SC23-1333

In the Supreme Court of Florida

WEST FLAGLER ASSOCIATES LTD.,
BONITA-FORT MYERS CORP., and ISADORE HAVENICK,
Petitioners,

v.

RON DESANTIS, in his capacity as Governor of the State of Florida, PAUL RENNER, in his capacity as Speaker of the Florida House of Representatives, and KATHLEEN PASSIDOMO, in her capacity as President of the Florida Senate,
Respondents.

ON PETITION FOR A WRIT OF QUO WARRANTO

RESPONSE TO PETITION FOR A WRIT OF QUO WARRANTO

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INTRODUCTION AND SUMMARY OF ARGUMENT

Two south Florida pari-mutuel operators and their vice president petition this Court for a writ of quo warranto. They seek to undo the 2021 gaming compact agreed to by the State and the Seminole Tribe of Florida; approved by the Legislature and the U.S. Secretary of the Interior; and now held by the federal courts to be consistent with federal law.

Two-and-a-half years ago, the State of Florida authorized the Tribe to offer gambling, including sports betting, through the 2021 gaming compact. That agreement granted the Tribe certain exclusive rights that provide it with an important revenue stream to bolster the health and prosperity of the tribal community, while also generating considerable revenue for the State itself. And it allowed licensed pari-mutuel facilities, like Bonita Springs, one of the Petitioners here,[1] to profit handsomely from sports-betting partnerships with the Tribe.

Shortly after the compact was concluded, Petitioners commenced federal litigation to stop it from taking effect. They first sued

[1] West Flagler sold the Magic City Casino earlier in 2023 and thus no longer has its own pari-mutuel facility. *See* Pet. 14, 15 n.3.

in the U.S. District Court for the Northern District of Florida seeking declaratory and injunctive relief. Petitioners then sued in the U.S. District Court for the District of Columbia seeking to set aside the agreement under the federal Administrative Procedure Act. Only after losing in both venues did Petitioners file suit here, challenging the portions of the compact that allow for online sports betting.

Petitioners provide no basis for this Court to upend work approved by three sovereigns in their third-choice legal venue.

First, the Court should decline to entertain the petition for discretionary reasons. Petitioners' delay in filing this action—two and a half years from the compact taking effect—is unjustifiable. Quo warranto is a discretionary exercise of jurisdiction reserved for *extraordinary* matters, and delays of this magnitude undercut any claim Petitioners might have to extraordinary relief. Moreover, the Seminole Tribe, because of its sovereign immunity, cannot be joined to this action. Yet as an equal partner to the compact, and the main beneficiary of the online-sports-betting provisions that Petitioners challenge here, it is an indispensable party. Equity and good conscience therefore bar invalidating the compact in this proceeding.

Second, the relief Petitioners seek was historically unavailable in quo warranto proceedings. The writ of quo warranto's traditional function was to oust from office individuals who had no valid title to that office, or to prevent officers with valid title from acting outside the arguable scope of their authority. It could be sought only by the Attorney General, absent specific legislative authorization providing otherwise. At a minimum, the writ was never thought to be a substitute for seeking a declaratory judgment that a statute is unconstitutional—as Petitioners seek here. To the extent this Court's precedent counsels a different result, *see Chiles v. Phelps*, 714 So. 2d 453 (Fla. 1998), the Court should recede from it.

And third, the Petition fails on the merits. Sports betting is not "casino gambling" as that term is defined in the Florida Constitution, because it is not the "type[] of game[] typically found in casinos." Art. X, § 30(b), Fla. Const. Section 30's citizen-initiative requirement is therefore inapplicable. But either way, the compact and its implementing legislation are squarely within Section 30's IGRA exception. The D.C. Circuit has now rejected Petitioners' argument that the compact is unlawful under IGRA because it allows the Tribe to offer

online sports betting, and the implementing legislation simply executes that lawful compact. Petitioners are incorrect that the IGRA-compact exception in Section 30 is limited to compacts narrower than what IGRA itself contemplates and permits—compacts addressing *only* gaming exclusively occurring on tribal lands. In any event, the Legislature validly deemed an online-sports-betting transaction to occur on tribal lands where wagers are accepted.

For all these reasons, the Petition should be dismissed or denied.

STATEMENT OF THE CASE AND FACTS

A. The Indian Gaming Regulatory Act

In *California v. Cabazon Band of Mission Indians*, the Supreme Court held that states lack regulatory authority over gaming on Indian reservations. 480 U.S. 202, 221–22 (1987). Gaming on tribal lands, the Court held, was subject instead to the control of the tribe and the federal government. *Id.* But *Cabazon* "left fully intact a State's regulatory power over tribal gaming outside Indian territory." *Michigan v. Bay Mills Ind. Cmty.*, 572 U.S. 782, 794 (2014).

Congress responded to *Cabazon* the next year by establishing a

comprehensive federal scheme for regulating gaming on Indian reservations—what the statute terms "Indian lands," *see* 25 U.S.C. § 2703(4)—in the form of the Indian Gaming Regulatory Act (IGRA). IGRA provides for a complex mix of federal and state regulation of gaming activities on Indian lands based on the type of game involved. Class I gaming includes "social games solely for prizes of minimal value." *Id.* § 2703(6). Class II gaming includes bingo and card games where the players compete against each other rather than against the casino. *Id.* § 2703(7). Class III gaming is everything else, *id.* § 2703(8), and "includes casino games, slot machines, and sports betting." *W. Flagler Assocs., Ltd. v. Haaland* ("*Haaland II*"), 71 F.4th 1059, 1062 (D.C. Cir. 2023) (citing 25 U.S.C. § 2703(8)).

Class I games are within the exclusive jurisdiction of tribes. 25 U.S.C. § 2710(a)(1). Class II games may be offered by tribes under certain circumstances in a state that "permits such gaming for any purpose." *Id.* § 2710(b)(1)(A). And Class III games—the type of gaming most relevant here—are "lawful on Indian lands only if such activities" are authorized by an Indian tribe "located in a State that permits such gaming activities for any purpose" and conducted pursuant to

a compact between a state and tribe. *Id.* § 2710(d)(1); *see* 18 U.S.C. § 1166(c)(2). Otherwise, participation in a Class III game on Indian lands in violation of state law is a federal crime. 18 U.S.C. § 1166(a), (b), (c)(2).

IGRA establishes procedures under which states and tribes may enter into IGRA compacts "governing gaming activities on the Indian lands of the Indian tribe." 25 U.S.C. § 2710(d)(3)(B). But "while the function of a class III gaming compact is to authorize gaming on Indian lands, it 'may include provisions relating to' a litany of other subjects." *Haaland II*, 71 F.4th at 1065 (quoting 25 U.S.C. § 2710(d)(3)(C)). These other subjects include, among other things, "the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity"; "the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations"; and "any other subjects that are directly related to the operation of gaming activities." *Id.* (quoting 25 U.S.C. § 2710(d)(3)(C)(i), (ii),

(vii)). Compacts must be submitted to the U.S. Secretary of the Interior for approval. 25 U.S.C. § 2710(d)(8). If the state and tribe cannot agree on an appropriate compact, the federal government has authority in some cases to unilaterally authorize tribal gaming. *Id.* § 2710(d)(7)(vii).

