IN THE SUPREME COURT OF FLORIDA

WEST FLAGLER ASSOCIATES, LTD., a Florida Limited Partnership, BONITA-FORT MYERS CORPORATION, a Florida Corporation d/b/a BONITA SPRINGS POKER ROOM, and ISADORE HAVENICK,

Petitioners,

v. SC23-_____

RON DESANTIS, in his capacity as Governor 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 Senate,

Respondents.
_____/

PETITION FOR WRIT OF QUO WARRANTO

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

PETITION FOR WRIT OF QUO WARRANTO

Petitioners, West Flagler Associates, Ltd., a Florida Limited Partnership ("West Flagler"), Bonita-Fort Myers Corporation, a Florida Corporation d/b/a Bonita Springs Poker Room ("Bonita Springs"), and Isadore Havenick ("Havenick"), respectfully petition this Court for a Writ of Quo Warranto directed to Respondents, Ron DeSantis, in his capacity as Governor 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 Senate, and allege as follows:

I. PRELIMINARY STATEMENT

This petition seeks to redress actions taken by the Florida Legislature and Governor to expand casino gambling in Florida in violation of the Florida Constitution. In 2018, Florida voters approved Amendment 3 adding Article X, Section 30 to the Florida Constitution. Its purpose was to strictly limit the power of the legislature to expand casino gambling in Florida by mandating that the *only* means to do so is through a constitutional amendment authorizing such gambling. Specifically, such an amendment must be enacted by a citizens' initiative petition approved by sixty percent

of the voters. The only exception to Article X's mandate is casino gaming "*on tribal lands*" approved under a compact negotiated and approved pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-2721; Fla. Const. art. X § 30(c).

The Governor exceeded his authority by entering into a compact (the "2021 Compact") with the Seminole Tribe of Florida (the "Tribe") granting the Tribe the exclusive right to offer off-reservation online and in-person sports betting *throughout the entire state* and by signing legislation ratifying the 2021 Compact and making such wagers legal statewide. *See* Fla. Stat. §§ 285.710(13)(b)7, 285.14, 849.142 (the "Implementing Law")[1]. The Legislature exceeded its authority by enacting the Implementing Law, which undid Florida's existing blanket prohibition against sports betting, Section 849.14, Fla. Stat., but only for the Tribe, its patrons and participating pari-mutuel facilities. Under the 2021 Compact and Implementing Law, anyone over the age of 21 and located *anywhere in Florida* can use a

[1] Legislative ratification included enactment or amendment of numerous other provisions of Florida law besides the sports betting provisions, but for purposes of this Petition, Petitioners limit their challenge to the specific provisions implementing and authorizing sports betting statewide.

sports betting app on their phone to place a bet with the Tribe and can also place these bets through Florida pari-mutuels that contract with the Tribe for that purpose. The 2021 Compact and Implementing Law are a clear expansion of casino gambling in Florida without a voter-approved constitutional amendment by citizens' initiative, as required by Article X, Section 30. In so doing, the Respondents have exceeded their authority in direct violation of the Florida Constitution.

This abuse of authority warrants this Court's review and correction. Under an analogous situation that expanded gambling, in *Fla. House of Representatives v. Crist*, 999 So. 2d 601 (Fla. 2008), this Court reaffirmed the blackletter rule that no branch of government can change public policy absent the constitutional power to do so.

The Governor and Legislature have attempted to avoid the Florida Constitution's mandate by having the 2021 Compact and the Implementing Law "deem" online bets placed anywhere in the state to have occurred "exclusively" on tribal lands where the bets are received—a transparent artifice that seeks to satisfy the exception in Article X, Section 30(c) for "gambling on tribal lands" pursuant to

IGRA compacts. This artifice to avoid Section 30's requirement of a citizens' initiative is contrary to established law, the undisputed facts, and common sense. Indeed, the U.S. Court of Appeals for the D.C. Circuit, in considering a challenge to the 2021 Compact under the Administrative Procedures Act recently determined this "deeming" provision cannot convert the off-reservation sports betting provisions into gaming pursuant to IGRA "on Indian lands", nor can IGRA provide authority for the Tribe to conduct gaming off Indian lands. *W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059, 1069 (D.C. Cir. 2023).

II. NATURE OF THE RELIEF SOUGHT

Petitioners seek a writ of quo warranto directed to Respondents declaring that: (1) Respondents' respective conduct in executing the 2021 Compact and enacting and signing the Implementing Law exceeded their authority under the Florida constitution to the extent that they permitted off-reservation, sports betting throughout the state; (2) a voter-approved constitutional amendment initiated by a citizens' petition is the exclusive means by which off-reservation sports betting can be authorized in Florida, and (3) such a voter-approved constitutional amendment is necessary for those portions

of the 2021 Compact and Implementing Law to be valid in this state. *Crist*, 999 So. 2d at 601. Upon such declaration by this Court, the offending provisions of both the 2021 Compact and Implementing Law will automatically be severed from the non-offending provisions. *See* App. 69-70 (2021 Compact, Part XIV, § A); Fla. Stat. §285.710(5).

Petitioners also request that the Court exercise its "All Writs" jurisdiction under Article V, Section 3(b)(7) of the Florida Constitution to suspend operation of the offending provisions of the Implementing Law pending a final decision of this Court in order to preserve the status quo.

III. BASIS FOR INVOKING JURISDICTION

Pursuant to Article V, Section 3(b)(7) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(3), this Court has original jurisdiction to issue a writ of quo warranto.

The instant petition is properly filed as an original action in this Court as Respondents are state officers whom Petitioners claim 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. *See Israel v. DeSantis*, 269 So. 3d 491, 495 (Fla.

2019) ("The Governor is a state officer."); *Chiles v. Phelps*, 714 So. 2d 453, 457 (Fla. 1998) (the Speaker of the House and the Senate President are state officers subject to the Court's jurisdiction for purposes of quo warranto proceedings).

A. Petitioners' Standing

Petitioners have standing to seek this relief. This Court has long recognized both that "[i]n quo warranto proceedings seeking the enforcement of a public right, 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" and that "the public right" at issue is "the right to have the governor perform his duties and exercise his powers in a constitutional manner." *Martinez v. Martinez*, 545 So. 2d 1338, 1339 & n.3 (Fla. 1989) (internal quotation marks and citation omitted); *see also Whiley v. Scott*, 79 So. 3d 702, 706 n.4 (Fla. 2011) ("[W]hen bringing a petition for writ of quo warranto, individual members of the public have standing as citizens and taxpayers."). Petitioners are Florida citizens and taxpayers who have a substantial interest in this issue. Because this case involves allegations of encroachment by the Governor and Legislature on powers constitutionally and exclusively assigned to the citizens of Florida,

these Petitioners are entitled to assert their rights on their own behalf. *See Whiley*, 79 So. 3d at 706 n.4 ("[A] petition for writ of quo warranto is directed at the action of the state officer and whether such action exceeds that position's constitutional authority. Thus, when bringing a petition for writ of quo warranto, individual members of the public have standing as citizens and taxpayers."); *see also Thompson v. DeSantis*, 301 So. 3d 180, 184 (Fla. 2020) (finding state house representative had standing as a citizen and taxpayer to seek writ of quo warranto given that "the extent of the harm to petitioner is not pertinent" to the standing analysis).

Not only are Petitioners Florida citizens and taxpayers with a substantial interest in this issue, but West Flagler and Bonita Springs are also competitors of the Tribe who will suffer direct economic harm from Respondents' excess of authority, because statewide online sports betting will negatively impact both poker and parimutuel revenues. *Cf. Phelps*, 714 So. 2d at 456 ("[M]embers of the general public seeking enforcement of a public right may obtain relief through quo warranto"). This Court also recognized in *Phelps* that legal entities have standing to file a petition for quo warranto challenging an invalid exercise of authority. *Id.*

B. Quo Warranto Relief from this Court is Appropriate and Timely

An original jurisdiction proceeding is appropriate where, as here, "the functions of government would be adversely affected absent an immediate determination by this Court," no material facts are in controversy, and the case "would in all likelihood ultimately be decided by this Court." *Chiles*, 714 So. 2d at 457, n.6. Further, quo warranto is the appropriate mechanism to enforce the public's right to have its Governor and other state officers exercise their power in a constitutional manner. *See Martinez*, 454 So. 2d at 1339 ("Quo warranto is the proper method to test the 'exercise of some right or privilege, the peculiar powers of which are derived from the State.'") (citation omitted); *see also Crist*, 999 So. 2d at 607 (analyzing the Governor's authority to bind the State to an Indian gaming compact); *Israel*, 269 So. 3d 491 (examining constitutional authority of the Governor to suspend sheriff).

