IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MONTERRA MF, LLC; ARMANDO CODINA, an individual; JAMES CARR, an individual; NORMAN BRAMAN, an individual; 2020 BISCAYNE BOULEVARD, LLC; 2060 BISCAYNE BOULEVARD, LLC; 2060 NE 2ND AVE., LLC; 246 NE 20TH TERRACE, LLC; and NO CASINOS, a Florida 501(c)(4) organization,

Plaintiffs,

v.

DEB HAALAND, in her official capacity as Secretary of the United States Department of the Interior, and UNITED STATES DEPARTMENT OF THE INTERIOR,

Defendants.

Case No. 21-cv-2513

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes & Constitution

Rules

Other Authorities

Plaintiffs, Monterra MF, LLC, Armando Codina, James Carr, Norman Braman, 2020 Biscayne Boulevard, LLC, 2060 Biscayne Boulevard, LLC, 2060 NE 2nd Ave., LLC, 246 NE 20th Terrace, LLC, and No Casinos, move for summary judgment and seek declaratory relief to invalidate erroneous agency action that authorized unprecedented expansion of gambling in Florida in violation of state and federal law. In support, Plaintiffs submit the following memorandum:

INTRODUCTION

The compact at issue is the greatest expansion of illegal gambling in Florida's history and circumvents the Florida Constitution's mandate that "Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida." Art. X, § 30(a), Fla. Const. ("Amendment 3"). Plaintiffs are Florida-based businesses, property owners, and a non-profit organization that have been stripped of the ability to oppose unlawful, statewide gambling expansion that should have been, but was not, presented to voters through the citizens' initiative process required by Florida's Constitution. The State of Florida unlawfully circumvented the clear prohibition on legislative attempts to authorize sweeping gambling expansion by entering a new Compact ("the 2021 Compact") with the Seminole Tribe of Florida ("Seminole Tribe"), and submitting it for review to the United States Department of the Interior ("DOI"). The DOI's unlawful approval of the 2021 Compact has caused injury to the Plaintiffs.[1]

Under Florida law, it is unlawful for a business to facilitate wagering on sporting events, and it cannot be made lawful absent compliance with the strict, constitutionally mandated process

[1] References to "DE___" are to the docket entries in this case. Pursuant to this Court's Standing Order for Civil Cases (DE No. 21), Plaintiffs have contemporaneously filed a Statement of Uncontested Material Facts with specific citations to those portions of the record supporting those facts. Emphasis, internal quotations, and internal citations are omitted unless otherwise indicated.

for approving the expansion of gambling. That process is dictated by Amendment 3 to the Florida Constitution, which was adopted pursuant to a citizens' initiative process the Seminole Tribe openly and enthusiastically supported.

The 2021 Compact violates the Indian Gaming Regulatory Act ("IGRA") by granting the Seminole Tribe exclusive rights to engage in Class III games that are unlawful anywhere else in the State, including craps and roulette at the Seminole Tribe's Hard Rock Hotel & Casino ("Hard Rock"), and sports betting. If not overturned, the 2021 Compact, in violation of Florida law, not only allows the Seminole Tribe to provide illegal sports betting on Indian lands, but allows the Seminole Tribe to market that unlawful activity to whoever it chooses, outside of Indian lands. To effectuate widespread sports betting, the 2021 Compact authorizes commercial, non-tribal gambling entities to solicit and execute sports bets through the Internet and outside of Indian lands. This sports betting regime has been coined the "hub and spoke" model—the Seminole Tribe serves as the hub for receiving wagers, and the various contractors and mobile apps that facilitate bets statewide outside of Indian lands are the spokes. In a press release, the Governor of Florida described the 2021 Compact as "the largest gaming compact in history, [which] will generate a minimum of $2.5 billion in new revenue to the state over the next five years and an estimated $6 billion through 2030." And therein lies the motivation for having DOI do what IGRA prohibits, ignore the law because a lot of money can be gained by doing so. The Chairman of the Seminole Tribe touted the "statewide sports betting and new casino games" that will result from the 2021 Compact.[2]

[2] Press Release, *Governor Ron DeSantis Celebrates Approval of Historic Gaming Compact with Seminole Tribe of Florida* (Aug. 6, 2021), https://www.flgov.com/2021/08/06/governor-ron-desantis-celebrates-approval-of-historic-gaming-compact-with-seminole-tribe-of-florida/.

The State of Florida used the 2021 Compact and the DOI approval process to circumvent requirements under Florida's Constitution and to authorize widespread expansion of gambling that never would have garnered approval by Florida voters. DOI improperly allowed the State of Florida to avoid Amendment 3 and its citizens' initiative requirement, as well as state law limiting the permissible scope of gambling in Florida. Critically, DOI ignored that federal law governing its approval determination of the 2021 Compact incorporates Florida state law; a compact that violates Florida law cannot be approved lawfully by DOI. The gambling authorized by DOI's approval of the 2021 Compact fundamentally violates Amendment 3's voter approval requirement, which gives the Florida voters the exclusive right to approve gambling expansion, and thereby violates federal law, in that IGRA requires that Class III gaming shall be lawful only if it is permitted by the State. The sports betting provisions also independently violate federal laws, including IGRA, the Wire Act, and the Unlawful Internet Gambling Enforcement Act ("UIGEA"), by authorizing gambling outside of Indian lands and by allowing the use of the Internet or interstate payment transmissions where sports betting is illegal. DOI ignored these violations of state and federal law and approved the 2021 Compact.

Several of the Plaintiffs own property in the immediate vicinity of the Hard Rock Hotel and Casino ("Hard Rock") operated by the Seminole Tribe of Florida ("Seminole Tribe"), or near pari-mutuel facilities that will be part of an expansive sports betting enterprise run by the Seminole Tribe off Indian lands. By allowing new forms of Class III gaming activities on and off Indian lands that are unlawful in Florida, the DOI approval adversely impacts Plaintiffs' properties and vitiates their rights to reject or approve any gambling expansion, as required under the Florida Constitution. DOI approval of the 2021 Compact was beyond DOI's jurisdiction and contrary to numerous laws, including IGRA, the Wire Act, and UIGEA.

THE ADMINISTRATIVE DECISION

At issue for review is the Secretary's and DOI's approval of a Compact between the Seminole Tribe and the State of Florida. The Secretary is statutorily required to review a compact "governing gaming on Indian lands" to determine whether it complies with law. 25 U.S.C. § 2710(d)(8). Defendants have no statutory authority to approve—whether affirmatively or passively by operation of law—compacts that purport to expand gaming beyond Indian lands. On its face then, DOI had no authority even to review the 2021 Compact because the Compact attempts to govern gaming off Indian lands.