B. The 2010 compact

Florida law has long restricted Class III gaming. *See Fla. House of Reps. v. Crist*, 999 So. 2d 601, 614 (Fla. 2008). But in order to secure significant financial benefits for the Tribe and the State from the conduct of Class III gaming, and to give the State a say over tribal gaming activities, the State and the Tribe have, over the years, attempted to conclude various IGRA compacts. *See id.*

In 2007, after the federal government threatened to authorize the Seminole Tribe to conduct Class III gaming activities without state involvement or revenue sharing, the Tribe and the Governor of Florida agreed to an IGRA compact. *Id.* at 605–06. Five days after that agreement was concluded, however, the Legislature sought quo warranto in this Court, contending that the Governor had exceeded his executive authority in concluding such a compact without legis-

lative authorization. *Id.* at 606. This Court agreed with the Legislature that the Governor lacked unilateral authority under state law to conclude a compact that would authorize the Tribe to conduct Class III gaming activities that would otherwise violate state-law prohibitions. *See id.* at 615–16.

In 2010, the Legislature enacted into law what this Court had found lacking in *Crist*: authorization for the Governor to negotiate and execute tribal gaming compacts. The law gives the Governor authority to negotiate and conclude IGRA gaming compacts, subject to legislative ratification. § 285.712(1)–(2), Fla. Stat. Once ratified by the Legislature, the compact must then be submitted to the Secretary of the Interior for approval under IGRA. *Id.* § 285.712(4).

Following this framework, in 2010, the Governor and the Tribe concluded, the Legislature ratified, and the Secretary of the Interior approved, a new IGRA gaming compact. Supp. App. 3–58. Under that compact, the Tribe could operate a variety of Class III games on tribal lands, including slot machines, banked games, and raffles and drawings at most tribal gaming facilities. *Id.* at 6–7, 15–16. This authorization was set to last for twenty years. *Id.* at 52**.** That compact also

granted the Tribe exclusivity over the operation of covered games, in exchange for regular revenue-sharing payments to the State. *Id.* at 42–46. The Legislature implemented the 2010 compact by authorizing the gaming agreed to in the compact as a matter of state law, including through removing otherwise applicable criminal prohibitions on such gaming. *See* Chs. 2010-29 & 2011-4, Laws of Fla.; § 285.710(13), (14) Fla. Stat. (eff. July 6, 2011). It also designated the Department of Business and Professional Regulation's Division of Pari-mutuel Wagering as the agency overseeing tribal gaming, § 285.710(7), Fla. Stat. (eff. July 6, 2011), and doled out portions of the gaming revenue received from the Tribe to the local governments containing tribal lands, *id.* § 285.710(10).

C. Amendment 3

In 2018, the people, by citizens' initiative, added Article X, Section 30 to the Florida Constitution. Popularly known as "Amendment 3," the provision restricts the Legislature's authority to authorize new casino gaming in Florida. The Seminole Tribe was a principal supporter of the measure. *See* Contessa Brewer, *Disney and Seminole Tribe Score Big Win in Florida on Election Day as Voters Approve Anti-*

Casino Amendment, CNBC (Nov. 7, 2018), https://tinyurl.com/bdfw38ej. Amendment 3 requires a vote by citizens' initiative before "casino gambling" may be authorized under Florida law. Art. X, § 30(a), Fla. Const. It defines casino gambling to include "any of the types of games typically found in casinos and that are within the definition of Class III gaming" under IGRA and provides exemplary lists of the included and excluded types of games. Art. X, § 30(b), Fla. Const.

Amendment 3 exempts from this citizen-initiative requirement gaming conducted under an IGRA compact. It states that nothing in it "limit[s] the ability of the state or Native American tribes to negotiate gaming compacts pursuant to" IGRA "for the conduct of casino gaming on tribal lands," or to "affect any existing gaming on tribal lands pursuant to" IGRA compacts. *Id.* § 30(c).

D. The 2021 compact

In 2019, the Seminole Tribe and the State were in negotiations to conclude a new version of the gaming compact. But that May, partially because of a dispute surrounding the State's implementation of the 2010 compact, the Tribe stopped making revenue-sharing pay-

ments owed to the State under the 2010 compact and related agreements. *See* Jeffrey Schweers, *Seminole Tribe Suspends Gambling Payments to State of Florida*, TALLAHASSEE DEMOCRAT (May 14, 2019), https://tinyurl.com/5xej4z6t.

In April 2021, the State, acting through the Governor, and the Tribe agreed to an updated gaming compact. That compact expanded the range of gaming activities the Tribe could conduct. The new agreement permitted the Tribe to operate on Indian lands "slot machines, raffles and drawings, table games [including craps and roulette], fantasy sports contests, [and] sports betting." Pet. App. 7, 23. The compact tasks the Tribe and its gaming commission with regulating the conduct of those games, *Id.* at 33–38; § 285.710(7), Fla. Stat., including by resolving patron disputes under tribal law, Pet. App. 33. The Tribe's regulation of gaming is subject to state-conducted audits and certain minimum standards laid out in the compact. *Id.* at 25–32, 41–48.

The Tribe's right to operate the games in question in Florida is exclusive, with certain exceptions. *Id.* at 57–66. In exchange, the

compact requires the Tribe to provide a substantial share of its gaming revenue to the State, totaling no less than $2.5 billion dollars over the first five years. *Id.* at 11, 54. The compact also permits qualified pari-mutuel facilities, like Petitioner Bonita Springs, to enter into agreements with the Tribe to market the Tribe's sports book. *Id.* at 18–21. Pari-mutuels that use this opportunity receive 60% of the relevant sports-betting profit (not to exceed 40% of all sports-betting profit). *Id.* at 19–20.

The sports-betting provisions of the compact have been at the center of what has now been more than two years of litigation. The compact contemplates that the Tribe will operate its sports book and accept all sports bets at physical locations on tribal lands. *Id.* at 23–24. It also authorizes the Tribe to accept sports bets from patrons who place such bets from elsewhere in Florida using the internet, not only from patrons who place bets while physically located on tribal lands. *Id.* at 23. To make the Tribe's regulatory jurisdiction over such transactions unmistakable, the compact contains a provision deeming the whole wagering transaction to take place where the bet is

accepted—on tribal lands—rather than wherever the bettor physically is. *Id.* at 18.

Consistent with Florida law, the Legislature ratified the compact after the Governor and the Tribe concluded it. *Haaland II*, 71 F.4th at 1073. The compact was then presented to the Secretary of the Interior who allowed it to take effect on August 11, 2021. *Indian Gaming; Approval by Operation of Law of Tribal-State Class III Gaming Compact in the State of Florida*, 86 Fed. Reg. 44037 (Aug. 11, 2021).

As with the 2010 compact, the new compact was implemented by legislation providing for a new body, the Florida Gaming Control Commission, to take over regulatory oversight of compact gaming, specifying the new revenue shares owed to each locality, and authorizing the updated universe of covered games. *See* Chs. 2021-268 to -271, Laws of Fla.; §§ 285.710(10), (13), 849.142, Fla. Stat.

E. Petitioners' federal lawsuits

On July 2, 2021, Petitioner asked the U.S. District Court for the Northern District of Florida to invalidate parts of the compact and implementing law. Supp. App. 59. Petitioners contended that the portions of the compact permitting the Tribe to accept sports bets from patrons physically off Indian lands violated Amendment 3, various

federal statutes—IGRA, the Wire Act, the Unlawful Internet Gambling Enforcement Act—and the Equal Protection Clause. *Id.* at 60–63. They asked the court to enjoin the Governor and the Secretary of the Florida Department of Business and Professional Regulation from "implementing" mobile sports betting. *Id.* at 124.