This Court may choose to consider extraordinary writ petitions "where the functions of government would be adversely affected absent an immediate determination by this Court." *Chiles*, 714 So. 2d at 457; *Whiley*, 79 So. 3d at 707 (finding the constitutional

question raised relating to the authority of the Governor and the Legislature in rulemaking proceedings was important enough to exercise the court's discretionary jurisdiction to entertain the petition). This Court previously recognized its jurisdiction to consider a petition invoking quo warranto jurisdiction in a prior challenge to an Indian gaming compact. *Crist*, 999 So. 2d at 607 (analyzing and finding the Governor lacked authority to bind the State to an Indian gaming compact).

Here, Respondents have directly violated the Peoples' exclusive constitutional right to approve expansion of casino gambling by citizens' initiative. Fla. Const. art. X, § 30. The fact that the Governor is charged with *negotiating* the Compact does not supplant the constitutional authority of the People to decide whether to expand gambling. *See Pleus v. Crist*, 14 So. 3d 941, 946 (Fla. 2009) ("We conclude that the Governor is bound by the Florida Constitution to appoint a nominee from the JNC's certified list, within sixty days of that certification. There is no exception to that mandate."). The functions of government are no less affected when state officers usurp the exclusive right of the People to change state policy than when one branch usurps the power of another, as occurred in *Crist*.

In fact, the violence done to the constitution is greater, because it offends the sovereign will of the People.

As of this filing, except for a brief and tentative time, the Tribe has not yet commenced off-reservation sports betting, pending resolution of the Administrative Procedure Act challenge to federal approval of the 2021 Compact and the appeal from the decision of the U.S. District Court for the District of Columbia setting aside the 2021 Compact as a violation of *federal law*. *W. Flagler Assocs., Ltd. v. Haaland*, 573 F. Supp. 3d 260 (D.D.C. 2021) ("*Haaland I*"). That decision on the federal question was subsequently reversed by the U.S. Court Appeals for the D.C. Circuit. *W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059 (D.C. Cir. 2023) ("*Haaland II*"). The appellate court's reasoning makes clear the need for this Court's review. Specifically, it concluded that the 2021 Compact did not and could not authorize off-Indian lands gaming under IGRA where such gaming would violate state law, and, instead, such question was a matter of state law. *Haaland II*, 71 F.4th at 1068 ("[L]et us be clear: 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."). Specifically, the court

found that IGRA does not address whether a state and tribe can contract to allow a tribe to conduct on *off-reservation gaming*. This federal law interpretation is critical to answering the question whether Respondents met the narrow exception to Article X, Section 30, which preserved the ability "*negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands*." Fla. Const. art. X, § 30(c) (emphasis added). The answer is, they did not.

The determination by this Court in the instant case on the state law issue is thus now ripe and time critical. Unless this Court grants this petition, casino gambling throughout the state in the form of off-reservation in-person and mobile sports betting will take effect without the approval by the voters of Florida, as explicitly required by the text of Article X, Section 30 of the Florida Constitution.

Petitioners[2] sought a remedy from the federal courts for two reasons. First, once the Secretary of the Interior allowed the 2021 Compact to take effect, the only remedy available to Petitioners to

[2] Petitioner Havenick did not participate personally in the federal action.

challenge that approval was through a federal lawsuit under the Administrative Procedures Act ("APA"). *See* 5 U.S.C. § 704 ("final agency action for which there is no other adequate remedy..."). Further, while this lawsuit was pending and during the period when the 2021 Compact had been set aside by the district court, in *Haaland I*, sports betting was not occurring in Florida. Second, Article X, Section 30(c) exempts from its scope gaming conducted on tribal lands pursuant to a duly-approved gaming compact under IGRA. That is, the Florida constitution itself cites the federal law of IGRA. It therefore was appropriate for Petitioners first to seek a determination that IGRA could not itself provide the authority to enact compacts approving off-reservation gaming. The appellate court issued its *Haaland II* opinion on June 30, 2023, and denied *en banc* review on September 11, 2023, and this petition relies in part on that federal decision.

Therefore, as the final authority on Florida law, this Court is the correct forum and quo warranto is the correct proceeding to make that determination. Further, since the current status of the case is that the 2021 Compact is valid under federal law, review of the legality of off-reservation sports betting under state law is urgent.

When this Court considered the legality of a compact in 2008 Justice Cantero in writing for the Court stated that "[i]n this case, the Secretary has approved the Compact and, absent an immediate judicial resolution, it will be given effect." *Crist*, 999 So. 2d at 608-09. That urgency exists here as well.

The issue of breaching constitutional authority is not only urgent but fundamental. Here, Respondents have directly violated the Peoples' exclusive constitutional right to approve expansions of casino gambling by citizens' initiative. Fla. Const. art. X, § 30(a). Quo warranto is the correct mechanism to protect the Constitution when a state officer or agency improperly exercises power in excess of delegated authority.

Finally, because "[t]he interpretation of a constitutional provision involves a 'question of law,'" *see In re Advisory Op. to Governor re Implementation of Amendment 4*, 288 So. 3d 1070, 1078 (Fla. 2020) (citing *Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc. (FACDL)*, 978 So. 2d 134, 139 (Fla. 2008)), no material factual determinations are needed, making quo warranto the appropriate remedy to address this unconstitutional exercise of authority.

IV. STATEMENT OF FACTS

A. Petitioners

Petitioner West Flagler is a Florida limited partnership, formed in 1963, with its principal place of business in Miami-Dade County, Florida. For over 50 years it operated Magic City Casino, which evolved as state gaming law evolved, from greyhound racing, to cardrooms, to simulcasting, to slots and to summer jai alai. It currently holds three active jai alai permits and conducts jai alai meets, as required by its permits, in Miami – less than 20 miles from the Tribe's Hollywood Hard Rock Casino.

Petitioner Bonita Springs is a corporation registered in the State of Florida, formed in 1956 doing business in Bonita Springs, Lee County, Florida. Bonita Springs operates, among other things, a 37-table live casino-style poker room. It is located approximately twenty-one (21) miles from the Seminole Tribe's Immokalee Casino, and one hundred and fifty (150) miles from the Seminole Tribe's Tampa Hard Rock Casino. With approximately 150 employees, it competes with the Tribe for gaming patrons.

Petitioner Havenick is a life-long Floridian and resides in Miami-Dade County, Florida. His grandfather bought Miami's Flagler

Greyhound Park in the early 1950's, which decades later was renamed Magic City Casino.[3] Havenick has been involved in the family's parimutuel business his entire adult life and currently serves as Vice President of both West Flagler and Bonita Springs. Prior to the opening of the Bonita Springs Poker Room in October 2020, the Havenick family owned and operated the Naples-Fort Myers Greyhound Racing & Poker in Bonita Springs for over 50 years.

West Flagler, Bonita Springs and Havenick are Florida citizens and taxpayers that have an interest in ensuring that state officers do not exceed their constitutional authority. As competitors of the Tribe, West Flagler (past and future) and Bonita Springs (current) are also affected directly by the state's grant of an off-reservation sports betting monopoly to the Tribe.

[3] The Flagler Street location of Magic City Casino is no longer owned by West Flagler, as its Florida greyhound parimutuel license was sold to PCI Gaming Authority, an affiliate of the Poarch Band of Creek Indians earlier in 2023.