Compact review is not committed to the Secretary's discretion. *Amador County, Cal. v. Salazar*, 640 F.3d 373, 381 (D.C. Cir. 2011). The IGRA statutory scheme sets forth three possible outcomes, and specific criteria, for the Secretary's review: (1) approve, (2) disapprove, or (3) "no action," which constitutes approval by operation of law. 25 U.S.C. § 2710(d)(8)(A)-(C). IGRA specifies conditions for disapproving a compact, including when the compact violates IGRA, violates any other federal law, or violates the trust obligations of the United States to Indians. 25 U.S.C. § 2710(d)(8)(B). Under the statutory scheme, any compact that violates the law cannot be considered approved. *See* 25 U.S.C. § 2710(d)(8)(C). Specifically, when DOI takes "no action" within the statutorily prescribed 45-day window, the compact "shall be considered to have been approved by the Secretary, *but only to the extent the compact is consistent with the provisions of [IGRA]*." *Id.*

Defendants reviewed the 2021 Compact submitted by the State of Florida and the Seminole Tribe. By letter dated August 6, 2021 ("DOI letter"), DOI notified the Governor of Florida that "[a]fter thorough review under IGRA, we have taken no action to approve or disapprove the Compact before the August 5 deadline. As a result, the 2021 Compact is considered to have been approved by operation of law to the extent that it complies with IGRA

and existing Federal law." DE 1-5 at 1. DOI's letter did not address the objections of affected private parties and local governments that the 2021 Compact violated state law; nor did it analyze applicable federal statutes, including the UIGEA or the Wire Act. DOI does not and cannot contest that it made a final determination as to the validity of the 2021 Compact that dramatically expands gambling in Florida, which constitutes a final, reviewable agency action under the APA.

THE LEGAL STANDARDS

I. Statutes Governing Gambling on Indian Lands

Before 1988, federal law lacked clear standards and regulations governing gaming on Indian lands. *See* 25 U.S.C. § 2701(3). That year, Congress passed the Indian Gaming Regulatory Act ("IGRA") to try to remedy that deficiency and provide government oversight for gaming on Indian lands. 25 U.S.C. §§ 2701 *et seq*. As explained by the National Indian Gaming Commission, IGRA expressly regulates gambling on Indian lands. https://www.nigc.gov/general-counsel/indian-gaming-regulatory-act.

While recognizing the importance of Tribal self-governance and sovereignty, IGRA specified that Tribes could only conduct gaming activities that are lawful within the individual state. *See* 25 U.S.C. § 2701(5). Accordingly, IGRA does not authorize Tribes to engage in activities that are otherwise unlawful in a state. Congress authorized Class III gaming on Indian lands only to the extent that such gaming activity is "located in a State that permits such gaming for any purpose by any person, organization, or entity." 25 U.S.C. § 2710(d)(1)(B).

IGRA recognizes three "classes" of gaming. Class I is reserved for social games and traditional forms of Indian gaming. 25 U.S.C. § 2703(6). Class II includes bingo and certain card games authorized or not prohibited under state law. 25 U.S.C. § 2703(7). Class III is a catch-all

that includes "all forms of gaming that are not class I or class II gaming." 25 U.S.C. § 2703(8). Class III games are the most heavily regulated under IGRA.

Sports betting, craps, and roulette are not specifically referenced in the class definitions, and therefore fall within Class III, as recognized by the implementing regulations: "Class III gaming means all forms of gaming that are not class I gaming or class II gaming, including but not limited to . . . [a]ny sports betting." 25 C.F.R. § 502.4(c); *see also* 25 U.S.C. § 2703(8).

Under IGRA, Class III gaming is lawful on Indian lands only if three specific requirements are met: (1) it must be authorized by the Tribe; (2) it must be located in a State that allows that gaming activity "for any purpose by any person, organization, or entity," and (3) it must be conducted pursuant to a Compact entered between the Tribe and the State. *See* 25 U.S.C. § 2710(d)(1).[3] By its terms, IGRA only governs gaming conducted by an "Indian tribe" on "Indian lands." *See* 25 U.S.C. §§ 2701, 2702. Those phrases are statutorily defined to include very limited and specific areas and groups, which cannot be expanded without a statutory amendment. *See* 25 U.S.C. § 2703(4),(5).

The Federal Wire Act criminalizes the use of "a wire communications facility" to transmit interstate sports bets or wagers and related information. *See* 18 U.S.C. § 1084. It applies to anyone "engaged in the business of betting or wagering," which would include the Seminole Tribe and non-Tribal pari-mutuels that are permitted under the 2021 Compact to contract with the Tribe for sports betting operations. *See* 18 U.S.C. § 1081. As defined by the Wire Act, prohibited use of a wire communications facility in interstate or foreign commerce includes "any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery

[3] IGRA vested the Secretary of the Department of the Interior with statutory authority to approve or disapprove any Compact entered between a Tribe and a State. *See* 25 U.S.C. § 2710(d)(8).

of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by the aid of wire, cable or other like connection *between the points of origin and reception of such transmission*." *See* 18 U.S.C. § 1081. Therefore, under federal law, the point of origin, or location, of a bet or wager is distinct from the location of the reception of the bet or wager.

In 2006, Congress passed the Unlawful Internet Gambling Enforcement Act ("UIGEA"), which prohibits gambling entities from knowingly accepting payments from someone participating in "unlawful Internet gambling." Like the Wire Act, it applies to anyone "engaged in the business of betting or wagering," which would include the Seminole Tribe and the non-Tribal pari-mutuels that are permitted under the 2021 Compact to contract with the Tribe for sports bettering operations, if the transaction involves "unlawful Internet gambling." 31 U.S.C. § 5363. "Unlawful Internet gambling" means "to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is *initiated, received, or otherwise made*." 31 U.S.C. § 5362 (10)(A). UIGEA specifies that "[t]he intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made." 31 U.S.C. § 5362(10)(E). Furthermore, UIGEA specifically addresses an off-reservation bet or wager, expressly exempting from its prohibition a bet or wager that is "initiated and received" "within the lands of a single Indian tribe" or "between the Indian lands or 2 or more Indian tribes." A bet or wager initiated outside the lands of a single Indian tribe is therefore subject to the UIGEA general prohibition. 31 U.S.C. § 5362(1)(C)(i)(I). The sports betting proposed in the 2021 Compact to occur over and through the Internet clearly violates the Wire Act and UIGEA, in addition to IGRA.

II. Summary Judgment and the Administrative Procedure Act

The Administrative Procedure Act ("APA") authorizes this Court to review and set aside agency action, findings, and conclusions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or that are "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). Consistent with that authority, declaratory judgments are a common remedy for agency action in violation of the APA. Kristin J. Hickman & Richard J. Pierce, *Administrative Law* § 20.7 (6th ed. 2019).

The Secretary's approval of the 2021 Compact by inaction is a reviewable agency action under the APA giving this Court jurisdiction over the matter. The D.C. Circuit has ruled that jurisdiction in an IGRA case where the DOI has refused to act is proper under the APA in the same way as if the Secretary had given a formal, express approval within the 45-day period IGRA provides. *Amador Cnty.*, 640 F.3d at 383. Although an agency is often afforded deference when construing a statute it administers, that principle does not apply to DOI and IGRA. This Court has specifically held that the Secretary's interpretation of IGRA is *not* entitled to deference under *Chevron v. Natural Resources Defense Council, Inc*. *See Connecticut v. U.S. Dep't of the Interior*, 344 F. Supp. 3d 279, 307-08 (D.D.C. 2018) (ruling that DOI is entitled to no deference regarding a dispute over the interpretation of IGRA). Thus, the Court must "proceed to determine the meaning of the [IGRA] the old-fashioned way: '[it] must decide for [itself] the best reading.'" *Miller v. Clinton*, 687 F.3d 1332, 1340 (D.C. Cir. 2012) (quoting *Landmark Legal Found. v. IRS*, 267 F.3d 1132, 1136 (D.C. Cir. 2001)).

