

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

TRIAL COURT DEPARTMENT  
SUPERIOR COURT  
DOCKET NO.

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PUBLIC HEALTH ADVOCACY  
INSTITUTE,

Petitioner,

v.

MASSACHUSETTS GAMING  
COMMISSION,

Respondent.

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**COMPLAINT**

1. This is an action seeking relief in the nature of mandamus and a request for declaratory relief and order requiring the Massachusetts Gaming Commission (“Commission”) to immediately comply with its obligations under Section 97 of the 2011 Expanding Gaming Act (“EGA”), St. 2011, c. 194, or in the alternative for a declaratory judgment that the Commission has failed to comply with its obligations under Section 97.

2. Section 97 of the EGA (“Section 97”) represents a first-in-the-nation commitment to compile critical data about how gambling customers are put at-risk for harm by specific gambling products provided by casinos.

3. Specifically, Section 97 contains a mandatory provision that requires the Commission to collect from gaming licensees, and to provide to researchers, data of vital importance. The explicit statutory purpose of providing this data to researchers is to more effectively regulate gambling in the Commonwealth by: (i) understanding the public health impact

of licensees' gambling products, (ii) identifying problem gaming, and (iii) developing evidence-based strategies to reduce problem gaming and the harm it causes.

4. The legislature signed the EGA into law over a decade ago. Since that time, multiple licensees have begun to operate casinos within the Commonwealth. In addition to generating millions of dollars in revenue for themselves and the Commonwealth, the licensees have generated substantial data concerning their gambling customers' gaming transactions and habits.

5. However, despite the fact that: (i) the Legislature enacted the EGA over 12 years ago, (ii) at least one license has been collecting player data since 2014, and (iii) all three existing licensees have collected this data since 2019, the Commission has failed to comply with its unambiguous statutory obligation to obtain this data from the casinos and provide it to qualified researchers.

6. In fact, even though the first casino licensee commenced operations in 2015, the Commission affirmatively decided to not implement its obligations under Section 97 until all three of the existing licensees began operations—an event that did not occur until 2019. And since the licensees began operations, the Commission has still utterly failed in its obligations under Section 97, and has not to date either collected the player data contemplated by Section 97 or made any Section 97 data available to researchers.

7. Due to the Commission's longstanding failure to comply with its mandatory obligation to collect and provide this data to researchers, the Petitioner and the public have been denied important evidence for understanding and developing strategies to reduce the negative health impact caused by the licensees' products to certain gaming customers. In turn, the Commission has deprived the Legislature—as well as the Commission itself—of critical gaming

data and analyses that these bodies could use to better regulate licensees' products to minimize the health risks they pose to the public.

### **THE PARTIES**

8. The Public Health Advocacy Institute ("PHAI") is a non-profit organization that operates in the Commonwealth and seeks to reduce the harm to public health resulting from licensees' gambling products by obtaining, reviewing, and analyzing the data that Section 97 obligates the Commission to collect and provide to qualified researchers. PHAI is located in Suffolk County.

9. The Commission is a commission for the purposes of G.L. c. 12, § 3. As a commission, it promulgates regulations to implement certain statutes that are passed by the Legislature and signed into law. The EGA is one such statute. The Commission is located in Suffolk County.

### **VENUE AND JURISDICTION**

10. Venue is properly laid in this Court pursuant to G.L. c. 214, § 5 and G.L. c. 223, § 1.

11. Petitioner seeks an order of mandamus requiring the Commission to comply with its unambiguous statutory duties under Section 97 to provide qualified researchers with gaming customer behavioral data gathered from gambling licensees.

12. In the alternative, Petitioner seeks a declaratory judgment from this Court that the Commission has failed to comply with its obligations under Section 97 by failing to collect the player data specified in the Section and failing to make the data available to researchers.

13. These requests for relief are properly brought in this Court.

14. G.L. c. 249, § 5 generally permits this Court to adjudicate civil actions “to obtain relief formerly available by writ of mandamus.” *See Ten Residents of Mass. v. Cape Wind Assocs.*, Nos. BACV2009-00107, BACV2009-00109, 2010 Mass. Super. LEXIS 3161, at \*26 (Mass. Super. Feb. 18, 2010 (“Chapter 249, section 5 authorizes a civil action to obtain mandamus relief.”)).

15. G.L. 214, § 1 confers upon this Court “original and concurrent jurisdiction of all cases and matters of equity cognizable under the general principles of equity jurisprudence.”