B. The Florida Constitution Prohibits Expansion of Casino Gambling Without Citizen Approval Through a Citizens' Initiative

In general, gambling is illegal in Florida. Chapter 849, Fla. Stat., prohibits keeping a gambling house, running a lottery, betting on sports contests or the manufacture, sale, lease, play, or possession of slot machines. *See, generally*, Fla. Stat. §§ 849.01. 849.08, 849.09, 849.11, 849.14 and 849.25. However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel wagering at licensed horse tracks and jai alai frontons, Fla. Stat. § 550.01 et seq.;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County, Fla. Stat. § 551.01 et seq.; and
- Cardrooms at licensed pari-mutuel facilities, Fla. Stat. § 849.086.

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is thus a privilege granted by the state.

The voters have played a historical role in the history of gambling in Florida. For example, until a voter-approved amendment in 1986 authorizing a state-run lottery, the 1968 Florida Constitution prohibited lotteries. *See* Fla. Const. art. X, § 7, amended *by* Fla.

Const. art. X, § 15. Voters also approved slot machines at certain parimutuel facilities by constitutional amendment in 2004 and local referenda in some counties, which triggered a demand by the Tribe for a compact allowing them to conduct slot gaming, which led to a compact with the state (the "2010 Compact"). State administrative action also has led to expanded gambling. For example, following a state agency interpretation of state law that allowed the parimutuel industry to introduce designated player poker games, the Tribe ceased revenue sharing under the 2010 Compact, citing breach of its table games exclusivity. Thus, since 1986, gambling has continually expanded throughout the state.

Concerned about the potential further expansion of gambling throughout the state, in 2018 the voters overwhelmingly approved Amendment 3, which became Section 30 of Article X of the Florida Constitution. It provides, in pertinent part:

> **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. 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. §§ 2701 et seq. ("IGRA"), and in 25 C.F.R. § 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. § 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.

(Emphasis added).[4]

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[4] Section 502.4 of the Code of Federal Regulations defines Class III gaming as "all forms of gaming that are not class I gaming or class II gaming, including but not limited to":

> (a) Any house banking game, including but not limited to -
> (1) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);
> (2) Casino games such as roulette, craps, and keno;
> (b) Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance;

This self-executing constitutional amendment, which became effective on November 6, 2018, requires a vote pursuant to a citizens' initiative – basically, another ballot question – for casino gambling to be allowed under Florida law outside of tribal land. *In re Voter Control of Gambling in Fla.*, 215 So. 3d 1209, 1216 (Fla. 2017) ("Reading together the ballot title and summary of the Initiative, it is reasonably clear that the chief purpose of the Initiative is to make the citizens' initiative process addressed in article XI, section 3, of the Florida Constitution the only means for authorizing casino gambling in Florida."). It strips state lawmakers of the legislative power to authorize casino gambling outside of tribal land, making a citizen initiative the "exclusive method" for doing so.

Months prior to the 2018 vote on Amendment 3, the United States Supreme Court held that the 1992 federal ban on sports betting within states violated the Tenth Amendment. *Murphy v. Nat'l*

> (c) *Any sports betting* and parimutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai; or
> (d) Lotteries.

25 C.F.R. § 502.4 (emphasis added).

Athletic Collegiate Ass'n, 139 S. Ct. 1461 (2018). This freed up states to enact legislation approving sports betting. Half a dozen states did so in 2018. *See* Alexandra Licata, Business Insider, https://www.businessinsider.com/states-where-sports-betting-legal-usa-2019-7#tennessee-17 (last visited September 21, 2023). Heated debate over Amendment 3 and its impact on the future of sports betting in Florida followed, with both a number of Amendment 3 proponents and opponents acknowledging that its passage would require voters to approve sports betting in Florida.[5]

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[5] *See* Jim Rosica, *'Vote No': FanDuel Comes Out in Opposition to Gambling Amendment*, FLA. POL. (Oct. 4, 2018), http://floridapolitics.com/archives/276607-fanduel-opposition-gambling-amendment; Jonathan Levin, *Disney Bets $20 Million to Ensure Florida Isn't the Next Vegas*, Bloomberg (Oct. 17, 2018), https://www.bloomberg.com/news/articles/2018-10-17/disney-bets-20-million-to-ensure-florida-isn-t-the-next-vegas; Dara Kam, *High stakes in gambling measure*, The Florida Times-Union (Oct. 27, 2018), 2018 WLNR 33324763; Donna Blevins, *ELECTION DAY 2018: AMENDMENT 3 Casino gambling up to voters? No: This loser slams a door on new revenue*, Orlando Sentinel (Oct. 31, 2018), https://www.orlandosentinel.com/2018/10/30/vote-no-on-amendment-3-this-loser-slams-the-door-on-new-revenue/; David Fucillo, *Florida Voters Pass Amendment 3, Increase Difficulty of Implementing Sports Betting*, SBNATION (Nov. 7, 2018), https://www.sbnation.com/nfl/2018/11/6/18070474/florida-midterm-election-results-2018-amendment-3-gambling; Jim Rosica, *'The will of the people': The coming brouhaha over sports betting in Florida*, Florida Politics (Nov. 19, 2018),

C. The Indian Gaming Regulatory Act Governs Gaming Only "On Indian Lands"

Congress enacted IGRA in 1988 to provide a statutory basis for the operation of gambling by Indian tribes on their tribal lands "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1).

IGRA divides gaming into three classes. The first two cover "social games" with minimal prizes, as well as "bingo" and "non-banked" card games — that is, games in which participants play against only each other; the host facility ("the house") has no stake in the outcome. 25 U.S.C. § 2703(7). Class III gaming, at issue here, comprises all other types of gaming. 25 U.S.C. § 2703(6)-(8).

Class III gaming activities are "lawful on Indian lands" only if, among other things, the activities are conducted in conformance with a tribal-state compact. 25 U.S.C. § 2710(d)(l). IGRA restricts its authorization of tribal gaming to "Indian lands," which include Indian reservations and lands held in trust by the United States for the benefit of any federally recognized Indian tribe. 25 U.S.C. § 2703(4).

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https://floridapolitics.com/archives/281580-brouhaha-sports-betting-florida/.

With few exceptions (all inapplicable here), IGRA does not authorize compacts for tribal gaming outside of Indian lands. *See* 25 U.S.C. §§ 2701(5); 2702(3); 2710(a), (b)(1), (d)(l); *Haaland II*, 71 F.4th at 1068.

D. The Tribe's Compacts with Florida Were Historically Confined to Gaming On Tribal Lands

This Court has exhaustively recited the history of the State and Tribe's compact negotiations leading to the events that culminated in the quo warranto petition filed by the House against Gov. Crist. *See Crist.*, 999 So. 2d at 605-06. In 2010, following this Court's decision in *Crist*, the Legislature enacted § 285.712(1), Fla. Stat., which makes the Governor the "designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the state" for the purpose of authorizing "class III gaming, as defined in [IGRA], on Indian lands within the state."

In 2010, the Tribe and Florida negotiated a compact, ratified by the Legislature and approved by the Secretary of the Interior (the "2010 Compact"). The state received substantial revenue from the Tribe in exchange for giving the Tribe, among other things, exclusivity over banked card games. The 2010 Compact has a 20-year term and

remains in effect until the 2021 Compact takes effect. Nothing in the 2010 Compact provides for the conduct of off-reservation gambling by patrons of Tribal casinos.

E. The 2021 Compact and Implementing Law Grant the Tribe A Monopoly to Conduct Off-Reservation Sports Betting Throughout the State of Florida Without Voter Approval as Required by Article X, Section 30

The 2021 Compact represents a paradigm shift in Florida's approach to tribal gaming — opening the door not only to sports betting across the state online and in-person, but potentially to statewide online gambling on other casino game. Four key provisions in the 2021 Compact are relevant here:

Part III, Section CC.2 provides that Sports Betting (as defined in the 2021 Compact) will occur through the use "of any electronic device connected via the internet, web application or otherwise, including, without limitation, any Patron connected via internet, web application or otherwise of any Qualified Pari-mutuel Permitholder(s) and **regardless of the location in Florida at which a Patron uses the same**." *See* App. 17-18 (2021 Compact, Part III, § CC.2) (emphasis added).