The district court never reached the merits of those claims because it dismissed the suit for lack of standing. *W. Flagler Assocs. v. DeSantis*, 568 F. Supp. 3d 1277, 1280 (N.D. Fla. 2021). It concluded that Petitioners' alleged injuries from the compact and the legislation implementing it—purported increased competition in the gambling marketplace because of the sports-betting provisions—were not fairly traceable to actions of the Governor or Secretary, who had little ongoing role in implementing the compact, or redressable by the relief sought against them. *Id.* at 1283–85. Instead, Petitioners' injuries were traceable to the actions of the Tribe, which was not a party to the litigation. *Id.* at 1286–88. Petitioners appealed but voluntarily dismissed the appeal before the court of appeals reached a decision. *See W. Flagler Assocs. v. DeSantis*, No. 21-14141, 2021 WL 7209340 (11th Cir. Dec. 20, 2021).

On August 16, 2021, Petitioners brought a second lawsuit in the U.S. District Court for the District of Columbia against the Secretary of the Interior. *See* Supp. App. 201. Petitioners rested this second suit on basically the same alleged violations of state and federal law that grounded the Florida federal suit. *See generally id.* at 201–43. The added twist in the D.C. suit was that Petitioners sought to leverage those alleged violations into "setting aside," under the federal Administrative Procedure Act, *see* 5 U.S.C. § 706(a)(2), the Interior Secretary's approval of the compact under IGRA, and therefore the compact itself.

On November 22, 2021, the district court agreed and set aside the compact. *W. Flagler Assocs. v. Haaland* ("*Haaland I*"), 573 F. Supp. 3d 260, 276–77 (D.D.C. 2021), *rev'd Haaland II*, 71 F.4th 1059. It held that the sports-betting provisions of the compact, because they permitted patrons physically present off Tribal lands to place sports bets—even though accepted and processed by the Tribe's sports-book operation entirely on those lands—violated IGRA by "authorizing" gaming off Indian lands. *Id.* at 272–75. The court invalidated the compact in full, even though the challenge was focused

only on the sports-betting provisions. *Id.* at 276 & n.8; Pet. App. 60.

The Secretary of the Interior appealed, and the D.C. Circuit, in an opinion issued June 30, 2023, unanimously reversed and remanded for judgment to be entered for the Secretary. *Haaland II*, 71 F.4th at 1062. The court emphatically rejected Petitioners' central contention—repeated in their petition, *see* Pet. 22—that IGRA governs gaming only on Indian lands. That contention, the court explained, confused two different functions an IGRA compact serves. An IGRA compact does indeed authorize Class III gaming on Indian lands, *see Haaland II*, 71 F.4th at 1062, 1065, and absent that authorization such activities would be a federal crime if conducted in violation of state law, *see* 25 U.S.C. § 2710(d)(1); 18 U.S.C. § 1166. But IGRA also allows a compact to "discuss[] other topics," and hence can also "govern[] activities outside Indian lands" if those activities are "directly related to" gaming on Indian lands. *Haaland II*, 71 F.4th at 1062; *see also id.* at 1066.

Here, the compact's online-sports-betting provisions, even when part of the transaction occurs off Indian lands, are permissible

subjects of an IGRA compact. *Id.* at 1066. That is so, the court explained, because the "discussion of wagers placed from outside Indian lands is . . . 'directly related to the operation of' the Tribe's sports book and thus falls within the scope of IGRA." *Id.* (quoting 25 U.S.C. § 2710(d)(3)(C)(vii)). The court likewise rejected Petitioners' suggestion that the compact violated IGRA in "deeming" all sports-betting wagers to occur on tribal lands. "Because the Compact requires all gaming disputes to be resolved in accordance with tribal law," it found, "this 'deeming' provision simply allocates jurisdiction between Florida and the Tribe, as permitted by" IGRA. *Id.* (citing 25 U.S.C. § 2710(d)(3)(C)(i)–(ii)). And the court rejected Petitioners' further suggestions that the compact violated the Wire Act, UIGEA, and the Equal Protection Clause *Id.* at 1068–69.

The D.C. Circuit denied Petitioners' petition to rehear the case en banc with no dissent, *W. Flagler Assocs. v. Haaland*, No. 21-5265, 2023 WL 5985186 (D.C. Cir. Sept. 11, 2023), and denied Petitioners' motion to stay its mandate. Petitioners then sought a stay of the court of appeals' mandate in the U.S. Supreme Court, which was also denied without any noted dissent. *W. Flagler Assocs. v. Haaland*, No.

23A315, 2023 WL 7011331 (U.S. Oct. 25, 2023). Petitioners have stated their intent to petition for certiorari, seeking an extension of time until February 9, 2024, to do so. Application for Extension of Time, *W. Flagler Assocs. v. Haaland*, No. 23A315 (Nov. 20, 2023).

F. This action

On September 25, 2023, Petitioners filed their quo warranto petition in this court. They named as defendants Governor Ron DeSantis, Speaker of the Florida House of Representatives Paul Renner, and President of the Florida Senate Kathleen Passidomo. Pet. 1. Petitioners argue that the Governor and the Legislature "unconstitutionally exercised their corresponding executive and legislative powers to enter into and ratify a compact with the Tribe on behalf of the State of Florida that unconstitutionally expanded casino gambling in Florida." *Id.* at 5.

They claim the right to do so because they are citizens and taxpayers of the State of Florida and because "West Flagler and Bonita Springs are also competitors of the Tribe who will suffer direct economic harm from Respondents' excess of authority." *Id.* at 6–7.

ARGUMENT

As an important source of revenue for both the Seminole Tribe

and the State—and even the Tribe's competitors—the 2021 compact serves the public interest and has been upheld in federal court. Its implementing legislation also comports with state law, as the voters who ratified Article X, Section 30 of the state constitution understood that Section 30 applied only to "casino gambling" and that no citizen initiative would be required for IGRA compacts in any event.

The petition for a writ of quo warranto should be denied for several reasons. First, the Court should decline to exercise its discretion to entertain it. Second, the writ of quo warranto is unavailable here. And third, Petitioners' merits arguments are unsound.

I. The Court should deny the petition in its discretion.

"[T]he nature of an extraordinary writ is not of absolute right," and "the granting of such writ lies within the discretion of the court." *Israel v. DeSantis*, 269 So. 3d 491, 494 (Fla. 2019). Quo warranto relief can and sometimes should be denied for "reasons other than the actual merits of the claim." *Warren v. DeSantis*, 365 So. 3d 1137, 1142 (Fla. 2023) (quoting *Topps v. State*, 865 So. 2d 1253, 1257 (Fla. 2004)). Two threshold reasons to deny the petition arise here. Petitioners waited over two years to seek the writ while prosecuting two federal-court actions to invalidate the compact. The Tribe is also an

indispensable party to this action but cannot be joined because of sovereign immunity.

A. Petitioners unjustifiably waited over two years to file this petition.

This Court has declined to grant extraordinary relief when a petitioner "unreasonably delay[ed] filing a petition for writ of quo warranto." *Warren*, 365 So. 3d at 1142; *see also Thompson v. DeSantis*, 301 So. 3d 180, 182–84 (Fla. 2020) (declining to consider quo warranto claims after the petitioner delayed for six months a challenge to the Judicial Nominating Commission's list of nominees); *State ex rel. Pooser v. Wester*, 170 So. 736, 738–39 (Fla. 1936) (holding that an unreasonable four-month delay precluded the grant of quo warranto relief).