16. G.L. c. 231A, § 1 provides that this Court “may on appropriate proceedings make binding declarations of right, duty, status and other legal relations though thereby.”

### **FACTUAL BACKGROUND**

#### **The Expanded Gaming Act**

17. In November 2011, Massachusetts, through the EGA, legalized casino gaming in the Commonwealth.

18. The EGA established the Commission, and created a regulatory framework pursuant to which the Commission could oversee gaming and issue gaming licenses. The EGA permitted the Commission to issue up to three (3) “category 1” licenses that would permit a licensee to operate a gaming establishment with table games and slot machines, as well as one (1) “category 2” license that would permit the licensee to operate a “slots only” parlor (*i.e.* a gaming establishment with slot machines but no table games).

19. As the Commission boasts on its own website, the EGA “includes a number of key principles to ensure the successful implementation” of gaming in the Commonwealth, including “mitigation for social impacts and costs and ensuring the nation’s best and most rigorous public safety, regulatory and enforcement mechanisms.” Massachusetts Gaming Commission, *About:*

*Expanded Gaming Act*, <https://massgaming.com/about/expanded-gaming-act/>) (last accessed Oct. 29, 2024).

20. Illustrating this key principle, the EGA created a “first-of-its-kind” comprehensive research plan to study the social and economic impact of casino gaming. International Association of Gaming Regulators, *Massachusetts Gaming Commission*, <https://iagr.org/industry-news/massachusetts-gaming-commission/> (May 18, 2020) (last accessed October 29, 2024). As described in the EGA, the purpose of this plan was to provide the Commission with a data-driven understanding of the impact of casino gaming on the public, and to permit the Commission to design evidence-based programs to better understand, detect, and mitigate problem gaming.

21. To arrive at this data-driven understanding, the EGA leverages the fact that gaming establishments track and gather a substantial amount of their customers’ behavioral data through various methods, such as loyalty card programs, player tracking software, and other information systems. In addition to personally identifiable information such as names, birth dates, and addresses, gaming establishments collect data that includes but is not limited to customers’ preferred games, play frequency, length of play, speed of play, wager volume, and wager volatility.

22. Although gaming establishments generally collect this player data to inform their marketing practices, such information is very valuable with respect to understanding gaming behaviors and developing prevention strategies. Recognizing this, Section 97 contains several explicit provisions that impose affirmative and mandatory obligations on (i) gaming licensees, to provide the Commission with all of this gaming customer tracking data, and (ii) the Commission, to provide this data to qualified researchers.

23. With respect to licensees, Section 97 provides that: “Notwithstanding any general or special law or rule or regulation to the contrary, a [licensee] shall supply the Massachusetts

gaming commission with customer tracking data collected or generated by loyalty programs, player tracking software, player card systems, online gambling transactions or any other information system.” Session Laws 2011, Chapter 194, § 97.

24. Once the Commission obtains this data from licensees, Section 97 imposes upon the Commission a mandatory duty to anonymize the data by contracting with an “experienced nonprofit research entity” to remove customers’ personally identifiable information while retaining certain specific information concerning the costumers’ gaming preferences and habits:

The commission ***shall contract with an experienced nonprofit research entity*** to develop an anonymizing system that automatically removes from the data: (a) personally identifying information, including player name, street address, bank or credit information and the last 4 digits of a player’s zip code, in compliance with section 2 of chapter 93H of the General Laws; and (b) game identifying information, including game name and device manufacturing company, in protection of corporate intellectual property. The data shall retain information on player characteristics including, but not limited to, gender, age and region of residence, player behavior including, but not limited to, frequency of play, length of play, speed of play, denomination of play, amounts wagered and, if applicable, number of lines or hands played and characteristics of games played including, but not limited to, reel configuration, return-to-player or RTP, volatility index and denomination.

*Id.* (emphasis added)

25. Once the data has been anonymized, Section 97 further imposes upon the Commission a mandatory duty to provide such data to qualified researchers for the statutorily designated purposes of better understanding gambling disorders and developing harm mitigation strategies:

The commission ***shall convey the anonymized data to a research facility*** which shall make the data available to qualified researchers for the purposes of: (1) conducting analyses that improve understanding of how gambling addiction develops and progresses; (2) developing evidence-based harm minimization strategies; and (3) developing evidence-based systems to monitor, detect and intervene in high-risk gambling.