Part IV, Section A attempts to create a legal fiction that "wagers on Sports Betting . . . made by players physically located within the State using a mobile or other electronic device shall be deemed to take place exclusively where received at the location of the servers or other devices used to conduct such wagering activity at a Facility on Indian Lands." App. 23 (2021 Compact, Part IV, § A). This is an effort to redefine, through compact and ratification, the location of a sports bet placed through an online software application. The only conceivable reason Respondents engaged in this exercise is to evade the narrow exception in Article X, Section 30(c) applicable only to IGRA authorized compacts for gaming "on tribal lands." And that exception is now closed for purposes of this Compact as the Court of Appeals did not find the "deeming" provision to fall under the IGRA authorization for gaming "on tribal lands." *Haaland II*, 71 F.4th at 1068. "The Compact does not say that these ['deemed'] wagers are 'authorized' by the Compact....Rather, it simply indicates that the parties to the Compact (*i.e.*, the Tribe and Florida) have agreed that they both consider such activity (*i.e.*, placing those wagers) to occur on tribal lands....this 'deeming' provision simply allocates jurisdiction between Florida and the Tribe[.]" *Haaland II*, 71 F.4th at 1066–67.

"[A]n IGRA compact cannot provide independent legal authority for gaming activity that occurs outside of Indian lands, whether that activity would otherwise violate state law." *Id*. at 1068.

Second, Part XI, Section A specifies that "this Compact provides the Tribe with partial but significant additional substantial exclusivity and other valuable consideration consistent with the goals of the Indian Gaming Regulatory Act, including special opportunities for tribal economic development through gaming within the external boundaries of Florida with respect to the play of Covered Games." App. 48-49 (2021 Compact, Part XI, § A). Of note here are both the invocation of the Tribe's "exclusivity" and the reference to the expansion of Covered Games to encompass "the external boundaries of Florida" — as opposed to the internal boundaries of the Tribe's lands.

Third, all of Part XII reflects the 2021 Compact's "intent . . . to provide the Tribe with the right to operate Covered Games on an exclusive basis throughout the State, subject to the exceptions and provisions set forth below, without State-authorized competition from other persons, organizations, or entities offering Class III Gaming or Other Casino-Style Gaming." App. 57-66 (2021 Compact,

Part XII). This purported "Grant of Exclusivity" (as Part XII is titled) reinforces both the 2021 Compact's desire to give the Tribe a monopoly over the newly authorized gambling and the extent to which, at least as of January 1, 2021, such gaming and gambling is not already authorized by Florida state law (a point that will figure into analysis under the IGRA below).[6]

In return for the Respondents' unconstitutionally expanding casino gaming in Florida, the Tribe agrees to pay the state a minimum of $400 million annually for the first five years following the effective date of the 2021 Compact. App. 54-55 (2021 Gaming Compact, Part XI § C.4.c). But, "the integrity of the Constitution and its priceless principles of government", *Jackson Lumber Co. v. Walton Cnty.*, 116 So. 771, 790 (Fla. 1928), should not be for sale. At a

[6] A fifth provision—later dropped by subsequent amendment, App. 78 (Amendment to 2021 Gaming Compact)—stated that within 36 months, the State of Florida and the Seminole Tribe will engage in negotiations for "an amendment to authorize the Tribe to *offer all types of Covered Games online or via mobile devices to players physically located in the State*, where such wagers made using a mobile device or online shall be deemed to take place exclusively where received at the location of the servers or other devices used to conduct such wagering activity at a Facility on Indian Lands." App. 73-74 (2021 Compact, Part XVIII, § A) (emphasis added).

minimum, the People have the right to decide whether the price of having expanded gambling throughout the state is worth the money.

The 2021 Compact itself recognizes that its effort to redefine where online bets take place may well prove unsuccessful. The 2021 Compact contains a severability clause, which provides: "[i]f at any time the Tribe is not legally permitted to offer Sports Betting as described in this Compact, including to Patrons physically located in the State but not on Indian Lands, then the Compact will not become null and void, but the Tribe will be relieved of its obligation to pay the full Guaranteed Minimum Compact Term Payment." App. 70 (2021 Compact Part XIV, § A). The reduction of the Guaranteed Minimum Compact Term Payment is limited to 10%. App. 55 (2021 Gaming Compact, Part XI § C.4.e).

On April 23, 2021, the Governor executed the 2021 Compact and promptly submitted it to the Legislature for ratification.[7] On May

[7] The legality of the off-reservation sports betting provisions was widely debated. Legislators, the Governor's office and Tribe all anticipated the courts would have the final word. *See* Ryan Nicol, Dan Gelber, *Philip Levine argue voters should have a say in new gaming deal*, FLA. POL. (May 17, 2021), https://floridapolitics.com/archives/430075-gelber-levine-voters-gaming-deal/ (last visited Sept. 22, 2023)

19, 2021, the Legislature ratified the 2021 Compact, as amended May 17, 2021, passing the Implementing Law, which is now codified within Laws of Florida, Chapters 2021-268, 2021-269, Fla. Stat. §§ 285.710((3)(b) – (14)); 849.142. The Implementing Law adopts the definitions in the 2021 Compact and amends § 285.710, Fla. Stat. (which was previously enacted to ratify the 2010 Compact) to ratify and approve the "gaming compact between the Seminole Tribe of

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("Rep. Sam Garrison, [who co-sponsored the] legislation to ratify the compact, told a House panel [that 't]here's a legitimate question and legal question as to whether or not the sports gaming, with the hub-and-spoke model as contemplated in the compact [is constitutional.]'"); FREQUENTLY ASKED QUESTIONS – 2021 Compact, Office of Governor Ron Desantis, https://www.myfloridahouse.gov/api/document/house?Leaf=HouseContent/Lists/LegislatorUResources/Attachments/66/2021.05.12%20Compact%20FAQs.pdf.

(last visited Sept. 21, 2023) ("The main concern is whether online gaming is considered gambling 'on tribal lands.'"); Haley Brown, House panel approves gaming compact amid 'open legal question', FLA. POL. (May 17, 2021), https://floridapolitics.com/archives/430058-house-panel-approves-gaming-compact-amid-open-legal-question/ (last visited Sept. 22, 2023) ("'If we were not to prevail in a state or federal court for the purpose of sports betting being authorized, the Tribe has already stated it will honor the revenue share from our land-based casinos at a minimum. That's $400 million a year,' [Seminole Tribe of Florida CEO, Jim] Allen said.").

Florida and The State of Florida, executed by the Governor and the Tribe on April 23, 2021, as amended on May 17, 2021."

On May 25, 2021, the Implementing Law was approved by Gov. DeSantis. The Implementing Law recognizes that the 2021 Compact supersedes the 2010 Compact only upon becoming effective, and if it is not approved by the Secretary or invalidated by court action, then the 2010 Compact remains in effect. § 285.710(3)(b), Fla. Stat. Further, § 285.710(5), Fla. Stat., provides, "[i]f any provision of the compact relating to covered games, revenue-sharing payments, suspension or reduction in payments, or exclusivity is held by a court of competent jurisdiction or by the Department of the Interior to be invalid, the compact is void." Sections 285.710(13) and (14) specifically approve off-reservation sports betting provisions and purport to alter Florida law to authorize sports betting statewide.