Summary judgment is the appropriate vehicle for this Court to determine the propriety of agency action. *See County of Los Angeles v. Shalala*, 192 F.3d 1005, 1011 (D.C. Cir. 1999), *cert. denied*, 530 U.S. 1204 (2000); *UPMC Mercy v. Sebelius*, 793 F. Supp. 2d 62, 67 (D.D.C. 2011). Under the APA, however, the familiar summary judgment standard gives way to the court's

function as an appellate tribunal, and the case is decided not on undisputed facts, but as a matter of law. *See Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083-84 (D.C. Cir. 2001); *Oceana, Inc. v. Locke*, 831 F.Supp.2d 95, 106 (D.D.C. 2011).[4]

III. Declaratory Judgment

The Declaratory Judgment Act "confer[s] on federal courts unique and substantial discretion in deciding whether to declare rights of the litigants." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). "To qualify for declaratory relief, the controversy 'must be a real and substantial controversy admitting of specific relief through a decree of conclusive character.'" *Indian Educators Fed'n Local 4524 of Am. Fed'n of Teachers, AFL-CIO v. Kempthorne*, 541 F. Supp. 2d 257, 266-267 (D.D.C. 2008). This court has specifically granted declaratory relief against the DOI. *See, e.g.*, *Indian Educators*, 541 F. Supp. 2d 257, 266; *Cobell v. Babbitt*, 91 F. Supp. 2d 1, 58 (D.D.C. 1999), *aff'd and remanded sub nom. Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001).

PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT

I. Plaintiffs Have Standing to Challenge Defendants' Approval of the 2021 Compact

Plaintiffs have standing to sue DOI and the Secretary for the following reasons. *First*, six of the seven plaintiffs own property close to sites where the planned gaming would occur because

[4] Plaintiffs' motion for summary judgment can be resolved by the Court as a matter of law, *see Am. Bankers Ass'n v. Nat'l Credit Union Admin.*, 271 F.3d 262, 266 (D.C. Cir. 2001), or on the parts of the record cited by Plaintiffs, 5 U.S.C. § 706. Defendants' mere failure to consider important aspects of state and federal law during their review is an independent basis for finding a violation of the APA. *See Genuie Parts Co. v. APA*, 890 F.3d 304, 307 (D.C. Cir. 2018). Defendants have indicated their intent to argue that this case should not proceed on the merits and that they need not submit the administrative record to the Court. Plaintiffs disagree, and reserve all rights regarding the administrative record. To the extent necessary, Plaintiffs will seek relief to require Defendants' compliance with LCvR 7(n), which requires Defendants to "file a certified list of the contents of the administrative record with the Court . . . simultaneously with the filing of a dispositive motion." Portions of the record, including correspondence from DOI and community members, are attached the Plaintiffs' Complaint. *See* DE 1-3, 1-4, 1-5.

of Defendants' approval of the 2021 Compact. Governing case law has repeatedly held that neighboring landowners have Article III and prudential standing to challenge the government's approval of a Compact governing Indian gaming. *Amador Cnty.*, 640 F.3d at 378-79 (reversing district court finding of lack of standing); *accord Match E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 214 (2012) (same); *Patchak v. Salazar*, 632 F.3d 702, 705 (D.C. Cir. 2011) (finding "no doubt" that Article III standing was satisfied and reversing district court's finding of lack of prudential standing; neighbor could challenge DOI decision to take parcel of land into trust on behalf of Indian tribe for casino use). *Second*, the lone non-profit plaintiff, although not a neighboring property owner, nevertheless has organizational standing as a long-time opponent of the expansion of casino gambling in Florida. *City of Roseville v. Norton*, 219 F. Supp. 2d 130, 149 (D.D.C. 2002), *aff'd*, 348 F.3d 1020 (D.C. Cir. 2003). *Third*, it is undisputed that the DOI took no action on the 2021 Compact, and therefore approved it, which is the source of harm to the Plaintiffs. *Fourth*, Plaintiffs' injury can be redressed by judicial action vacating the erroneous approval of the 2021 Compact, or declaring that the 2021 Compact is not consistent with IGRA. *Fifth*, Plaintiffs are within the zone of interest covered by IGRA, which indisputably governs land use issues in connection with Indian gaming.

When evaluating Plaintiffs' standing, the Court is entitled to consider "relevant facts found outside of the complaint," including affidavits submitted by plaintiffs and news articles establishing plaintiffs' injury and connection to the planned gaming expansion. *Mendoza v. Perez*, 754 F.3d 1002, 1016 n. 9 (D.C. Cir. 2014); *see also Sierra Club v. EPA*, 292 F.3d 895, 899 (D.C. Cir. 2002). The Court is entitled to reach the merits of Plaintiffs' claims if even one of the Plaintiffs is deemed to have standing. *See Rumsfeld v. Forum for Academic & Inst'l Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006).

A. Governing Precedent Establishes that Article III's Threshold Requirements Are Met

Article III requires a plaintiff to show: (1) "an injury in fact," (2) "a fairly traceable" connection between the alleged injury in fact and the action of the defendant, and (3) likelihood that "the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 180-81 (2000). The Article III causation requirement, demands "something less than the concept of proximate cause," and "even harms that flow indirectly from the action in question can be said to be fairly traceable to the action for standing purposes." *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003) (*citing Loggerhead Turtle v. County Council*, 148 F.3d 1231, 1251 n. 23 (11th Cir.1998).

As explained by the U.S. Supreme Court, an injury in fact is established when a plaintiff has a "concrete and particularized," "actual or imminent," "invasion of a legally protected interest." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In the specific context of an APA challenge involving DOI's approval of a gambling compact, plaintiffs need only establish that they "will be injured by the planned gaming and thus [have] a cognizable interest in prohibiting it." *Amador Cnty. v. Salazar*, 640 F.3d 373, 378 (D.C. Cir. 2011).

Courts considering standing in terms of IGRA give great weight to plaintiffs' geographical proximity to the proposed gambling site and overall negative impact. The Western District of New York, for example, found that multiple plaintiffs sufficiently alleged concrete and particularized interests where they either resided or operated businesses in same neighborhood as a proposed gambling facility and alleged the facility would negatively impact physical integrity, safety, and environmental quality of the neighborhood. *Citizens Against Casino Gambling v. Hogen*, No. 07-CV-451, 2008 WL 2746566, at *18-19 (W.D.N.Y. July 8, 2008); *see also, e.g.*, *Nulankeyutmonen Nkihtaqmikon v. Impson*, 503 F.3d 18, 27 (1st Cir. 2007); *Taxpayers of Michigan Against Casinos*

v. Norton, 193 F.Supp.2d 182, 185 (D.D.C. 2002). Additionally, courts have allowed non-profit organizations that oppose gambling to sue DOI to challenge approval of proposed gaming. *See, e.g.*, *Michigan Gambling Opposition v. Kempthorne*, 525 F.3d 23 (D.C. Cir. 2008); *Michigan Gambling Opposition v. Norton*, 477 F. Supp. 2d 1 (D.D.C. 2007).