Warren is controlling. There, a state attorney challenged the Governor's decision to suspend him from office. Rather than seeking quo warranto immediately in this Court, however, the petitioner sued in federal district court thirteen days after his suspension claiming, among other things, that the Governor's action violated Florida law. 365 So. 3d at 1140–41. It was not until almost "one month after the federal district court issued its merits order . . . and more than six

months after his suspension" that the petitioner brought his action in this Court presenting the same claim he had asked the federal district court to decide. *Id.* at 1141. That delay justified denying the quo warranto petition. *Id.*

Here, Petitioners' unreasonable delay was far worse. The compact-implementing legislation Petitioners challenge was signed into law on May 25, 2021, chs. 2021-268 to -271, Laws of Fla., and the Secretary of the Interior allowed the compact to take effect on August 11, 2021. Petitioners brought their Florida federal suit on July 2, 2021, 42 days before the compact took effect; and brought their D.C. federal suit on August 16, 2021, only 5 days after. *See* Supp. App. 59, 201. Both complaints presented the federal courts with the state-law arguments Petitioners now present to this Court. *Id.* at 80–82, 148–50, 204–05, 231–33.

Petitioners lost the Florida federal case on October 18, 2021. *W. Flagler Assocs. v. DeSantis*, 568 F. Supp. 3d 1277. They saw initial success in the D.C. matter, but their win was vacated on June 30, 2023. *Haaland II*, 71 F.4th 1059, *rev'g* 573 F. Supp. 3d 260. In other words, despite being "ready to challenge," *Warren*, 365 So. 3d at

1142, the Florida implementing legislation at least by July 2, 2021, Petitioners waited 26 months before suing in this Court—a longer delay than in *Warren*, *Thompson*, and *Pooser* combined. Petitioner invoked this Court as Plan C only after their two federal-court lawsuits failed.

Petitioners offer no good excuse for the delay. Petitioners first contend that "once the Secretary of the Interior allowed the Compact to take effect, the only remedy available to Petitioners to challenge that approval was through a federal lawsuit." Pet. 10–11. But Petitioners also could have sought—and in fact did seek in their Florida federal suit, *see* Supp. App. 124–25, 199—a remedy for their injuries through directly challenging the implementing legislation, and that is exactly the remedy they are seeking here.

Second, Petitioners contend that they needed to go to the federal courts first because their state-law claims depend on the resolution of an antecedent question of federal law—in particular, on whether the compact was consistent with IGRA. Pet. 12. But even if that were true,[2] this Court may, and often does, decide questions of federal law.

[2] The federal-law question to which Petitioners refer is whether

And here, that purported federal-law question was embedded in a question of state law, on which this Court is the final authority.

Finally, Petitioners suggest that their delay was excused because they successfully convinced the D.C. federal district court to set aside the compact on November 22, 2021, a ruling that remained in place pending the federal government's appeal. Pet. 12. But the fact that Petitioners bet the farm on successfully defending their dubious district-court victory on appeal, only to lose their federal suit much more slowly than Andrew Warren lost his, *see Warren*, 365 So. 3d at 1140–41, is no excuse for their more-than-two-year delay in bringing their state-law claims to this Court, which they knew full well would be live if they lost the appeal.

Original jurisdiction over quo warranto actions is reserved for *truly* extraordinary circumstances, where the review of Florida's highest court is necessary immediately, rather than as a last resort. That

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the "compact[]" was "pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands." Art. X, § 30(c), Fla. Const. But a collateral attack on the Secretary's approval was not a prerequisite to knowing that the compact was concluded under IGRA, as it plainly was. *See State v. Phillips*, 852 So. 2d 922, 923 (Fla. 1st DCA 2003) (rejecting the contention that "pursuant to" necessarily means "in accordance with").

process prevents prejudice to the opposing party that may arise from the uncertainty surrounding extended litigation—here, depriving the State and the Tribe of a mutually beneficial gaming compact.

B. The Seminole Tribe of Florida is an indispensable party.

The Court should also decline to exercise quo warranto jurisdiction because this lawsuit lacks an indispensable party—the Tribe.

Actions cannot be maintained without indispensable parties. *See* Fla. R. Civ. P. 1.140(b)(7).[3] "An indispensable party is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action." *Fla. Dep't of Rev. v. Cummings*, 930 So. 2d 604, 607 (Fla. 2006).

The Tribe fits that description. The compact is essentially a contract between the State and the Tribe, and parties to contracts have

[3] Though this is an invocation of this Court's original jurisdiction, which is more typically guided by Florida Rule of Appellate Procedure 9.100, "[e]quitable principles apply in the exercise of a Florida court's extraordinary writ jurisdiction." *State v. Southpointe Pharm.*, 636 So. 2d 1377, 1381 (Fla. 1st DCA 1994) (citation omitted).

historically been indispensable parties in litigation about those contracts. *See, e.g.*, *Spierer v. City of N. Miami Beach*, 560 So. 2d 1198, 1200 (Fla. 3d DCA 1990); *Loxahatchee River Env't Control Dist. v. Martin Cnty. Little Club, Inc.*, 409 So. 2d 135, 137 (Fla. 4th DCA 1982) (per curiam). The Tribe's interest in the online-sports-betting provisions of the compact—which are the only ones Petitioners challenge—is especially acute. The Tribe is the main beneficiary of those portions of the compact. Pet. App. 60–61. It stands to lose billions if Petitioners succeed in this proceeding—money that would, consistent with IGRA's purposes, otherwise enrich the lives of the Tribe's members. *See* 25 U.S.C. § 2701(4); Pet. App. 4–5. But, because of its sovereign immunity, the Tribe cannot be joined to this action without its consent. *See Houghtaling v. Seminole Tribe of Fla.*, 611 So. 2d 1235, 1239 (Fla. 1993); *Puyallup Tribe, Inc. v. Dep't of Game*, 433 U.S. 165, 172 (1977) ("Absent an effective waiver or consent, it is settled that a state court may not exercise jurisdiction over a recognized Indian tribe."). Proceeding with this action without the Tribe would thus "leav[e] the controversy in such a condition that its final termination [would] be wholly inconsistent with equity and good conscience." *Cummings*,

930 So. 2d at 607 (quoting *Phillips v. Choate*, 456 So. 2d 556, 557 (Fla. 4th DCA 1984)); *see also, e.g.*, *Rosales v. United States*, 73 F. App'x 913, 914–15 (9th Cir. 2003).

II. Quo warranto is unavailable here.

The writ must be denied in any event because quo warranto is not an avenue for the relief Petitioners seek—a "declar[ation] that the Governor and Legislature exceeded their powers in authorizing off-reservation sports betting" and the "negat[ion]" of Section 285.710(13)(b)7. Pet. 60–61. The writ of quo warranto is not a substitute for declaratory and injunctive relief. *Detzner v. Anstead*, 256 So. 3d 820, 823 (Fla. 2018). Less still is the writ one of "erasure" that may be used to "strike down" invalid legislation. Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 935–38 (2018). And even if it were, such relief could not be properly sought by private parties.