In June 2021, the 2021 Compact was submitted to the Secretary for approval. The Secretary allowed the 45-day review period to expire without action, which under IGRA operates as approval once published in the Federal Register. This occurred on August 5, 2021. On August 16, 2021, Petitioners West Flagler and Bonita Springs filed the APA action in the United States District

Court for the District of Columbia. The district court held expedited briefing on competing motions for summary judgment. On November 22, 2021, it granted summary judgment in favor of West Flagler and Bonita Springs, agreeing that the Secretary abused her discretion in allowing the 2021 Compact to take effect because IGRA did not authorize a compact allowing a tribe to engage in off-reservation gaming. *Haaland I,* 573 F. Supp. 3d at 260. On June 30, 2023, a panel of the D.C. Circuit Court of Appeals reversed the district court. *Haaland II,* 71 F.4th at 1059. ("The Compact 'authorizes' only the Tribe's activity on its own lands, that is, operating the sports book and receiving wagers. The lawfulness of any other activity such as placing of wagers from outside Indian lands, under state law or tribal law, is unaffected by inclusion as a topic in the Compact."). The appellate court thereafter denied a motion for rehearing *en banc* on September 11, 2023, see *W. Flagler Assocs., Ltd. v. Haaland,* Consol. Cases 21-5265, 22-5022, 2023 WL 5985186 (D.C. Cir. Sept. 11, 2023), and barring a stay its mandate is expected to issue in coming days.[8]

[8] See Appellees West Flagler Associates, Ltd. and Bonita-Fort Myers Corp.'s Motion to Stay Mandate Pending Petition for Writ of

STANDARD OF REVIEW

When interpreting constitutional provisions, this Court has declared that it must "adhere to the 'supremacy-of-text principle': 'The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'" *In re Advisory Op. to Governor re Implementation of Amendment 4*, 288 So. 3d 1070, 1078 (Fla. 2020) (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). Furthermore, as this Court has explained, "[w]e also adhere to the view expressed long ago by Justice Joseph Story concerning the interpretation of constitutional texts (a view equally applicable to other texts): '[E]very word employed in the constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.'" *Id*. (citing Joseph Story, *Commentaries on the Constitution of the United States* 157-58 (1833)).

Certiorari, *W. Flagler Assoc. Ltd., et al. v. Haaland*, Consol. Cases 21-5265 & 22-5022 (D.C. Cir. Sept. 15, 2023).

V. ARGUMENT

A. The Off-Reservation Sports Betting Provisions of the 2021 Compact and Implementing Law Exceed the Governor and Legislature's Authority, Because They Do Not Meet the "On Tribal Lands" Exception of Article X, Sec 30 and, Thus, Violate Its Prohibition Against Expanding Casino Gambling Without Voter Approval

When the People voted overwhelmingly with over 70% of the vote to adopt Amendment 3, they understood its provisions also limited the expansion of sports betting. *See, supra,* fn. 5. The plain language of the amendment applies to all forms of casino gambling, including sports betting.[9] The 2021 Compact and Implementing Law improperly seek to circumvent the will of the People. In an effort to shoehorn themselves into the limited "tribal lands" exception to voter approval of expanded gambling, the 2021 Compact and Implementing Law unlawfully redefine "tribal lands"—a key term in

[9] Unlike the concerns expressed by this Court regarding Florida's right to privacy provision during oral argument in *Planned Parenthood of Southwest and Central Florida, et al., v. State of Florida, et al.*, Case No. SC2022-1050, Article X, Section 30 expressly references all forms of casino gambling and is backed by substantial evidence of the voters' intent to ensure that Florida voters, not the legislature, control the decision to expand casino gambling in Florida. *Id*. (Sept. 8, 2023 Oral Argument), https://www.facebook.com/floridasupremecourt/videos/2406981256288 41/.

Article X, Section 30(c)—to include the entirety of the state by deeming online bets placed *outside* of tribal lands and received in a server located *on* tribal lands to be conducted by the Tribe on those tribal lands.

This Court need not decide *de novo* whether the 2021 Compact authorized expansion of gambling outside the Tribe's lands. In upholding the 2021 Compact, the *Haaland II* court already held that a compact under IGRA "does not (and cannot) have, namely [the legal effect], independently authorizing betting by patrons located outside of the Tribe's lands. Rather, the Compact itself authorizes only the betting that occurs on the Tribe's lands." *Haaland II*, 71 F.4th at 1062.

After explaining the "deeming" provisions of the Compact, the appellate court found that those provisions did not convert online off-reservation sports betting to gaming on tribal lands. *Haaland II,* 71 F.4th at 1066 ("The Compact 'authorizes' only the Tribe's activity on its own lands, that is operating the sports book and receiving the wagers" and not placing wagers off tribal lands.) Putting it even more bluntly, the district court found the "deeming" language to be a "fiction." *Haaland I*, 573 F. Supp. 3d at 273 ("When a federal statute

authorizes an activity only at specific locations, parties may not evade that limitation by "deeming" their activity to occur where it, as a factual matter, does not.").

Significantly in its opinion, the appellate court restated a portion of its holding: "let us be clear: 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." *Haaland II,* 71 F.4th at 1068. It agreed with the premise that if the Implementing Law was challenged in a Florida court and struck, the Compact "would give no independent authority for the Tribe to continue to receive bets from outside Indian lands." *Id.*, *citing* Counsel for the Secretary Oral Arg. Tr. at 6:14-21 ("[I]f the state statute ... related to this action were to be challenged in Florida state court and were to fall, the compact that they crafted would give no independent authority for the Tribe to continue to receive bets from outside Indian lands.").

As recognized by the appellate court in *Haaland II*, the 2021 Compact's "deeming" provisions and their counterpart in Fla. Stat. § 285.710(13)(b)(7) fail to convert online sports betting into gaming exclusively on tribal lands. Thus, such online sports betting is not

"pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands." *See* Fla. Const. art. X, § 30(c). Accordingly, the exception in Article X, Section 30(c) does not apply.

B. Article X, Section 30 Excludes the Governor's and Legislature's Ability to Alter Public Policy Expanding Gambling in Florida Without Voter Approval

This Court, in its advisory opinion approving Amendment 3 for the 2018 ballot, found that "[s]ubsection (b) of the amendment's text contains an extensive definition of what is considered 'casino gambling' for the purposes of the amendment; and, contrary to the opponents' argument, these definitions generally comport with the plain meaning of these words." *In re Voter Control of Gambling*, 215 So. 3d 1209 (Fla. 2017). As examples, this Court provided dictionary definitions of "casino" ("a building or room for gambling") and "gambling" ("the act or practice of betting")." *Id.* at 1217, fn. 1.

As demonstrated below, the Article X, Section 30(b) definition of "casino gambling" includes online sports betting. *See Lee Mem'l Health Sys. v. Progressive Select Ins. Co.*, 260 So. 3d 1038, 1043 (Fla. 2018) ("The determination of the meaning of a constitutional provision begins with its plain language.")

1. Sports betting falls within the definition of Section 30(b)

Article X, section 30(b) generally defines "casino gambling" as "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." It encompasses any of the types of games typically found in casinos and those within the definition of Class III gaming now or in the future.

In the federal appellate litigation, the state of Florida as amicus in support of the Secretary did not dispute that the section 30(b) definition includes sports betting,[10] despite the federal appellants' passing suggestion of such a reading when arguing why the 2021 Compact did not violate the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. § 1362 *et seq.*.[11] Were Respondents to change tack

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[10] *See generally* Brief for Amicus Curiae State of Florida in Support of Federal Appellants' Request for Reversal, *W. Flagler Assocs. Ltd. v. Haaland*, Consol. Cases 21-5265 & 22-5022, 2022 WL 3701152, (D.C. Cir. Aug. 24, 2022).

[11] *See* Opening Brief for Federal Appellants U.S. Dept. of Interior and Debra Haaland, *W. Flagler Assoc. Ltd. et al., v. Haaland*, Consol.

now, that argument should fail. The federal appellants argued that section 30(b) might not include sports betting: "There appear to be arguments that it does not. For one, the requirement applies only to "casino gambling," a term that the constitution defines more narrowly than class III gaming for IGRA purposes. *See* Fla. Const. art. X, § 30(a),(b) ("casino gambling" means any of the types of games typically found in casinos *and* that are within IGRA's definition of class III gaming)" (emphasis in original).[12] As explained below, even under this interpretation of subsection (b), sports betting falls plainly within its definition of "casino gambling." But the federal appellants' argument ignored the entirety of the text, which defines "casino gambling" as "any of the types of games typically found in casinos *and* that are within the definition of Class III gaming . . . *and* in 25 C.F.R. § 502.4, upon adoption of this amendment, *and* any that are added to such definition of Class III gaming in the future." Fla. Const. art. X, § 30(b) (emphasis added). If an activity had to satisfy *all* the

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Cases 21-5265 & 22-5022, 2022 WL 3567067, **38-39 (D.C. Cir. Aug. 17, 2022).