Here, Plaintiffs have established that the expanded gaming permitted under the 2021 Compact would be detrimental to their property interests due to increased neighborhood traffic, increased neighborhood congestion, increased criminal activity, and reduction in property value. *See* Declaration of Armando Codina ("Codina Decl."), at ¶¶ 6, 8-9, 12-19, 25; Declaration of James Carr ("Carr Decl.") at ¶ 36; Declaration of Norman Braman ("Braman Decl."), at ¶¶ 10-11. Plaintiffs Monterra LF, LLC, Armando Codina, and James Carr (the "Monterra Plaintiffs") have properties located less than three miles of the Hard Rock—namely, the Residences at Monterra Commons ("Monterra Commons"). Codina Decl., at ¶¶ 3-4. The Monterra Plaintiffs have invested significant funds in developing Monterra Commons as a premier independent living facility for active seniors. *Id.*, at ¶ 5; Carr Decl., at ¶ 3-5. DOI approved significant expansion of gambling at the Hard Rock, including adding new tables games such as craps and roulette and allowing Hard Rock to serve as the "hub" of a substantial, statewide sports betting operation, right in Monterra Commons' proverbial backyard.[5] Codina Decl., at ¶¶ 3-11. The Monterra Plaintiffs have a legally cognizable interest in limiting the forms of gambling that are approved at the Hard Rock. *Id.* The new gaming activities authorized by DOI will lead to substantial increases in volume, traffic, and

[5] In its Motion for Limited Intervention in this case, the Tribe recognized the 2021 Compact gives it rights to significantly expand gambling activity. *See* DE 31 at 1 ("The 2021 Compact adds several new forms of gaming exclusively made available to the Tribe, including craps, roulette, and sports betting. Under the 2021 Compact, the Tribe may conduct sports betting through use of electronic devices connected via the internet.") and 7 ("the new types of games allowed in the 2021 Compact, includ[e] online sports betting.").

crime, in the areas surrounding the Hard Rock. Codina Decl., at ¶¶ 10, 14-15; Carr Decl., at ¶ 3-36. These deleterious effects on the surrounding community will make it more difficult to lease units at Monterra Commons, and will leave residents vulnerable to the lure of compulsive gambling. Codina Decl., at ¶¶ 10; Carr Decl., at ¶¶ 8-13.

Plaintiffs Norman Braman, 2020 Biscayne Boulevard, LLC, 2060 Biscayne Boulevard, LLC, 2060 NE 2nd Ave., LLC, and 246 NE 20th Terrace, LLC (collectively, the "Biscayne Plaintiffs") have a similar, but different interest, in opposing the expansion of gambling authorized by DOI. The Biscayne Plaintiffs own property merely one-half (½) mile from a location that may serve as one of the "spokes" in the substantial, statewide sports betting operation authorized by DOI. Braman Decl., at ¶ 1. West Flagler owns and operates a facility that is likely to engage in sports betting operations on the doorstep of properties owned by the Biscayne Plaintiffs. *Id*., at ¶¶ 2-4, 6-9; *see also* DE 1-3, Part II.CC(3)(d) of the 2021 Compact. Such gambling activities have never previously been authorized in the Edgewater neighborhood where the Biscayne Plaintiffs' properties are located. Braman Decl., at ¶ 9. This form of gambling, which is illegal in the State of Florida, will negatively impact the Edgewater neighborhood by increasing traffic, increasing congestion, increasing crime, and decreasing property values. *Id.*, at ¶¶ 10-11.

Plaintiff No Casinos has standing under a diversion-of-resources theory, because the 2021 Compact impairs No Casinos' ability to engage in its own anti-gambling projects by forcing it to divert resources in response. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) Diversion of resources in terms of personnel, funds, programs, all qualify to confer standing. *See, e.g.*, *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014); *D.C. Appleseed Ctr. for L. & Just., Inc. v. D.C. Dep't of Ins., Sec., & Banking*, 54 A.3d 1188, 1205 (D.C. Cir. 2012). No Casinos' primary mission is to oppose expansion of gambling in Florida, particularly those forms of

gambling that fall under IGRA's definition of Class III gaming. Declaration of John Sowinski ("Sowinski Decl."), at ¶¶ 3, 6. To that end, No Casinos was actively involved in the drafting, funding, and passage of Amendment 3 to Florida's Constitution. *Id.*, at ¶¶ 1-3, 14. Once it secured the passage of Amendment 3 by an overwhelming majority, No Casinos should have been able to return to its usual mode of advocacy, through opposing ballot initiatives. *Id.*, at ¶¶ 6-7, 13, 16-20. But because of the 2021 Compact and DOI's approval, No Casinos is now forced to divert important resources, personnel and volunteers, to address the unlawful expansion of gambling, including, educating its supporters on the illegality of the DOI's approval, and counteract the erroneous message sent by the DOI, the Tribe, and the State of Florida, and advocate that legislators not approve the unlawful expansion of gambling. *Id.*

Beyond establishing an injury in fact, Plaintiffs also satisfy causation and redressability. The D.C. Circuit has consistently held causation and redressability exist where agency action authorizes a third-party to engage in conduct that injures the plaintiff. *See Amador Cnty.*, 640 F.3d at 378; *Consumer Federation of Am. v. FCC*, 348 F.3d 1009, 1012 (D.C. Cir. 2003); *America's Cmty. Bankers v. FDIC*, 200 F.3d 822, 827-28 (D.C. Cir. 2000); *Animal Legal Defense Fund v. Glickman*, 154 F.3d 426, 440-43 (D.C. Cir. 1998) (en banc). In *Amador County*, for example, a county with property surrounding Tribal land sued under the APA to challenge the DOI's approval of a compact between the Tribe and the State of California. *Amador Cnty.*, 640 F.3d at 375. Amador County alleged that the proposed gaming would negatively impact its infrastructure costs and the character of the community. *Id.* at 378. The D.C. Circuit concluded that the County "easily satisfie[d] the requirements of causation and redressability" "[b]ecause the Tribe may proceed with gaming only with secretarial approval of the compact," therefore a "direct causal connection" exists between DOI's compact approval and the harm to the plaintiff. *Id.* Without the DOI's

approval, there would be no injury to Plaintiffs.