*Id.* (emphasis added)

26. Finally, after the data has been provided to qualified researchers, Section 97 imposes upon the Commission a mandatory duty to request reports from the researchers with respect to their analysis of such data for the statutorily designated purpose of providing the Legislature with recommendations for how to more effectively regulate gambling in the Commonwealth:

The commission ***shall request reports on researcher analyses of the behavioral data***, which could provide informed recommendation to the general court relative to more effective regulation of gambling operations.

*Id.* (emphasis added).

27. As shown above, none of the requirements set forth in Section 97 are discretionary. To the contrary, in each instance, Section 97 contains mandatory language stating that licensees and the Commission “shall” perform the obligations imposed upon them by the statute.

**The Commission Has Failed to Comply with its Mandatory Statutory Duties**

28. Customer tracking data has been available from licensees since at least June 2015 when Plainridge Park Casino—a category 2 “slots only” casino—became the first casino in the Commonwealth to open to the public. As of June 2019, three casinos have commenced operations in the Commonwealth.

29. Specifically, the Commission has issued two category 1 licenses and one category 2 license to the following licensees:

- a. On February 28, 2014, the Commission issued a category 2 license to Penn National Gaming, d/b/a Plainridge Park Casino. Plainridge Park Casino began offering casino gaming to the public on June 24, 2015.
- b. On June 13, 2014, the Commission issued a category 1 license to Blue Tarp

Redevelopment, LLC, d/b/a MGM Springfield. MGM Springfield began offering casino gaming to the public on August 24, 2019.

- c. On September 17, 2014, the Commission issued a category 1 license to Wynn, MA, LLC, d/b/a Encore Boston Harbor. Encore Boston Harbor began offering casino gaming to the public on June 23, 2019.

30. Each of the licensees track and gather information regarding their customers gaming habits through player loyalty cards, player tracking software, and/or other information systems.

31. In other words, since as early as June 2015—nearly a decade ago—at least one casino licensee has been collecting the data described in Section 97 from its customers. And, since at least June 2019—more than five years ago—all three existing licensees have been collecting customer tracking data.

32. PHAI requested on October 21, 2022 that the Commission provide it with the data described in Section 97 to aid PHAI in its ongoing research aimed at understanding and reducing the harm caused by problem gambling. After the Commission failed to make this data available to PHAI, as well as any other qualified researcher, PHAI renewed its request for the data on February 15, 2024.

33. However, as of the filing of this Complaint, the Commission has failed to provide the data to any qualified researchers, including PHAI.

**Respondent's Failure to Comply with its Mandatory Duties Under Section 27 of the EGA  
Warrants Mandamus Relief**

34. This Court should exercise its authority to order the Commission to comply with the mandatory obligations imposed by Section 97 by providing the data specified in Section 97 to qualified researchers in a time period not to exceed 90 days from the date of such order.



35. "A request for relief in the nature of mandamus is a call to a government official to perform a clear cut duty[.]" *Mederi, Inc. v. Salem*, 488 Mass. 60, 65 (2021) (quotation omitted). "[M]andamus is a remedy for administrative inaction[.]" *Town of Reading v. Attorney Gen.*, 362 Mass. 266, 269 (1972) (alterations in text adopted). Thus, mandamus relief is warranted where a statute imposes upon a respondent a clear nondiscretionary duty to take a specific action that the respondent fails to take and no other avenue of relief is available. *See Doe v. Dist. Attorney for the Plymouth Dist.*, 29 Mass. App. Ct. 671, 675 (1991); *Gannon v. Mayor of Revere*, 401 Mass. 232, 235 (1987).

36. The duties imposed by Section 97 are "clear cut" and mandatory, and Respondent's "inaction" warrants mandamus relief. *Reading*, 362 Mass. at 269.

37. The duties set forth in Section 97 and the purpose of the duties imposed by the statute are clear and specific. They obligate the Commission to (1) contract with a research facility to anonymize the player tracking data that the licensees provide, (2) convey the anonymized data to a qualified researchers for the specific purpose of studying gambling addiction and mitigating harm, and (3) request reports from the researchers with respect to such data for the purpose of more effectively regulating gambling operations. Session Law 2011, Chapter 194, § 194.

38. Section 97 uses the word "shall" to describe the Commission's duties. *See id.* When construing Massachusetts statutes, "'shall' is to be given a mandatory meaning." *Uglietta v. City Clerk of Somerville*, 32 Mass. App. Ct. 742, 744 (1992) (quoting *Hashimi v. Kalil*, 388 Mass. 607, 609 (1983)). Accordingly, the duties imposed upon the Commission by Section 97 are not discretionary, but mandatory. *See Elmer v. Comm'r of Ins.*, 304 Mass. 194, 196 (1939) ("'Shall' in a statute is commonly a word of imperative obligation. It is inconsistent with the idea of discretion.").