[12] *Id*.

descriptions connected by the word "and," then an activity could constitute "casino gambling" only if it was "in 25 C.F.R. § 502.4" *both* "upon adoption of this amendment" *and* "added to such definition . . . in the future." But that would render "casino gambling" a null set, since it is impossible for an activity to *both* be within 25 C.F.R. § 502.4 when the amendment was adopted *and* added "in the future."[13] Further, such a restrictive reading of section 30(b) would make redundant subsection (b)'s further description of "casino gambling" as including "electronic gambling devices", "casino games" and "casino-style game[s]". Accordingly, a form of gaming is "casino gambling" if it is "any of the types of game" that are 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."[14]

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[13] Brief of Appellees West Flagler Associates, Ltd. and Bonita-Fort Myers Corp., *W. Flagler Assocs. et al., v. Haaland*, Consol. Cases 21-5265 & 22-5022, 2022 WL 5482500, **34-35 (D.C. Cir. Oct. 6, 2022).

[14] The use of the word "and" does not signify that these are separate criteria that each must be met as reflected, *inter alia*, by the fact that a type of gaming cannot simultaneously be in the definition of Class

Moreover, even if two-prong approach to the definition of casino gambling under section 30(b) were to apply, a proper reading of the entire provision leads to the conclusion that online sports betting is "casino gambling." Sports betting is both a type of game "typically found in casinos" and is expressly encompassed by the definition of Class III gaming in the federal law incorporated by Article X, Section 30.

a. **"Any" is a broadly construed term in legislative interpretation**

As discussed below, if applying a two-prong approach to section 30(b), the first prong of the definition would be "any of the types of games typically found in casinos." Fla. Const. art. X, § 30(b). The second prong then would be, "and that are within the definition of Class III gaming in the Federal Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq. ("IGRA"), and in 25 C.F.R. § 502.4, upon adoption of this amendment, and any that are added to such definition of Class III gaming in the future." Both are expanded upon and informed by the rest of section 30(b), which, as further discussed

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III gaming in place "upon adoption of the amendment" and "added to the definition of Class III gaming in the future."

below, includes an inclusive and non-exhaustive list of broadly described types of gambling it seeks to restrict. Fla. Const. art. X, § 30(b).[15] The use of the word "any" throughout the definition of "casino gambling" indicates the broad sweep intended.

"Any" means "one or some indiscriminately of whatever kind" or "one, some or all indiscriminately of whatever quantity." *Any*, Merriam-Webster's Collegiate Dictionary (11th ed. 2003); *see United States v. Gonzalez*, 520 U.S. 1, 5 (1997), *quoting* Webster's Third New International Dictionary 97 (3d ed. 1976) ("Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'"). "Any" is "unmeasured or unlimited in amount, number or extent." *Any*, Merriam-Webster's Collegiate Dictionary (11th ed. 2003). In other words, "any" means every or all. *Id.*; *see Roberson v. Health Career Inst. LLC*, No. 22-CV-81883-RAR, WL 4991121 at *16 (S.D. Fla. Aug. 2, 2023), *citing Regions Bank v. Legal Outsource P.A.*, 936 F.3d 1184, 1194 (11th Cir.

[15] This constitutional definition of "casino gambling" is not redundant, as demonstrated by other games such as lotteries as well as raffles are listed as Class III, *see* 25 C.F.R. § 502.4, but are not necessarily the types of games typically found in a casino.

2019) ("The word 'any' means 'all'."). Thus "any" can encompass the entire category of "the types of games" (as further defined), no matter how many.

Throughout section 30(b), "any" is repeatedly used to cast a far-reaching net of "casino gambling." Covering many types of games, subsection (b) states, "[t]his includes, but is not limited to …any other game not authorized by Article X, section 15." And further, covering numerous game delivery systems and technologies, subsection (b) states, "[a]s used herein, 'casino gambling' includes… any other form of electronic or electromechanical facsimiles of any game of chance." Moreover, Florida law broadly defines "gambling" as a "game of chance, at any place, by any device whatever, for money or other thing of value." Fla. Stat. § 849.08.[16]

[16] By federal law, sports betting was limited to only four states prior to May 18, 2018, when the U.S. Supreme Court held relevant provisions of the Professional and Amateur Sports Protection Act (PAPSA) unconstitutional in *Murphy v. NCAA*, 138 S. Ct. 1461 (2018). Of course, by that time, the Amendment 3 language was already locked in with its Florida Supreme Court approval on April 20, 2017, and the Amendment's qualification for the ballot on January 17, 2018. It is not surprising that Amendment 3 did not specifically mention sports betting as it was limited by federal law to only four states, but instead Article X, section 30(b) left sports betting to be captured in the more general "casino gambling" definition. Since the

Importantly, the use of the word "includes" in these subsection (b) definitions of "casino gambling" connotes a non-exhaustive list. This would capture sports betting even if that activity were not specified among the list of games and technologies. Indeed, there is no application of the *expressio unius est exclusion alterius* canon following the word "includes." *See White v. Mederi Caretenders Visiting Servs. of Se. Fla.*, LLC, 226 So. 3d 774, 781 (Fla. 2017) ("Generally, it is improper to apply *expressio unius* to a statute in which the Legislature used the word 'include'... This follows the conventional rule in Florida that the Legislature uses the word 'including' in a statute as a word of expansion, not one of limitation."); *In re Adv. Op. on Amdt. 4*, 288 So. 3d at 1080. Thus, these detailed definitions of "casino gambling" within subsection (b) provide grounds to inclusively define sports betting rather than rule it out.

The interpretative canon *ejusdem generis* also does not apply in this context. Under that canon, "where general words of phrases *follow* an enumeration of specific words or phrases, 'the general

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Murphy decision in 2018, sports betting, including online sports betting, is legal in a majority of states.

words are construed as applying to the same kind or class as those specifically mentioned.'" *In re Adv. Op. on Amdt. 4*, 288 So. 3d at 1080 (emphasis added), *quoting In re Advisory Op. to the Attorney Gen. on Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 801 (Fla. 2014). But article X, section 30(b)'s general definition of "casino gambling" *precedes* the listing of specific games and technologies, rendering the canon inapplicable. *See In re Adv. Op. on Amdt. 4*, 288 So. 3d at 1080. While listing of particular games and technologies ensures that they those games are included within "casino gambling," they do not in any way restrict the application of the general definition of "casino gambling" in subsection (b).

Finally, section 30(b) affirmatively names certain forms of gambling that are *not* included in "casino gambling." Pari-mutuel wagering on horse racing, dog racing, and jai alai exhibitions are explicitly excluded from the subsection (b) definition, even though those types of games are designated Class III in 25 C.F.R. § 502.4. And they all involve gambling on a sport (albeit primarily in a pari-mutuel context). The fact that sports betting, which is a Class III game in 25 C.F.R. § 502.4, is not likewise exempted from "casino

gambling," in article X, section 30(b), means that all other sports betting does fall within the definition.

b. **"Any of the types of games typically found in casinos" includes sports betting**

i. **"Typically" is more appropriately defined here as "characteristically" rather than "usually"**

In defining "casino gambling," article X, section 30(b) assesses whether sports betting is among the types of games "typically found in casinos." Here, whether sports betting is "found in casinos" is an independent analysis from whether sports betting may *also* be found in other places. In other words, despite the prevalence of sports betting online, the constitutional question is whether sports betting is "typically found in casinos" or not.

"Typically" has more than one dictionary definition. One meaning of "typically" is "in a way that shows the characteristics of a particular kind of person or thing." *Typically*, Cambridge Advanced Learner's Dictionary (4th ed. 2013). But "Typically" also means an "usual example of a particular thing." *Id*. In its root adjective, "typical" means "combining or exhibiting the essential characteristics of a group." *Typical*, Merriam-Webster's Collegiate Dictionary (11th

ed. 2003). "Typical" also means "conforming to a type." *Id*. Some dictionaries only have one definition: "exhibiting the traits or characteristics peculiar to its kind, class, or group." *Typical*, American Heritage Dictionary (2d Coll. Ed. 1991), *see S. Kingstown Sch. Comm. V. Joanna S.*, 773 F.3d 344, 351 (1st Cir. 2014) (citing Am. Heritage Dictionary 1210 (2d Coll. Ed. 1991)). Other dictionaries define "typically" to contain connotations of "characteristically" as well as "usually", for instance, "having the usual features or qualities of a particular group or thing." *Typically*, Longman Dictionary of Contemporary English (6th ed. 2014).