1. "[Q]uo warranto is a common-law remedy, its office and scope depending upon the use and limitations authorized by the common law," subject to "statutory modification." *State ex rel. Landis v. Prevatt*, 148 So. 578, 579 (Fla. 1933). Historically, quo warranto guarded the State's "sovereignty from invasion or intrusion," *State ex*

rel. Att'y Gen. v. Gleason, 12 Fla. 190, 206 (1868), by providing the State a mechanism to ensure its power was exercised only by those entitled to do so. The writ would issue to oust "a state officer or agency" from the unlawful exercise of "a power or right derived from the State." *Detzner*, 256 So. 3d at 822 (quoting *Crist*, 999 So. 2d at 607). Consistent with those historical roots, this Court long recognized that quo warranto petitions "could not be filed by an individual without the consent of the Attorney General," subject to certain statutory exceptions not relevant here. *State v. Fernandez*, 143 So. 638, 639 (Fla. 1932); *see* § 80.01, Fla. Stat. ("Any person claiming title to an office which is exercised by another has the right" to seek quo warranto relief "on refusal by the Attorney General to commence an action").

It was not until 2011 that this Court, for the first time, entertained an individual private citizen's quo warranto petition merely because she was "a citizen and taxpayer." *Whiley v. Scott*, 79 So. 3d 702, 706 (Fla. 2011). The Court did so on the strength of an earlier case allowing the Governor and private citizens to serve as co-relators, given that "this Court historically has taken jurisdiction of writ

petitions where members of one branch of government challenged the validity of actions taken by members of another branch." *Chiles*, 714 So. 2d at 456; *see Whiley*, 79 So. 3d at 706 n.4 (citing *Chiles*). That was a reference to cases like *Martinez v. Martinez*, in which the Court concluded that a member of the Legislature could petition the Court for a writ of quo warranto against the Governor because, "as a member of the legislature being called into special session," he "[wa]s directly affected by the governor's action." 545 So. 2d 1338, 1339 (Fla. 1989); *see also Austin v. State ex rel. Christian*, 310 So. 2d 289, 291 (Fla. 1975).

That exception to the Attorney General's exclusive authority is rooted not in history, but in a minority opinion stating that "[i]n quo warranto proceedings . . . the people are the real party to the action and the person bringing suit 'need not show that he has any real or personal interest in it.'" *Martinez*, 545 So. 2d at 1339 (quoting *Pooser,* 170 So. at 737). In *Pooser*, "[a] majority of the court d[id] not think it necessary to" determine whether the petitioner there had standing because the petition was in any event barred by laches. 170 So. at 737. Justice Terrell opined that "one of the high prerogatives

of a court of justice is to keep . . . [the] law dynamic by construing it to provide a remedy for every new wrong that arises" and that the writ should thus be "extended" to cover every instance where "the one complaining has suffered an injury . . . that should in right and justice be atoned for"; so in his view, to "citizen[s]" who are "interested in having the law upheld." *Id.* at 737–38. But consistent with the writ's history and purpose, long after *Pooser*, the Court continued to recognize that "except as modified by statute, the common law authorize[d] no person, however interested, to institute quo warranto proceedings in a case of this nature except through the Attorney General." *State ex rel. Wurn v. Kasserman*, 179 So. 410, 411 (Fla. 1938).[4]

[4] *See also Farrington v. Flood*, 40 So. 2d 462, 464 (Fla. 1949) ("[T]he right to institute [quo warranto] proceedings [is] in the State and the institution of the action [is] a matter in the sole discretion of the Attorney General."); *Washington Cnty. Kennel Club, Inc. v. State ex rel. McAllister*, 107 So. 2d 176, 179 (Fla. 1st DCA 1958) ("Our conclusion is that neither under the statutes of this state nor under any applicable principle of law did the relator have the right to institute the present proceeding for the State of Florida on his relation, without the permission of the Attorney General[.]"); *McGhee v. City of Frostproof*, 289 So. 2d 751, 752 (Fla. 2d DCA 1974) ("[I]t might at first blush appear that [] quo warranto . . . would be appropriate . . . [, but] while it is ordinarily the proper method to determine entitlement to an office, it may be instituted only by the Attorney General (who, it appears, declined to do so in this case) or by a person claiming title to the office."); *Orange Cnty. v. City of Orlando*, 327 So. 2d 7, 8 (Fla.

Even if the writ were an appropriate mechanism for "members of one branch of government" to "challenge[] the validity of actions taken by members of another branch," *Chiles*, 714 So. 2d at 456, that is a far cry from this case, in which private citizens seek to take that power for themselves. Pet. 7. There is no need to reach the former question; dispositive here is that private-citizen standing in quo warranto cases, without statutory authorization, is irreconcilable with the history and purpose of the writ, sole power over which was vested in the Attorney General as the people's attorney. *Robinson v. Jones*, 14 Fla. 256, 260 (1873).

This Court made clear in *Thompson* and *Boan* that attempts to right the wrongs of those precedents need to satisfy the standard of *State v. Poole*, 297 So. 3d 487 (Fla. 2020). *Thompson*, 301 So. 3d at 184; *Boan v. Fla. Fifth Dist. Ct. of App. Jud. Nominating Comm'n*, 352 So. 3d 1249, 1252 (Fla. 2022). The above takes on that burden and

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1976) ("In the event quo warranto is not available, i.e., the Attorney General refuses to allow quo warranto to proceed, then an action for injunctive and declaratory relief would be proper."); *Gryzik v. State*, 380 So. 2d 1102, 1105–06 (Fla. 1st DCA 1980) (accepting the rule described in *McGhee*); *Butterworth v. Espey*, 523 So. 2d 1278, 1278 (Fla. 2d DCA 1988) ("Even if, as those appellants argue, the Attorney General refused to bring the suit, those appellants are not entitled to bring the suit unless they claim entitlement to the office.").

shows that the Court should recede from its contrary precedents because they are clearly erroneous and because Petitioners have no cognizable reliance interest in "procedural rules" governing the availability of a writ of quo warranto. *Poole*, 297 So. 3d at 507.

2. Even if Petitioners were the proper parties to bring this action, the relief they seek is not a writ of quo warranto, but a "declar[ation]" "negat[ing]" Section 285.710(13)(b)7. Pet. 60. The writ of quo warranto is not a writ of erasure. It also does not replace a declaratory-judgment action in circuit court. *See State ex rel. Landis v. Duval Cnty.*, 141 So. 173, 176, 184 (Fla. 1932) ("It is one of the fundamentals of procedure in quo warranto that the writ will not be issued where there is another ample and sufficient remedy provided by law for the relief sought.").

Instead, the writ of quo warranto tests whether the respondent official is engaged in the unlawful, ongoing exercise of the State's power—for example, the unlawful occupation of a public office properly held by another. *See Crist*, 999 So. 2d at 620–21 (Lewis, J., concurring in result); *see also, e.g.*, *State ex rel. Haley v. Stark*, 18 Fla. 255, 267 (1881) (ouster); *State ex rel. Ellis v. Gerbing*, 47 So. 353,

357–58 (Fla. 1908) (ultra vires act); *State ex rel. Ellis v. Tampa Water-works Co.*, 47 So. 358, 359 (Fla. 1908) (ultra vires act). "A quo warranto proceeding against an officer is not a proper remedy to test the legality of his past or future conduct or acts, and to compel, restrain, or obtain a review of such conduct or acts[.]" *State ex rel. Landis v. Valz*, 157 So. 651, 654 (Fla. 1934). In fact, traditionally the past acts of an officer—even one whose power to hold office could be ousted through a writ of quo warranto—could not be challenged at all under the "de facto" officer doctrine. *See Penn v. Pensacola-Escambia Gov't al Ctr. Auth.*, 311 So. 2d 97, 101 (Fla. 1975); *Gleason*, 12 Fla. at 231–34.

