly, sports betting must be mobile. Without legal online products, the illegal market will remain nearly as strong as it is today, as many consumers will simply continue to place their bets instantly, and illegally, on their phones as opposed to traveling to a casino. Legal sports betting must be a modern product, which means mobile options, otherwise it will completely defeat a fundamental purpose of legalization. On this front, SB 455 is an effective and forward-thinking bill.

Senate Bill 455 contains many firm regulations that meet the high standard necessary for an effective sports betting law. While some language still requires work, we look forward to working with the Kansas Legislature and state agencies to perfect a bill that will make Kansas a leading example of responsible sports betting regulation in the country.



National Basketball Association

**Statement of the National Basketball Association
Kansas Legislature, Senate Federal & State Affairs Committee
Hearing on Senate Bill 455**

April 4, 2018

Thank you for the opportunity to share the views of the National Basketball Association on Senate Bill 455, which creates a regulatory framework for sports betting in Kansas. We are pleased that SB 455 contains strong consumer protections as well as safeguards that will enable sports governing bodies, including the NBA, to protect the integrity of our competitions in an environment where sports betting is legal. Although there are certain provisions of the bill that require further refinement, we generally are supportive of the approach reflected in SB 455.

The NBA's position on sports betting has evolved in recent years. For decades, the NBA, along with the other major professional sports leagues, opposed the expansion of legal sports betting. The leagues were instrumental to the passage in 1992 of a federal law – the Professional and Amateur Sports Protection Act, or "PASPA" – that prevented the spread of state-authorized sports betting beyond Nevada and a handful of other states.

Despite this prohibition, illegal sports betting remains widespread in the United States. It is impossible to measure the amount of betting with any precision. But many experts estimate that illegal betting in the U.S. is in the range of \$100 to \$200 billion per year, and some think the number is even higher. These bets are taken in a black market that does not support local businesses, cannot be taxed, and most important from our perspective, cannot be monitored or regulated.

We have studied these issues at length. Our conclusion is that the time has come for a different approach that gives sports fans a safe and legal way to wager on sporting events while protecting the integrity of the underlying competitions.

As we are all aware, the U.S. Supreme Court is currently in the process of deciding a case that could narrow or invalidate PASPA. And states like Kansas and others have reacted by moving forward to discuss and advance new laws that could immediately thereafter permit legal sports betting. We have opted to engage in these discussions to ensure that the perspective of sports leagues is represented.

For these reasons, we support the general framework included in SB 455, which addresses what we consider to be the five key components of sports betting legislation:

- First, it enables the detection and prevention of improper conduct relating to sports betting. Among other things, SB 455 includes mandatory alerts by gaming operators of unusual betting activity; centralization of betting data to facilitate monitoring of bets across operators and jurisdictions; eligibility requirements to prevent insiders from placing bets on their sports; and enhanced civil and criminal prohibitions to prevent betting-related corruption.
- Second, SB 455 recognizes that sports leagues provide the foundation for sports betting while bearing the risks that sports betting imposes, even when regulated. Without our games and fans, there could be no sports betting. And if sports betting becomes legal in Kansas and other states, sports leagues will need to invest more in compliance and enforcement. To compensate leagues for the risk and expense created by betting, and the commercial value our product creates for betting operators, we believe it is reasonable for operators to pay each league a percentage of the total amount bet on its games. This approach draws from how sports betting is legally regulated in some other international jurisdictions, like Australia.
- Third, SB 455 makes an effort to address leagues' ability to restrict wagering on their own events. Certain types of bets are more susceptible to manipulation than others, such as whether a player will commit the first foul of the game. Different sports will have different types of bets, and so each league needs the ability to approve the types of wagering that are offered.
- Fourth, SB 455 includes important consumer protection requirements. These include a rigorous licensing program to ensure operators are properly vetted; age restrictions; self-exclusion programs and other measures to address problem gambling; and regulations of gambling advertising to protect vulnerable persons. These also include the use of official league data by gaming operators to ensure the accuracy and consistency of betting outcomes.
- Finally, SB 455 appropriately authorizes betting on internet and mobile platforms. If betting were limited to land-based locations, many consumers who live hours away likely would continue to bet illegally through offshore websites and other illegal channels.

Each of these elements is critical to the NBA's support for a sports betting bill. The NBA's first and paramount responsibility is to protect the integrity of professional basketball and preserve public confidence in the league and our sport.

While we are generally supportive of the framework of SB 455, there are certain provisions that require improvements. For example, while the bill authorizes the racing and gaming commission to restrict certain bet types, leagues must be given

a greater voice on this subject. In addition, the bill currently limits the amount of compensation a sports league may receive based upon the revenue that sports betting operators retain after winnings are paid. Such a linkage could create a perception of a conflict of interest for sports leagues, since a league potentially could be paid more when consumers lose bets. For this reason, compensation to leagues should be based solely on a percentage of the total amount wagered, as is the case in HB 2792. We will work with the relevant stakeholders to incorporate modest changes in this provision and other limited areas, such as the official data requirement.

Subject to these additional changes, we are supportive of the framework of SB 455, which creates a strong regulatory structure with protections that are critical to protecting the integrity of sports. We look forward to continuing this discussion. Thank you again for the opportunity to share our views.