Although sports betting satisfies both interpretations, the context of article X, section 30(b)'s use of "typically" is more in line with an understanding of "characteristically" than "usually." The sentence states "casino gambling means *any* of the types of games." Fla. Const. art. X, § 30(b) (emphasis added). The phrasing "types...typically" demonstrates a focus on the kind or character of games that are in casinos. As subsection (b) proceeds, it further defines "casino gambling" by describing an array of games and their technologies – these being akin to "types." *See* Fla. Const. art. X, § 30(b). Yet there is no indication in subsection (b)'s text that the

prevalence alone of games in a casino creates a basis to define those games to be "casino gambling."

Moreover, subsection (b)'s "casino gambling" definition also refers to the type of game that would be within Class III, specifically referencing "25 C.F.R. s. 502.4." Fla. Const. art. X, § 30(b). That regulation states that "Class III gaming means *all forms* of gaming...*including but not limited to:*" and then lists sports betting. 25 C.F.R. § 502.4 (emphasis added). The regulation's focus on the form, or type, of gaming provides additional context for subsection (b)'s focus on the nature of the game as a casino-game, not simply its availability among casinos. Defining "typically" as "characteristically" found in casinos is more consistent with article X, section 30(b) overall.

The text of section 30(b) itself in comparison with its additional definitions of "casino gambling" reveals that sports betting is typically, *i.e.*, characteristically, found in casinos. As a matter of law, this Court can determine that sports betting satisfies this portion of subsection (b) definition, as it was characteristically found in casinos as of the approval of Amendment 3. Sports betting today is also generally found in casinos. *Compare* American Gaming Association,

State of the States 2023: The AGA Analysis of the Commercial Casino Industry, May 2023, https://www.americangaming.org/wp-content/uploads/2023/05/AGA-State-of-the-States-2023.pdf,at 13-14 (listing 28 states in which "Brick & Mortar Sports Betting" is actively offered in casinos), with *id.*, at 13-14 (listing 37 states with Class III "Commercial Casinos / Racinos"). The nature, as well as the usualness, of sports betting occurring in a casino satisfies the constitutional standard.

ii. **The "typically found in casinos" evaluation is a current-day analysis, as determined by the text and context of article X, subsection 30(b)**

Amendment 3 "ensures that Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida." Fla. Const. art. X, § 30(a). The Amendment is an enduring grant to the People themselves – and only them --- to authorize new gambling in Florida.

The constitutional provision should be interpreted for sports betting as it exists today. *See Scalia & Garner, Reading Law at 40, quoting McCulloch v. Maryland*, 17 U.S. 316, 415 (1819) ("This provision is made in a constitution, intended to endure for ages to

come, and consequently, to be adapted to the various crises of human affairs.") Article X, section 30(b) should be given its "fair reading." *See Thompson v. DeSantis*, 301 So. 3d 180, 187 (Fla. 2020) ("The goal of constitutional interpretation is to arrive at the fair meaning of the constitutional text"). Thus, if sports betting is "typically found in casinos" today, which it is, that portion of the subsection (b) analysis is satisfied.

To instead evaluate subsection (b)'s "typically found in casinos" as a 2018-only snapshot would clash with the "presumption against ineffectiveness" canon. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012) ("The presumption against ineffectiveness ensures that a text's manifest purpose is furthered, not hindered.") It is the *sine qua non* of a constitutional provision to be applied to future situations - what is "typically found in casinos" today, not solely in 2018, is the analysis.

If this was even up for debate, the language of article X, section 30(b) itself alleviates any doubt. The subsection's phrase "upon adoption of this amendment" only modifies "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." Art. X, § 30(b). This makes sense due to subsection (b)'s inclusion of any games that become listed as Class III "in the future." Thus, a strict requirement to satisfy subsection 30(b)'s definition of "casino gambling" is that any game must be evaluated when Amendment 3 was adopted and in the future. However, it would make little sense for "upon adoption of this amendment" to modify "typically found in casinos" as there in no "in the future" counterpart to the "typically" analysis. If read in that anachronistic manner, the first portion of the analysis would remain stagnant at what was "typically" in a casino in 2018, even though the Class III listing portion of the analysis would clearly change over time, thereby limiting the anticipated broad reach of the amendment. Were that to happen, Amendment 3's effect and purpose would be gutted.

Additionally, as a grammatical matter, the first portion of subsection (b)'s general "casino gambling" definition includes two distinct clauses. The text "casino gambling means" first demands an analysis of "*any* of the types of games typically found in casinos," followed by "*and* that are within the definition of Class III...." Art. X, § 30(b) (emphasis added). These two clauses are separate clauses, and they operate as independent, and necessary, tests of what

constitutes "casino gambling." *See Buie v. Bluebird Landing Owners' Ass'n, Inc.*, 172 So. 3d 519, 521 (Fla. 1st DCA 2015) ("'And' is conjunctive and means that both conditions apply."). Accordingly, "upon adoption of this amendment" modifies the second prong, but the phrase does not leap over the "and" to modify to first prong in the absence of any textual indication otherwise.[17]

[17] Even a 2018 "snapshot" interpretation of "typically" in sub-section 30(b) yields the same result. By the time Amendment 3 was approved casino-based sports betting was taking hold quickly throughout the country. *See* https://www.businessinsider.com/states-where-sports-betting-legal-usa-2019-7#delaware-2 (last visited September 21, 2023). Delaware was the first on June 5, 2018, thanks to existing legislation pre-authorizing sports books at casinos that took effect when federal law changed. *Id*. Mississippi launched casino-based sports book in August 2018. *Id*. New Jersey launched sports betting at casinos, tracks and online in June 2018. *Id*. New York legislation anticipated the legalization of sports betting since before the Supreme Court decision, but its gaming commission did not enact regulations until 2019. *Id*. Rhode Island and West Virginia also legalized casino-based sports betting in 2018. *Id*. Pennsylvania legalized sports betting in 2017 in anticipation of the repeal of the federal ban, and a casino was the first to launch a sports book in November 2018. *See*, Covers.com, *https://www.covers.com/betting/usa/pennsylvania* (last visited September 21, 2023). *See also* App. 109 (Chart – States Permitting Sports Betting as of Nov. 2018).

c. Sports betting is a Class III game under IGRA and its regulatory provisions

As explained in Section V.B.I, and on page 19, n.4, *supra,* IGRA and 25 C.F.R. §502.4 include sports betting within the definition of Class III games. Regardless of the approach to the section 30(b) definition, it is beyond dispute that sports betting is within the definition of Class III gaming.

2. The Off-Tribal Lands Sports Betting Provisions of the Compact and Implementing Law Do Not Meet Art. X. Sec. 30's Narrow Exception

Article X Section 30 is clear that the only new type of casino gambling that can be authorized without a citizens' initiative is via an IGRA compact "for the conduct of casino gambling *on tribal lands*." *See* Fla. Const. art. X, § 30(c). ("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*.") (emphasis added); *see also Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 795 (2014) ("Everything—literally everything—in IGRA affords tools (for either state or federal officials) to regulate gaming on Indian lands, *and nowhere else*.").

The Governor and Legislature have sought to bypass article X, section 30 by using an Indian gaming compact to introduce sports betting throughout Florida, but they cannot do so because this provision by its terms protects only new gaming that takes place **on Tribal lands**.

The Governor and Legislature thus attempted to avoid the requirements of Art. X, Sec. 30 not by *actually* limiting sports betting to Indian lands, but by *labeling* the problem away. But the Florida Constitution cannot be so easily avoided. The Governor and Legislature's fiction does not change the reality that the Governor and Legislature are seeking to authorize gambling that takes place off Indian lands.

Nor can they assert that "discussing", "addressing" or "allocating jurisdiction" over sports betting being made off tribal lands meets the exception to voter approval under Art. X, Sec. 30(c). The *Haaland II* decision forecloses this, by holding clearly that none of the off-reservation sports betting was or even could be approved pursuant to the 2021 Compact. As plainly stated by that court, nothing in IGRA can authorize gaming outside Indian lands. The district court in the *Haaland I* case reached the same conclusion.