Even if some past acts were properly the subject of quo warranto, that would not be true of enacted legislation. This Court's review of challenges to the constitutionality of legislation is carefully circumscribed by the Florida Constitution. The Court has mandatory jurisdiction to review "decisions . . . declaring invalid a state statute," Art. V, § 3(b)(1), Fla. Const., and discretionary jurisdiction to review a "decision . . . that expressly declares valid a state statute," *id.*

§ 3(b)(3). Using quo warranto to obtain immediate review of a proceeding challenging a statute evades those limitations. By seeking a "declara[tion]" about the challenged provision from this Court in the first instance, Petitioners seek not merely to set aside the constitutional limits on the Court's appellate jurisdiction, but to bypass the circuit and district courts entirely as well.

Worse still, Petitioners ask the Court to grant them in the guise of a writ of quo warranto what even a declaratory judgment would not afford them—a "writ of erasure" "strik[ing] down" the challenged statute. Mitchell, 104 Va. L. Rev. at 935–38. Courts cannot erase statutes from the law books. Instead, their role is limited to enjoining state action against implementing an unconstitutional law. *See id.* at 936. Yet by their own admission, Petitioners' nominal request for the Court to determine "by what authority" the statute was enacted is, at bottom, a demand that the Court "negate" the statute *ab initio*. Pet. 60.

Petitioners seek support for this request in *Chiles*, 714 So. 2d 453. Pet. 6–8. In that case, this Court entertained a writ of quo war-

ranto sought by the Governor and an abortion clinic against legislative officers, including the House Speaker and the Senate President, seeking to challenge the Legislature's override of two vetoed bills. *Chiles*, 714 So. 2d at 456. The court allowed the quo warranto challenge to proceed, even though "under ordinary circumstances, the constitutionality of a statute should be challenged by way of a declaratory judgment action in circuit court." *Id.* at 457. But the Court entertained the writ because the Governor was invoking a "right to have the legislature and its leaders exercise their powers in a constitutional manner," *id.* at 456, and because "the functions of government would be adversely affected absent an immediate determination by this Court," *id.* at 457. Here, of course, there is no such immediacy, *see supra* Part I.A.; and this is not a separation-of-powers dispute among government officials. But to the extent *Chiles* held that quo warranto is a substitute for a declaratory action challenging the constitutionality of legislation, it is clearly erroneous for the reasons discussed above. *See Poole*, 297 So. 3d at 507 (no reliance interest in procedural rules).

3. To the extent Petitioners purport to challenge not only the compact's legislative implementation but also some other act of "the Governor and Legislature [that] exceeded their powers in authorizing off-reservation sports betting," Pet. 60, the writ is unavailable to do so for a different reason. Petitioners do not meaningfully argue that the Governor lacked authority to negotiate and execute the compact. Nor could they. *See* § 285.712(1), Fla. Stat. (granting the Governor authority to negotiate and execute IGRA compacts on behalf of the state). Petitioners challenge only the "authoriz[ation]" of "off-reservation sports betting." Pet. 60. And it was the statute—nothing less—that did that. Indeed, under Florida law, only the Legislature may authorize gaming under an IGRA compact. *See* § 285.712(2), Fla. Stat.; *see also Haaland II*, 71 F.4th at 1068; *Crist*, 999 So. 2d at 615–16. The writ is unavailable to challenge the authority of an official who was unquestionably authorized to act in the manner that he did. *See Detzner*, 256 So. 3d at 822–23.

Petitioners put great weight on this Court's decision in *Crist*, which entertained a petition for a writ of quo warranto challenging the Governor's execution of a prior gaming compact. Pet. 9. But in

response to *Crist*, the Legislature authorized the Governor to negotiate and execute IGRA compacts on behalf of the state, reserving for itself the right to ratify such compacts and ultimately authorize gaming under them. *See* § 285.712, Fla. Stat. Here, the approval and implementation of the compact was accomplished through legislation, not unilateral executive action. *See* § 285.710, Fla. Stat. *Crist* is inapt because the question presented there—whether the Governor had the authority to enter into an IGRA compact—is no longer in dispute.

Because the sole question here is whether the Legislature properly authorized gaming in Section 285.710(13)(b)7., and because that question is outside the proper scope of quo warranto, the writ must be denied.

III. The online-sports-betting provisions do not violate Article X, Section 30.

Even apart from those threshold problems, the petition should be denied because the Legislature lawfully implemented the online-sports-betting portions of the compact. Those provisions do not implicate Article X, Section 30's citizen-initiative requirement at all, because sports betting is not "casino gambling" within the meaning of

Section 30. But even if it were, the implementing legislation falls comfortably within Section 30's exception for IGRA compacts. Petitioners' arguments to the contrary fall short of overcoming the strong presumption that the work of the Legislature is constitutional. *See, e.g.*, *See Fla. Dep't of Rev. v. City of Gainesville*, 918 So. 2d 250, 256 (Fla. 2005).

A. Sports betting does not implicate Article X, Section 30 because it is not "casino gambling."

Section 30 requires a citizens' initiative before the Legislature may authorize "casino gambling." Art. X, § 30(a), Fla. Const. It defines that term to mean:

> any of the types of games typically found in casinos and that are within the definition of Class III games 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.

Id. § 30(b). But sports betting is not a "type[] of game typically found in casinos." *Id.* For that reason alone, Petitioners' claims fail.

1. Gaming is "casino gambling" only if it is "typically found in casinos."

Though not a model of clarity, the text of Section 30(b) is properly read to mean that for something to be "casino gambling," it

must be both within the types of games "[1] typically found in casinos and [2] that are within the definition of Class III games" under IGRA, as defined (by the statute and regulation) when the amendment was ratified and as defined by those sources in the future going forward.

Petitioners read that text quite differently. They argue that "casino gambling" does not require both components, typicality and Class III status. Pet. 38–39. Instead, Petitioners believe a game qualifies as "casino gambling" so long as it is "*either* (i) 'typically found in casinos'; (ii) 'within the definition of Class III gaming' found in IGRA or the implementing regulation 'upon adoption of' Amendment 3; or (iii) 'any that are added to the definition of Class III gaming in the future.'" *Id.* at 39 (emphasis added). That is so, they say, because Section 30 uses the term "and" in several places; one of those uses (the third one) is disjunctive; and therefore *all* uses of the term "and" must be disjunctive. *Id.* Under that reading, sports betting is "casino gambling" because it is a Class III game, even if sports betting was not typically found in casinos in 2018. *See Id.* at 38–39.[5]

[5] Confusingly, Petitioners seem to take the opposite view later in their Petition. *See* Pet. 50–51.