B. Plaintiffs Satisfy Prudential Standing Because They Are Within the "Zone of Interest"

In addition to establishing Article III standing, plaintiffs also have prudential standing to challenge the DOI's approval of the 2021 Compact. Prudential standing exists when plaintiffs' interests are "arguably within the zone of interests to protected or regulated by the statute." *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012). "The zone of interest test is not 'especially demanding.'" *Voyageur Outward Bound School v. United States*, 444 F. Supp. 3d 182, 198 (D.D.C. 2020) (*quoting Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 130 (2014)). "If the Government had violated a statute specifically addressing how federal land can be used, no one would doubt that a neighboring landowner would have prudential standing to bring suit to enforce the statute's limits." *Match-E-Be-Nash*, 567 U.S. at 227. The D.C. Circuit has held "[t]hose in the surrounding community who are impacted by gambling fall within IGRA's zone of interest." *Amador Cnty.*, 640 F.3d at 379. There is no doubt Plaintiffs meet this lenient standard.

II. Defendants' Approval of a Compact Authorizing Sports Betting Off Indian Lands Is Contrary to Law

A. IGRA Does Not Vest Defendants with Authority Beyond Indian Lands

The governing IGRA provisions, by their express terms, apply only to gaming "on Indian lands." IGRA outlines the scope of the Secretary's review of a compact and specifies that "the Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming *on Indian lands* of such Indian tribe." 25 U.S.C. § 2710(d)(8)(A). The Secretary is also authorized to disapprove or take no action on a compact. The subsections conferring that authority specifically refer back to subsection A, which contains the "on Indian lands" requirement. 25 U.S.C. § 2710(d)(8)(B)-(C). Accordingly, whether the Secretary approves, disapproves, or takes no action on a compact, that authority is expressly limited to compacts

"governing gaming on Indians lands." And IGRA separately provides that "Indian tribes have the exclusive right to regulate gaming activity *on Indian lands* if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not," 25 U.S.C. § 2701, and then outlines the requirements for Class III gaming to be "lawful on Indian lands." 25 U.S.C. § 2710(d)(1). These express textual references make clear that Congress did not intend to confer authority on DOI or the Secretary of the Interior to approve gambling off Indian lands.

Although IGRA's text is clear and unambiguous, IGRA's legislative history further confirms that IGRA is "an attempt to formulate a system for regulating gaming *on Indian lands*." 100th Cong., 2ND Sess. 1988, 1988 U.S.C.C.A.N. 3071, 1988 WL 169811, S. Rep. No.100-446 at 1 (1988). The Senate report recognized that tribal governments have "significant governmental interests" at stake, but described those interests in the context of benefiting the Tribe "within its jurisdictional borders" and "on tribal lands." *Id.* at 13. Congress has subsequently refused to amend IGRA to permit online off-reservation sports betting. *See, e.g.*, H.R. 5502, 116th Cong. (2019); 144 Cong. Rec. S8117 (1998). The very fact that Congress recognized that IGRA would need to be amended to allow such betting, confirms that IGRA is limited to "on Indian lands."

Case law confirms this view of IGRA's text and purpose. In evaluating a lawsuit involving a Tribe's attempt to open a casino outside of Indian lands, the Supreme Court noted that IGRA regulates gaming on Indian lands, "and nowhere else" and characterized IGRA's "overall scope" as regulating "on Indian lands." *Michigan v. Bay Mills Indian Cnty.*, 572 U.S. 782, 791, 795 (2014). In a case squarely on point, the Ninth Circuit held that a Tribe could not operate an online bingo site, despite the server being located "on Indians lands," because at least some of the gaming activity "does not occur on Indian lands and thus is not subject to . . . IGRA." *State of California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 967 (9th Cir. 2018).

Here, it is undisputed that sports betting activities will not be "on Indian lands" but instead will extend well beyond Indian lands; indeed, the 2021 Compact grants the Seminole Tribe a monopoly on sports betting that will occur throughout the State of Florida. DE 1-1, Part III.CC. The 2021 Compact itself provides that pari-mutuel permitholders may provide "dedicated areas within their facilities wherein Patrons may access or use electronic devices to place wagers." *Id.*, Part II.CC(3)(d). DOI's letter approving the 2021 Compact recognized the expansive scope of sports betting, noting that the Tribe "will have *statewide* exclusivity for sports betting" that "patrons physically located within the State" can participate, and that the patron and server may not be physically in the same location. DE 1-5 at 2, 6. Despite acknowledging these obvious off-reservation implications, the DOI letter concluded that the gaming was permissible because the Compact defined "on Indian lands" to include the hub and spoke model involving a server located on Indian lands. *Id.* at 7. That conclusion is outside the bounds of Defendants' statutory authority and is contrary to law.

B. Defendants Cannot Override IGRA's "On Indian Lands" Requirement

DOI and the Secretary cannot override IGRA by accepting the 2021 Compact's attempt to self-define the location of the gaming activity. The 2021 Compact specifies that sports betting "shall be deemed at all times to be exclusively conducted by the Tribe at its Facilities where the sports book(s), including servers and devices to conduct the same, are located" regardless of the bettor's physical location. DE 1-1 at 16. But compacts "are a creation of federal law, and IGRA prescribes the permissible scope of a Tribal State compact." *Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536, 546 (8th Cir. 1996). As the U.S. Supreme Court has noted, IGRA's scope is "on Indian lands," *Bay Mills*, 572 U.S. at 791, notwithstanding the State's and the Tribe's attempt to supply their own expanded definition. IGRA defines "Indian lands" to include "all lands

within the limits of any Indian reservation." 25 U.S.C. § 2703(4). DOI's erroneous decision to elevate the Compact's self-serving definition over IGRA's requirements is contrary to law.

C. Defendants' Approval is Contrary to Prior Positions Asserted by DOI

By their own admission, Defendants have no prior precedent for approving gaming off Indian lands through the hub and spoke model of the sports betting. In its letter approving the Compact, DOI characterized the legality of the "hub and spoke" model as "a novel matter," and further noted that "[u]ntil recently, compact review under IGRA was limited to 'brick and mortar' gaming facilities located on Indian lands, with both the player and the bet taking place in one physical location." DE 1-5 at 6.

Even worse for Defendants, in prior interpretations of IGRA, the federal government repeatedly took the position that IGRA did not authorize gambling off Indian lands, and more specifically, that bets transmitted off Indian lands constitute off-reservation gaming. For example, the National Indian Gaming Commission ("NIGC"), an agency within DOI, concluded, "The use of the Internet, even though the computer server may be located on Indian lands, would constitute off-reservation gaming to the extent any of the players were located off of Indian lands." *See* Letter from Kevin Washburn, General Counsel, NIGC, to Joseph Speck, Nic-A-Bob Productions, re: WIN Sports Betting Game (Mar. 13, 2001), DE 1, *West Flagler*, No. 1:21-cv-02192, (Ex. G) NIGC further notes that the purpose of IGRA is to "regulate the conduct of gaming *on Indian Lands*." NIGC, *Indian Gaming Regulatory*, available at https://www.nigc.gov/general-counsel/indian-gaming-regulatory-act. In *Iipay Nation*, the United States and California successfully sued a Tribe for taking wagers that originated off Indian lands in violation of federal law. 898 F.3d at 967.[6]

[6] In their Compact approval letter, Defendants attempted to distinguish *Iipay Nation* by noting that the wagering there was prohibited by state law. DE 1-5 at 7. Putting aside that sports betting is illegal in Florida too, *see* Section IV, that attempted distinction does not address the "on Indian lands" requirement, which was a clear point of contention in *Iipay Nation*. *See* 898 F.3d at 965. As

Defendants' clear shift in position, without any support, let alone any change in the underlying law, is contrary to law and arbitrary and capricious, and cannot be upheld.