39. Petitioners lack an adequate alternative remedy to mandamus to prevent the injustice caused by the Commission's failure to comply with the law. *Lutheran Serv. Ass'n of New England, Inc. v. Metro. Dist. Comm'n*, 397 Mass. 341, 344 (1986). Gaming licensees are not obligated to provide gaming customer tracking data to any agency other than the Commission, and no other governmental or private entity is vested by law with the obligation to make such data available to researchers.

### **CLAIMS FOR RELIEF**

#### **Count 1 (Writ of Mandamus)**

40. Petitioner repeats and incorporates herein the allegations contained in Paragraphs 1 through 39.

41. The Commission's failure to convey to qualified researchers anonymized versions of the player tracking data generated by licensees is a failure to perform the clear-cut and mandatory duties set forth in Section 97 of the EGA.

42. Because the Commission is the only entity in a position to gather this important data from the licensees and provide it to researchers, Petitioners have no adequate alternative remedy for the Commission's refusal to comply with the law.

43. Due to the Commission's failure to comply with its mandatory legal obligations under Section 97, PHAI has been deprived of its ability to study the gambling data that the Commission is obligated to provide and to which PHAI would not otherwise have access. Accordingly, PHAI has been unable to analyze such data for the purposes of better understanding, detecting, and mitigating the harms caused by gambling addiction.

44. Similarly the Commission's failure to comply with its mandatory legal obligations under Section 97 has deprived PHAI and the public from the benefit of the protection of regulations

or laws informed by the independent research described by the Legislature in the EGA.

**Count 2**  
**(Declaratory Judgment)**

45. Petitioners repeat and incorporate herein the allegations contained in Paragraphs 1 through 44.

46. An actual and justiciable controversy exists between the parties regarding the Commission's failure to comply with its mandatory legal obligations described in Section 97 of the EGA due to its failure to obtain player tracking data from casino licensees and provide that data to qualified researchers.

47. A justiciable controversy exists for the persons entitled to initiate the judicial resolution where there is a dispute involving a state agency's action or inaction pursuant to a statutory duty.

48. Section 97 of the EGA imposes upon the Commission mandatory duties to obtain player tracking data from casino licensees and provide that data to qualified researchers.

49. The Commission's failure to convey to qualified researchers anonymized versions of the player tracking data generated by licensees is a failure to perform the clear-cut and mandatory duties set forth in Section 97 of the EGA.

50. Due to the Commission's failure to comply with its mandatory legal obligations under Section 97, PHAI has been deprived of its ability to study the gambling data that the Commission is obligated to provide and to which PHAI would not otherwise have access. Accordingly, PHAI has been unable to analyze such data for the purposes of better understanding, detecting, and mitigating the harms caused by gambling addiction.

51. Similarly, the Commission's failure to comply with its mandatory legal obligations under Section 97 has deprived PHAI and the public from the benefit of the protection of regulations

or laws informed by the independent research described by the Legislature in the EGA.

52. Accordingly, Petitioner seeks a declaratory judgment that the Commission possesses a mandatory statutory obligation to provide player tracking data to qualified researchers pursuant to Section 97 of the EGA, that the Commission has failed to comply with this obligation by failing to obtain this data from licensees, despite its availability since June 2015, and has failed to make the data available to qualified researchers.


### **PRAYERS FOR RELIEF**

Accordingly, Petitioner respectfully requests that the Court:

- (a) Hold a hearing on this Petition as soon as possible;
- (b) Order relief in the nature of mandamus requiring the Commission to comply with its mandatory obligations imposed by Section 97 of the EGA by collecting the player tracking data specified in Section 97 and making it available to qualified researchers in a time period not to exceed 90 days from the date of the order;
- (c) Enter a declaratory judgment that (i) Section 97 of the EGA obligated the Commission to collect from licensees the player tracking data specified in Section 97 and provide such data to qualified researchers, and (ii) the Commission has failed to comply with this obligation by failing to obtain this data from licensees, despite its availability since June 2015, and has failed to make the data available to qualified researchers;
- (d) Award Petitioners their costs, including attorney's fees, of bringing this Petition;  
and
- (e) Grant such other and further relief as this Court deems just and proper.

DATED: October 29, 2024

For Petitioner,

/s/  \_\_\_\_\_

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