But the text simply refers to "any of the types of games typically found in casinos **and** that are within" a particular "definition"—specifically, the definition "of Class III gaming in" IGRA, "**and** in" IGRA's implementing regulations, "**and**" future versions of the statute and its implementing regulations. Art. X, § 30(b), Fla. Const. (emphasis added). In that structure, the first "and" sets out two independent requirements for a game to qualify as "casino gambling"—the game must be "typically found in casinos" and must also be within the "definition of Class III gaming." The second and third "and" connect three distinct sources of federal law that are cross-referenced in Section 30. Those sources comprise the second requirement for a game to qualify as casino gambling: The game must be Class III gaming as defined in IGRA, its implementing regulations, and future amended versions of either IGRA or the regulations. Thus, while the second and third "and" are indeed disjunctive, the first operates independently to serve an independent—and plainly conjunctive—purpose.

Petitioners would instead read the first "and" as a mere part of a tripartite series. If that were so, at a minimum one would expect to

see a comma before the first "and" in the series (*e.g.*, "casino gambling" means A, and B, and C). But the definition lacks that syntactic structure. There is therefore no occasion to depart from the general understanding that unless context suggests otherwise, "[*a*]*nd* joins a conjunctive list." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 116 (2012) (*Reading Law*).

By contrast, the context reflects that the second and third use of "and" should be understood in the "distributive (or several) sense." Bryan A. Garner, *Garner's Dictionary of Legal Usage* 639 (3d ed. 2011). An example of the distributive use is "A and B, jointly or severally," as distinct from "A and B, jointly." *Id.* That sense fits here. Thus, a game is included if it is defined as a Class III game at *both* the time of adoption and any future time, or at *either* the time of adoption or any future time.

That is especially so because Section 30(b) defines "*casino* gambling" (emphasis added)—that is, gambling related to casinos. On Petitioners' reading, however, the gambling covered by Section 30 need not pertain to casinos at all; Section 30 should instead be understood to encompass *any* Class III game, whether connected to casinos or

not. *See* Gov't Br., *W. Flagler Assocs., Ltd. v. Haaland*, Nos. 22-5022, 21-5265, 2022 WL 3567067, at *39 (Aug. 17, 2022) (observing that "IGRA's definition of class III gaming" is broader than casino gambling); 25 U.S.C. § 2703(8) ("[C]lass III gaming means all forms of gaming that are not class I gaming or class II gaming."). That would be like defining "academic achievement" to turn on nonacademic achievement.

2. Online sports betting is not a type of game typically found in casinos.

Sports betting is not a "type[] of game typically found in casinos," Art. X, § 30(c), Fla. Const., and so does not satisfy this element of the definition. That renders Section 30's citizen-initiative requirement inapplicable.

Petitioners assert that Section 30(b)'s "use of 'typically' is more in line with an understanding of 'characteristically' than 'usually.'" Pet. 46; *see also id.* at 45–46 (collecting dictionary definitions). Thus, Petitioners claim, "typically" is most naturally read to refer to "the kind or character of games that are in casinos," *id.* at 46, rather than focusing on how often a particular game is played in casinos rather than elsewhere. But this Court need not resolve that interpretive

question here; under either meaning, sports betting is not typically found in casinos.

a. If "typically" means "characteristically," sports betting is not a type of game that shares characteristics with casino games. Context makes that plain. "It is a fundamental principle of statutory construction (and, indeed of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Advis. Op. to Gov. re Implementation of Amend. 4*, 288 So. 3d 1070, 1079 (Fla. 2020) (cleaned up). Here, the definition of "casino gambling" does not stand alone. It is followed by a list specifying that the definition "includes, but is not limited to" various types of games, Art. X, § 30(b), Fla. Const.—language reflecting a list that is "exemplary and not exhaustive" of the included gambling. *Reading Law* at 133 (citation omitted). Those examples boil down to: "any house banking game"; "any player-banked game that simulates a house banking game"; "casino games"; "slot machines"; and "any other game . . . in which outcomes are determined by random number generator or are similarly assigned randomly." Art. X, § 30(b), Fla.

Const. But unlike those closed-universe games with defined statistical outcomes, sports betting involves wagering on competitive, real-world events in which bettors try to predict outcomes.

Underscoring the point, the only games the provision expressly excludes from the definition of "casino gambling" are all akin to sports betting. *See id.* (excluding "pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions"). And the basic distinction between the casino games subject to Section 30 and sports betting is confirmed by other aspects of Florida law, which has long drawn a similar distinction. *Compare* § 849.08, Fla. Stat. (criminalizing "[g]ambling," meaning "play[ing] or engag[ing] in any game at cards, keno, roulette, faro or other game of chance"), *with* § 849.14. Fla. Stat. (criminalizing betting on "the result of any trial or contest of skill, speed or power or endurance of human or beast"). Notably, states in which sports betting was legal as of Section 30's ratification tracked this distinction between sports betting and casino gaming. *See* N.J. Stat. Ann. §§ 5:12a-10, 5:12a-11, 5:12-5, 5:12-21 (separately classifying gaming from sports betting); Nev. Rev. Stat. Ann. §§ 463.0152, 463.160 (same); Miss. Code Ann. § 75-76-5 (same); N.Y.

Rac. Pari-Mut. & Breed. § 1367.

Petitioners ask the Court to ignore this context. Pet. 43–44. To that end, they point to *Amendment 4*, in which this Court declined to apply two canons of construction—*expressio unius* and *ejusdem generis*—to modify the clear text of the phrase "all terms of sentence, including parole or probation" to only include sentencing terms similar in kind to parole or probation. *See* 288 So. 3d at 1080. Here, however, the term "casino gambling" lacks that pellucid clarity, and the listed examples in Section 30(b) properly inform the meaning of casino gambling under the canon of *noscitur a sociis*, which applies when "several . . . words are associated in a context suggesting that the words have something in common." *Reading Law* at 195.

b. If, on the other hand, "typically" means "usually," Petitioners likewise cannot prevail. Petitioners allege that—at least today—sports betting is, as an empirical matter, often conducted in casinos. Pet. 47–51. That hinges on the theory that the typicality requirement looks to modern circumstances, not the circumstances voters would have understood at ratification. The text dispels that view. Casino gambling includes the types of games (1) "typically found in casinos"

and (2) "within the definition of Class III gaming . . . upon adoption of this amendment, and any that are added so such definition of Class III gaming *in the future*." Art. X, § 30(b), Fla. Const. (emphasis added). That temporal directive—"in the future"—pertains exclusively to the Class-III-gaming requirement, *not* the typicality requirement. As a result, the types of games typically found in casinos was fixed at the time of Section 30's adoption in 2018. And Petitioners do not contend that sports betting was common in Florida casinos at that time. *See* Pet. 51 n.17 (citing a handful of other states).

In any event, Petitioners' empirical assertion that sports betting is typically found in *other* states' casinos today or was so at the time of the enactment of Amendment 3, Pet. 47, 51 n.17—is a fact question better suited for resolution in the circuit courts, to the extent it is relevant at all. *See Harvard v. Singletary*, 733 So. 2d 1020, 1022–23 (Fla. 1999).

B. Even if Article X, Section 30 applies, the compact falls within the IGRA exception.

In 2018, the Tribe successfully campaigned to add Article X, Section 30 to the Florida Constitution. That provision "requires a vote by citizens' initiative" for "casino gambling to be authorized under

Florida law," but specifies that nothing in Section 30 "limit[s] 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." Art. X, § 30(a), (c), Fla. Const. That exception, contrary to Petitioners' contentions, applies to all gaming agreed to in an IGRA compact, exempting the compact's implementing legislation from the citizen-initiative requirement. Even barring that, however, the Legislature properly deemed online sports wagering to occur on tribal lands.