III. Defendants Failed to Consider Governing Federal Laws that Negate the Legality of the Compact

Defendants' review of the Compact necessarily required an analysis of federal law. *See, e.g.*, 25 U.S.C. § 2701(5). Defendants acknowledged as much when they noted "the Compact is considered to have been approved by operation of law to the extent that it complies with IGRA and existing Federal law." DE 1-5 at 1. Congress even recognizes the existence of "Federal barriers" to allowing mobile sports betting. *See* H.R. 5502, 116th Cong. (2019). IGRA specifies the conditions for the Secretary to disapprove a compact, including, among other things, a determination that the compact violates "any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands." 25 U.S.C. § 2710(d)(8)(B). Two federal statutes—the Wire Act and the Unlawful Internet Gambling Enforcement Act ("UIGEA")—are implicated by the gaming authorized by DOI's approval of the Compact. Yet, Defendants referenced neither.

Floridians, including a Plaintiff here, wrote to DOI to object that the 2021 Compact violated both federal statutes. DE 1-3, 1-4. In a letter dated June 9, 2021, Plaintiff No Casinos detailed a number of "critical flaws" in the 2021 Compact, including violations of the Wire Act and UIGEA. DE 1-3 at 3. Dan Gelber, Mayor of the City of Miami Beach, Florida, also expressed strong opposition to the 2021 Compact in a letter dated June 3, 2021 that also discussed how the compact violates the Wire Act and UIGEA. DE 1-4; *see also* Mary Ellen Klas, *Miami Beach Mayor to Feds: Reject Corrupted Gambling Compact* (June 3, 2021), https://www.tampabay.com/news/florida-politics/2021/06/03/miami-beach-mayor-to-feds-reject-

noted in the *Iipay Nation* opinion, the government affirmatively argued that "'gaming activity' under IGRA is 'the gambling in the poker hall,' as opposed to 'off-site licensing or operation of the games" and that the patron's decision to wager money "occur[ed] off Indian lands." *Id.* at 966.

corrupted-gambling-compact/. But the DOI letter does not even mention either of these two federal statutes.

A. The Compact Allows Sports Betting that Violates the Wire Act

As explained above, pp. 6-7, the Wire Act applies to anyone "engaged in the business of betting or wagering," which undisputedly includes both the Seminole Tribe and its Pari-Mutuel Partners that seek to engage in sports betting operations. *See* 18 U.S.C. § 1081. Although the Wire Act contains a limited safe harbor for certain activities, that safe harbor does not apply to "the transmission of betting information to or from a jurisdiction in which betting is illegal." *U.S. v. Cohen*, 260 F.3d 68, 75 (2d Cir. 2001). As the First Circuit put it: "[T]he safe harbor provision only applies when gambling on the events in question is legal in both the sending and receiving jurisdiction" *U. S. v. Lyons*, 740 F.3d 702, 713 (1st Cir. 2014). Indeed, the Wire Act's text references "the points of origin *and* reception" of the unlawful transmission. 18 U.S.C. § 1081.

Sports betting is illegal in Florida. *See* pp. 25-29, below. DOI, the State, and the Tribe do not have authority to authorize sports betting outside of Indian lands. *See* pp. 15-17, above. DOI, the State, and the Tribe cannot redefine what "on Indian lands" means in contravention of IGRA. *See* pp. 17-18. Florida has not attempted to make sports betting legal outside of the context of the fatally flawed Compact. *See* Ch. 2021-271 §§ 35-36, Laws of Florida (purporting to exempt Class III gaming rights granted to the Tribe "pursuant to [the] gaming compact" from the general prohibition on gambling and the criminalization of sports betting and bookmaking). Accordingly, any bet originated outside of Indian lands implicates and violates the Wire Act, even if the bet is "received" on Indian lands via the Tribe's server.

Additionally, sports betting is illegal in Florida's neighboring states. *See* Ala. Code § 13A-12-21; Ga. Code Ann. § 16-12-21. Not only does the flawed 2021 Compact illegally authorize sports betting off Indian lands, it also allows *interstate* sports betting, which further violates the

Wire Act.[7] Although the Compact purports to restrict sports betting to patrons who are "physically located within the State," DE 1-1 at 52, it provides no reliable mechanism for ensuring that bets from Alabama and Georgia (or any other State that bans sports betting) will not be processed through the Seminole Tribe's server.

It is undisputed that the Compact allows wagers to be made from a mobile or electronic device. DE 1-1 at 70. The Compact designates geo-fencing as the method for "prevent[ing] wagers by players not physically located in the State." DE 1-1 at 19. But the ineffectiveness of geofencing and related technologies has been well documented. Peter K. Yu, *A Haters Guide to Geoblocking*, 25 B.U. J. Sci. & Tech. L. 503 (2019). In fact, the federal government has concluded that "online gambling could provide criminal actors with the potential to be anonymous to an even greater extent than in physical casinos. Using online tools like TOR networks and Virtual Private Networks, criminal actors could conceal their identity, location, and true gambling activity." Joseph S. Campbell, Assistant Director of the FBI, *Law Enforcement Implications of Illegal Online Gambling*, statement filed before the Committee On Oversight and Government Reform – U.S. House of Representatives (Dec. 9, 2015). *See* Exhibit 1. Moreover, gambling operators are forced to concede that "[g]iven the nature of the Internet . . . [they] cannot guarantee that intermediate routing of data or information ancillary to the transaction does not cross state lines." *New Hampshire Lottery Comm'n v. Barr*, No. 19-cv-00163, Declaration of Charles R. McIntyre in support of Plaintiff's Motion for Summary Judgment, ECF No. 2-2 (D.N.H. Feb. 15, 2019). So too here, where sports bettors have every incentive to hide their true location to take advantage of sports betting in areas where it is prohibited.

[7] Notably, the Plaintiffs in the related case, *West Flagler Assoc., Ltd., et al. v. Deb Haaland et al.*, No. 1:21-cv-02192 (D.D.C. Aug. 16, 2021), do not make this argument, presumably because of their interest in preserving certain forms of gambling.

B. The Compact Allows Sports Betting that Violates the Unlawful Internet Gambling Enforcement Act

In 2006, Congress passed the Unlawful Internet Gambling Enforcement Act (UIGEA), which prohibits gambling entities from knowingly accepting payments from someone participating in "unlawful Internet gambling." Like the Wire Act, it applies to anyone "engaged in the business of betting or wagering," which includes the Seminole Tribe and the non-Tribal pari-mutuels who are permitted to contract with the Tribe for sports bettering operations, if the transaction involves "unlawful Internet gambling." 31 U.S.C. § 5363. To determine whether "unlawful Internet gambling" has occurred, UIGEA references the laws that govern in the locations where the bet or wager "is *initiated, received, or otherwise made.*" 31 U.S.C. § 5362 (10)(A). That is consistent with the statute's limited exemption for entirely intratribal or intertribal bets or wagers from the definition of "unlawful Internet gambling." 31 U.S.C. § 5362(10)(C).The sports betting proposed here thus violates UIGEA because sports bets placed under the "hub and spoke" model are not initiated and received in the same location. *See, e.g.*, 31 U.S.C. § 5362(10)(C) (exempting entirely intratribal or intertribal bets or wagers from the definition of "unlawful Internet gambling").