1. Online sports betting is validly addressed in the 2021 compact, and compacts are exempted from the citizen-initiative requirement.

To begin with, Petitioners agree that "Section 30(c) exempts from its scope gaming conducted on tribal lands pursuant to a duly-approved gaming compact under IGRA," Pet. 12; *see id.* at 2, 52, which therefore may be authorized by the Legislature without the otherwise-required citizens' initiative. Petitioners thus do not challenge the implementing legislation to the extent it authorizes gaming that wholly occurs on tribal lands. *Id.* at 4, 60. Rightly so. If Section 30 generally required a citizens' initiative to authorize gaming under IGRA compacts, that would severely "limit the ability of the state or

Native American tribes to negotiate" them. Art. X, § 30(c), Fla. Const. Without assurance that the Legislature could implement a finalized compact, the State and the Tribe would have little incentive to negotiate one at all.

But Petitioners contend that this Section 30(c) exception generally permitting legislative implementation of IGRA gaming compacts is limited to "only new gaming that takes place **on Tribal lands**." Pet. 53 (emphasis in original). Petitioners thus argue that the compact's implementing legislation is invalid in authorizing "bets placed *outside* of tribal lands" that are "received in a server located *on* tribal lands to be conducted by the Tribe on those tribal lands," *id.* at 34, while conceding that the implementing legislation is valid in authorizing gaming physically occurring, in its entirety, on tribal lands.

That distinction makes no sense, and *Haaland II* refutes Petitioners' theory. There, the D.C. Circuit held that the off-reservation sports-betting provisions were permissible to include in the compact and thus were a permissible subject of compact negotiations under IGRA. As the D.C. Circuit explained, the compact provisions allowing for "wagers placed from outside Indian lands" were lawful to include

in the compact, because they are "directly related to the operation of" the Tribe's gaming activities on tribal lands. *Haaland II*, 71 F.4th at 1066 (citing 25 U.S.C. § 2710(d)(3)(C)(vii)). The compact provides for bets placed by patrons who are physically off tribal lands and accepted by the Tribe on tribal lands. Petitioners do not explain why Section 30 would permit the Legislature to implement through legislation only one half of that gaming transaction, which IGRA permits to be negotiated for in an IGRA compact.

Nor does Section 30(c)'s language support Petitioners' distinction. If the parties could not implement such off-reservation provisions in an IGRA compact—despite IGRA permitting it—that would severely "limit the ability of the state [and the Tribe] to negotiate gaming compacts pursuant to" IGRA "for the conduct of casino gambling on tribal lands." Art. X, § 30(c), Fla. Const. The off-reservation wagering provisions were an important and lucrative bargaining chip in the compact negotiations. Without them, the compact might well have never concluded—thus authorizing nothing.

Petitioners emphasize the reference in Section 30(c) to IGRA compacts "for the conduct of casino gambling on tribal lands." Pet.

52. But that language simply describes what all IGRA compacts do—authorize gaming on tribal lands, as this compact does. That federal-law authorization is necessary because IGRA by default makes Class III gaming on Indian lands conducted in violation of state law a federal crime. *See* 25 U.S.C. § 2710(d)(1); 18 U.S.C. § 1166(b). The prohibition can be lifted if the state and a tribe agree in an IGRA compact to authorize Class III gaming on those lands. 18 U.S.C. § 1166(c)(2). The compact here and its implementing legislation do just that in authorizing the Tribe, for example, "to operate sports betting on its lands." *Haaland II*, 71 F.4th at 1066. But the fact that this compact, like all IGRA compacts, is "for the conduct of casino gambling on tribal lands" does not mean that the compact cannot also include other provisions providing for gaming transactions occurring both partly on and partly off tribal lands, as the D.C. Circuit correctly concluded in *Haaland II*. *See id.* And the inclusion of those ancillary provisions does not make the compact any less "for" the conduct of gambling on tribal lands under Section 30(c).

In arguing the contrary, Petitioners find no support in the D.C.

Circuit's statement that an IGRA compact "*cannot provide independent legal authority for gaming activity that occurs outside of Indian lands, where that activity would otherwise violate state law.*" Pet. 54 (quoting *Haaland II*, 71 F.4th at 1068). The IGRA compact does not "independently" authorize those activities. The implementing legislation does that. And that legislation is constitutional under the IGRA exception in Article X, Section 30(c).

Put differently, Petitioners have not shown that Section 30(c) contemplates an IGRA compact that is narrower than the compacts contemplated by IGRA itself. The 2021 compact was formed pursuant to IGRA, and is therefore lawful under Article X, Section 30.

2. Alternatively, the Legislature permissibly deemed the multi-location gaming here to occur entirely on tribal lands.

Even if the Section 30(c) exception protected only new gaming on tribal lands, the Legislature was within its authority in deeming online sports-betting transactions, as a matter of state law and for purposes of Article X, Section 30(c), to occur on tribal lands.

The Legislature has power to act unless "clearly contrary to some express or necessarily implied prohibition found in the Constitution." *Crist v. Fla. Ass'n of Crim. Def. Laws., Inc.*, 978 So.2d 134,

141 (Fla. 2008) (citation omitted). Nothing in Section 30(c) clearly prohibits the Legislature from selecting, as a legal matter, the location of a gaming transaction that physically takes place both on and off tribal lands. That is not a "legal fiction," Pet. 25, 56, 57, but a common thing done to clarify where a transaction occurs, as a matter of law, when it occurs in two or more physical locations. *See, e.g.*, *Ray-Hof Agencies v. Peterson*, 123 So. 2d 251, 253 (Fla. 1960) (holding that contracts are formed where the last act constituting acceptance occurs). Unsurprisingly, then, the Legislature has often exercised authority to deem such transactions to occur in one place or another. *See, e.g.*, § 456.47(5), Fla. Stat. (deeming telehealth services to be provided either in the patient's county of residence or where patient was when the service was performed); § 212.054(3)(a), Fla. Stat. (sales occur either in county where purchaser resides, delivery occurs, or purchaser accepts bill of sale); § 212.05(1)(e)1.a.(II), Fla. Stat. (prepaid calls occur at customer's address under certain conditions).

That common practice was both preserved in Section 30(c) and incorporated in IGRA. The former states that it does not "limit the

right of the Legislature to exercise its authority through general law to . . . regulate . . . gambling activities." Art. X, § 30(c), Fla. Const. And the latter contemplates that compacts may "allocate[] law enforcement authority between the tribe and State." *Haaland II*, 71 F.4th at 1062. The D.C. Circuit recognized that the compact's "'deeming' provision" did just that in "allocat[ing] jurisdiction between Florida and the Tribe," given that "the Compact requires all gaming disputes be resolved in accordance with tribal law." *Id.* at 1066. The legislation implementing the compact does the same as a matter of substantive state law. *See* § 285.710(13)(b)7., Fla. Stat.

In sum, the deeming provision in the implementing legislation is simply an exercise of the Legislature's authority through general law to regulate gambling activities in accordance with allocations of jurisdiction provided for in the Compact. Nothing in Section 30 prohibited the Legislature from supplying useful and needed clarification about where online sports betting transactions occur for state-law purposes.

CONCLUSION

This Court should dismiss or deny the petition.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in 14-point Bookman font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2) and contains 10,498 words.

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