Unsurprisingly, given the plain text of the statute, the federal government has taken the position in connection with online gaming, noting that "'wagering,' 'gambling,' or gaming' occur in both the location from which a bet, or 'offer,' is tendered and the location in which the bet is accepted or received." Brief for the United States as Amicus Curiae Supporting Appellee, No. 99-35088, *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899 (9th Cir. 2002), 1999 WL 33622333 at *12-14; *see also California v. Iipay Nation of Santa Ysabel,* 314CV02724AJBNLS, 2016 WL 10650810 *12 (S.D. Cal. Dec. 12, 2016). Further, UIGEA expressly addresses tribal Internet gambling, requiring on-reservation gambling only. It expressly exempts from its prohibition a bet or wager that is "initiated and received" "within the lands of a single Indian tribe" or "between the

Indian lands or 2 or more Indian tribes." 31 U.S.C. § 5362(1)(C)(i)(I). A bet or wager initiated outside the lands of a single Indian tribe is therefore subject to UIGEA's general prohibition.

IV. Defendants Cannot Approve a Compact that Circumvents State Law

A. IGRA Requires Consideration of State Law

Any analysis under IGRA necessarily requires an analysis of the state law governing gaming. The lawfulness of Class III gaming on Indian lands turns, in part, on whether the State "permits such gaming for any purpose by any person, organization, or entity." 25 U.S.C. § 2710(d)(1)(B). DOI erroneously concluded that it could not consider "the State constitutionality of the legislative authorization of sports betting within the State of Florida" because such concerns were "outside the scope of the Department's review." DE 1-5 at 5-6 n.8. That erroneous conclusion is contrary to law and tortures IGRA's text.

As an initial matter, Defendants' sole basis for refusing to evaluate state law is a subsection of IGRA that describes the "limited circumstances" that allow the Secretary to disapprove a Compact. DE 1-5 at 5 n.8 (citing 25 U.S.C. § 2710(d)(8)(B)). Defendants, however, ignore the totality of the review scheme, which allows to the Secretary not only to disapprove a compact, but also to approve it outright or by operation of law. 25 U.S.C. § 2710(d)(8)(A)-(C). And an approval by operation of law requires finding that the compact "is consistent with the provisions of [IGRA]," which includes the provisions governing the lawfulness of gaming under state law. 25 U.S.C. § 2710(d)(8)(C); 2710(d)(1)(B). When viewed as a whole, it becomes clear that IGRA forbid the Secretary from approving a compact that violates or is inconsistent with state law.

Moreover, state law issues are frequently embedded in agency review, contrary to the position taken by Defendants. The D.C. Circuit has repeatedly addressed situations where agency review was predicated on state law. *See, e.g.*, *Cellwave Tele. Servs. v. FCC*, 30 F.3d 1533 (D.C. Cir. 1994) (addressing issue of Delaware partnership law *de novo* and ruling the statute itself

"unambiguously provides" that the limited partnership was created at the time of the filing of the certificate with the Delaware Secretary of State); *Starpower Comm'ns v. FCC*, 334 F.3d 1150 (D.C. Cir. 2003) (interpreting interconnection agreements because "under Virginia's plain meaning rule, the agreements are not unambiguous."); *United Food & Commercial Workers v. NLRB*, 222 F.3d 1030 (D.C. Cir. 2000) (holding NLRB's "determination that organizers were lawfully excluded from the sidewalks of the four stores was based on an erroneous reading of Virginia law," granting petition for review, and remanded to the agency). In those circumstances, agencies interpret state law, but are not entitled to any deference to their interpretation. *Id.* at 1036. Governing federal law at times *requires* consideration of state law; it does not absolve an agency's duty to review it.

IGRA expressly requires compliance with state law for Class III gaming on tribal lands. *See* 25 U.S.C. § 2710(d)(1); *see also Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 41 F.3d 421, 427 (9th Cir. 1994) ("a state need only allow Indian tribes to operate games that others can operate, but need not give tribes what others cannot have."). Moreover, the Wire Act and UIGEA also require an analysis of state law to determine whether sports betting, in particular, is legal in Florida. *See* pp. 19-22, above.

B. The 2021 Compact Violates Amendment 3 to Florida's Constitution

Florida's long history of opposing the expansion of gambling is hard to ignore, but that is exactly what Defendants did, based on a fundamental misreading of IGRA. *See* pp. 23-24, above. Florida's gaming law operates from the fundamental premise that gambling in any of its forms is illegal. *See* Fla. Stat. § 849.08.

> Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever for money or anything of value, shall be guilty of a misdemeanor of the second degree.
>
> *Id.*

Although, over the years, the Legislature has previously authorized limited exceptions to this general prohibition,[8] no one can credibly argue that Florida allows widespread gambling throughout the State. No one in Florida could lawfully engage in sports betting, craps, or roulette, absent the 2021 Compact. *See*, *e.g.*, Fla. Stat. §§ 849. 08, 849.14.

The summary judgment papers filed by the plaintiffs in *West Flagler v. Haaland* bury the lede on this issue. *West Flagler Assoc., Ltd. et al. v. Haaland et al.*, No. 1:21-cv-02192 (D.D.C. filed August 16, 2021), D.E. 19 at 6-7. They devote only two paragraphs to the central state law that governs the case. Although prior, limited expansions of gambling had been done by legislative enactment, a seismic change in Florida gaming law prevented that from happening following the passage of Amendment 3 to Florida's constitution. In 2018, over 71 percent of Florida voters approved a citizens' initiative that amended Florida's Constitution to give voters final and *exclusive* authority over whether to approve casino gambling in Florida.[9] Accordingly, as of November 6, 2018 when the self-executing amendment governing gambling became effective, the Florida legislature lost plenary authority over gambling authorization. Amendment 3 to Florida Constitution provides:

> **SECTION 30. Voter control of gambling in Florida.—**
>
> (a) This amendment ensures that *Florida voters shall have the exclusive right to decide* whether to authorize casino gambling in the State of Florida. *This amendment requires a vote by citizens' initiative pursuant to Article XI, section 3, in order for casino gambling to be authorized under Florida law.*

[8] Some of the limited exceptions to Florida's general gambling prohibition include the state lottery, banked card games and slots machines at certain tribal facilities, as well as pari-mutuel wagering, cardrooms, and slot machines at a select few facilities. *See* DE 1 ¶¶ 52, 56.

[9] More than 5.6 million voters (71.5%) approved Amendment 3. *See* Florida Department of State, Division of Elections https://results.elections.myflorida.com (Nov. 2018 General Election Results, Constitutional Amendments).

This section amends this Article; and also affects Article XI, *by making citizens' initiatives the exclusive method of authorizing casino gambling.*

(b) *As used in this section, "casino gambling" means any of the types of games typically found in casinos and that are within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, 25 U.S.C. ss. 2701 et seq. ("IGRA"), and in 25 C.F.R. s. 502.4*, upon adoption of this amendment, and any that are added to such definition of Class III gaming in the future. This includes, but is not limited to, any house banking game, including but not limited to card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games); any player-banked game that simulates a house banking game, such as California black jack; casino games such as roulette, craps, and keno; any slot machines as defined in 15 U.S.C. s. 1171(a)(1); and any other game not authorized by Article X, section 15, whether or not defined as a slot machine, in which outcomes are determined by random number generator or are similarly assigned randomly, such as instant or historical racing. As used herein, "casino gambling" includes any electronic gambling devices, simulated gambling devices, video lottery devices, internet sweepstakes devices, and any other form of electronic or electromechanical facsimiles of any game of chance, slot machine, or casino-style game, regardless of how such devices are defined under IGRA. As used herein, "casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. For purposes of this section, "gambling" and "gaming" are synonymous.

(c) Nothing herein shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. In addition, *nothing herein shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA.*

(d) This section is effective upon approval by the voters, is self-executing, and no Legislative implementation is required.

(e) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

Fla. Const., art. X, § 30.

The Amendment was intended to ensure that "for casino gambling to be authorized under Florida law, it must be approved by Florida voters pursuant to Article XI, Section 3 of the Florida

Constitution." *Advisory Op. to the Atty. Gen re: Voter Control of Gambling in Florida*, 215 So. 2d 1209, 1213 (Fla. 2017).

Defendants were notably silent on Amendment 3. They undertook no analysis of this seminal shift in Florida gaming law, and did not even mention the Amendment when considering whether the new forms of gaming authorized by the Florida legislature were lawful. DOI's approval of the 2021 Compact denied Florida voters the exclusive right to approve expansion of gambling.

Clearly, Amendment 3 applies to the gambling at issue in this case. By its terms, Amendment 3 applies to "casino gambling," which is an expressly defined term within the Amendment. It includes craps and roulette within the definition of "casino gambling." Fla. Const., art. X, § 30. Although the Amendment contains a clause recognizing the ability of Tribes and the State to *negotiate* compacts under IGRA, it does not and cannot dispense with the mandatory requirement of IGRA that the forms of gaming offered by the Tribe be lawful in the State. *See* 25 U.S.C. § 2710(d)(1)(B).

As the Supreme Court of Florida explained, the Governor does not have constitutional authority to bind the State to a gaming compact that departs from state law. *Florida House of Representatives v. Crist*, 999 So. 2d 601, 616 (Fla. 2008). "[W]hat is legal in Florida is legal on tribal lands, and what is illegal in Florida is illegal there." *Id.* at 614. Moreover, although compacts are creatures of federal law, states cannot use compacts as a tool to circumvent state law. *See* pp. 17-18, above

Amendment 3 also applies to the sports betting provisions in the Compact. Undisputedly, sports betting falls within Class III gaming, as defined in IGRA. 25 U.S.C. §2703(8). Amendment 3 incorporates IGRA's Class III definition as well as 25 C.F.R. § 502.4, which expressly includes

sports betting as a Class III game. Fla. Const., art. X, § 30. Although the Amendment does not specifically list "sports betting," the text makes clear that the specified list is not meant to be exhaustive. Moreover, the Amendment contains a narrow, specific list of exceptions to which the Amendment does not apply: "As used herein, 'casino gambling' does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions." Fla. Const., art. X, § 30. The fact that sports betting is not included among the limited list of narrow exceptions confirms that Amendment 3 applies to sports betting.[10] Even in the wake of the 2021 Compact, Floridians have recognized that for sports betting to become lawful, a citizens' initiative must be passed consistent with Amendment 3 and have begun the initiative process to try to do so. *See* Exhibit 2, Proposed Amendment to Article X, Section 33 of the Florida Constitution by The Florida Education Champions; *see also* Florida Division of Elections, Ballot Application, *available at* https://dos.elections.myflorida.com/Initiatives/initdetail.asp?account=79479&seqnum=1. Plaintiffs will continue to vehemently oppose efforts to expand gambling in Florida.

V. The Compact Enriches Non-Tribal Entities in Violation of IGRA

Congress intended IGRA "to ensure that the Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. § 2702(2). DOI itself describes IGRA as "a legal framework structured to safeguard tribes as the primary beneficiaries of their gaming operations," among other things. DOI, *Budget Justifications and Performance Information, Fiscal Year 2021*, NATIONAL INDIAN GAMING COMMISSION, at 7 *available at* https://www.doi.gov/sites/doi.gov/files/uploads/fy2021-nigc-budget-justification.pdf. When a Compact violates the very premise of IGRA, it cannot stand. *Amador Cnty.*, 640 F.3d at 381.

[10] The clause recognizing the ability of Tribes and States to negotiate compacts is inapplicable to the sports betting provisions because, as explained at pp. 15-17, the Compact cannot authorize gambling activities off Indian lands.

Here, the 2021 Compact purports to authorize non-tribal gambling entities to solicit and execute sports bets outside of Indian lands. Under the 2021 Compact, select pari-mutuel facilities ("Pari-Mutuel Partners") will be required "to perform marketing or similar services" in connection with sports betting and to have "dedicated areas within their facilities where Patrons may access or use electronic devices to place wagers." DE 1-1 at 15, 17. These Pari-Mutuel Partners also stand to take at least 60% of the net profit they generate through off-reservation sports betting, not to mention the additional revenue they will likely generate from the foot traffic to their facilities generated by potential sports bettors. *See id.* at 16-17. In approving the Compact, DOI expressed "concerns" about this arrangement and noted that it "does not endorse the marketing agreement provided in the Compact." DE 1-5 at 12. The issue of whether the hub and spoke scheme is consistent with IGRA must be decided.[11]

CONCLUSION

Plaintiffs respectfully request that this Court grant summary judgment and: (1) find that Secretary Haaland and the U.S. Department of the Interior violated the Administrative Procedure Act, and (2) declare that the 2021 Compact is not approved by operation of law and is not consistent with IGRA because it violates state and federal law, and therefore DOI's approval of the 2021 Compact by operation of law must be set aside. In the alternative, even if the Court does not find that Secretary Haaland and the U.S. Department of the Interior violated the Administrative Procedure Act, Plaintiffs respectfully request that this Court grant summary judgment and declare

[11] The Plaintiffs in the related case *West Flagler*, No. 1:21-cv-02192, did not raise this argument because West Flagler is a potential Pari-mutuel Partner. West Flagler acknowledges that it directly competes with the Seminole Tribe and seeks to invalidate the Compact because the "online sports betting provisions will divert business that would have been spent at Plaintiffs' facilities and cause it to be spent on online sports gaming offered by the Tribe." *West Flagler Assoc., Ltd. et al. v. Haaland et al*, No. 1:21-cv-02192, DE 19 at 14.

that the 2021 Compact is not consistent with IGRA because it violates state and federal law, and therefore the 2021 Compact has no legal force or effect.

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