Judge Friedrich found the "deeming" language is nothing but a transparent "fiction." *Haaland I*, 573 F. Supp. 3d at 273 ("When a federal statute authorizes an activity only at specific locations, parties may not evade that limitation by 'deeming' their activity to occur where it, as a factual matter, does not.").

Moreover, in reversing the district court's opinion and upholding the Secretary's approval of the Compact, the appellate court did not disagree with this aspect of the opinion. Far from it, it found that the Secretary's approval of the 2021 Compact was valid precisely because the Compact did not and could not provide the authorization for the off-Indian lands gaming that the district court found it provided. The appellate court unequivocally stated: "let us be clear: *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*." *Haaland II*, 71 F.4th at 1068. The court agreed with the premise that if the Implementing Law was challenged in a Florida court and struck, the Compact "would give no independent authority for the Tribe to continue to receive bets from outside Indian lands." *Id.* (citing Oral Arg. Tr. at 6:14-21). Further, after explaining the "deeming" provisions of the

Compact, the appellate court found that those provisions *did not convert online off-reservation sports betting to gaming on tribal lands*. *Haaland II.*, 71 F.4th at 1066 ("The Compact 'authorizes' only the Tribe's activity on its own lands, that is operating the sports book and receiving the wagers" and not placing wagers off tribal lands.)

According to the *Haaland II* opinion (and common sense), the Compact's "deeming" provisions and their counterpart in Fla. Stat. § 285.710(13)(b)7. fail to convert off-reservation online sports betting into gaming on tribal lands. *Haaland II*, 71 F.4th at 1062. The 2021 Compact's sports betting provisions can only be read as authorizing new casino gambling off Indian lands in violation of Article X, section 30 of the Florida Constitution. Those provisions and the Implementing Law are therefore unlawful and must be set aside.

3. The Legislature Understood It Could Not Change Florida's Existing Ban on Sports Betting

Recognizing that only the People can legalize sports betting outside of a compact, the Legislature ignored the language in Florida's express prohibition on sports betting, which provides: "[w]hoever stakes, bets, or wagers any money ... upon the result of any trial or contest ... or whoever receives in any manner whatsoever

any money or other thing of value staked, bet, or wagered … commits a felony of the third degree[.]" Fla. Stat. § 849.14 (Unlawful to bet on result of trial or contest of skill, etc.). In other words, it is illegal to both (i) place a money bet in Florida and (ii) receive a money bet in Florida. The Implementing Law adopts the legal fiction of deeming any "[w]agers on sports betting … using a mobile or other electronic device" "*to be exclusively conducted by the Tribe* where the servers or other devices used to conduct such wagering activity on the Tribe's Indian lands are located." (emphasis added). This language addresses the wagering "conducted by the Tribe" to deem the wager as having been placed there, as if a bettor can be magically transported to tribal lands. However, in addition to being contrary to established law on where bets are placed and to common sense, the Implementing Law does not address the bettor's physical act of placing the wager (which the 2021 Compact does). It then purports to authorize all sports betting statewide by exempting betting under Section 285.710(13) from Florida criminal statutes. Fla. Stat. § 285.710(14) ("Notwithstanding any other provision of state law, it is not a crime for a person to participate in the games specified in subsection (13) at a tribal facility operating under the compact

entered into pursuant to this section"); Fla. Stat. § 849.142(1) ("Sections 849.01, 849.08, 849.09, 849.11, 849.14, and 849.25 do not apply to participation in or the conduct of [g]aming activities authorized under § 285.710(13) and conducted pursuant to a gaming compact ratified and approved under § 285.710(3)").

There is a likely explanation for this. Had the Legislature sought to create another legal fiction to redefine where a wager is made (as opposed to the Tribe's *conduct* of wagering activities, which is really the acceptance end of the bet), this would have required an amendment to Section 849.14's prohibition on placing a sports bet by stating expressly that "wagers on sports betting, including wagers made by players physically located within the state but off Tribal lands using a mobile or other electronic device, shall be deemed to have been exclusively *made by the players* on Tribal lands where the servers are located." However, such explicit language runs directly into the narrow "on Tribal lands" exception under Article X, Section 30(c), since a bettor is not actually betting "on Tribal lands," which explains why the Legislature tried to obfuscate this fact by focusing on deeming the wager "to be exclusively *conducted by the Tribe* where the servers" are located on Tribal lands. The bettor's actions, whether

on a personal device or at a participating pari-mutuel, take place off Tribal lands.

Both the State of Florida as well as the United States have acknowledged that a bet occurs both where the bettor is located when placing the bet and where the bet is accepted. *See Brief of Amici Curiae in Support of AT&T Corporation and Affirmance*, 1999 WL 22622330, at *4-8 (9th Cir. Case No. 99-35088, July 22, 1999) ("Gaming activity necessarily includes the player's placing of the wager or other participation in the game. *See*, e.g., Black's Law Dictionary, 679 (6th ed. 1990) (definition of "gambling" includes "[m]aking a bet"); Webster's New International Dictionary, 932 (3rd ed. 1964) (definition of "gambling" includes the act or practice of betting). In the context of a lottery, for the gaming activity to be conducted, participants place their wager by purchasing lottery tickets. Under the NIL concept, persons physically present in any of the amici states, not on the Coeur D'Alene reservation, would be wagering on the NIL. The existence of a phone bank and a centralized computer system on the Coeur D'Alene reservation does not change the uncontested fact that the person making the wager is located outside of Idaho, and clearly not on the Coeur D'Alene reservation.

As a consequence, because the wager is placed off the reservation, the gaming activity is not conducted "on Indian lands" as plainly required by IGRA") (emphasis added); *Brief for the United States of America as Amicus Curiae Supporting Appellee, Couer d'Alene Tribe v. AT&T Corporation*, 1999 WL 33622333, at *13-14 (9th Cir. Case No. 99-35088, July 20. 1999) ("It follows 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"). And federal case law does as well. *Iipay Nation of Santa Ysabel*, 898 F.3d [960, 968-69 (9th Cir. 2018)] (holding that patron's internet wager from California where bingo was illegal violated the Unlawful Internet Gambling Enforcement Act even if the wager was received at Indian tribal lands where bingo was legal); s*ee also, e.g. United States v. Calamaro*, 354 U.S. 351, 254 (1957) ("Placing and receiving a wager are opposite sides of a single coin. You can't have one without the other."). The Court of Appeals decision is consistent with the interpretation of where a bet is placed in analyzing why the 2021 Compact did not authorize betting outside tribal lands.

This word-smithing underscores that the Legislature understood it could not explicitly expand gambling by allowing a

patron to place a sports wager off reservation without enacting law in violation of Article X, Section 30. So, it only explicitly addressed Tribe's conduct on reservation to try to fit into the narrow "on Tribal lands" IGRA exception under Article X, Section 30(c). But Section 849.14, prohibits both the making of the wager and the acceptance of the wager.

VI. CONCLUSION

The portions of the Implementing Law authorizing the off-reservation sports betting provisions of the 2021 Compact expanded casino gambling throughout Florida, not just on tribal lands. Under the Florida Constitution, the People must approve any new casino gambling in the state through the citizens' initiative process — the off-reservation sports betting provisions of the 2021 Compact and the off-reservation portions of the Implementing Law violate Article X, Section 30 of the Florida Constitution. Neither the Governor nor the Legislature can expand gambling in Florida in derogation of the People's constitutional final say.

The Court should issue a writ quo warranto declaring that the Governor and Legislature exceeded their powers in authorizing off-reservation sports betting. This will negate § 285.710(13)(b)7., Fla.

Stat. and trigger the automatic severance provisions of the 2021 Compact and Implementing Law.

Pending its decision, this Court should also exercise its "all writs" power under Article V, Section 3(b)(7) of the Florida Constitution and enter an order temporarily suspending the sports betting provisions of the Implementing Law and maintaining the status quo. *See Amends. to Fla. Rule of Crim. Proc. 3.853(d)(1)(A) (Postconviction DNA Testing)*, 857 So. 2d 190 (Fla. 2003) (suspending Rule 3.853(d)(1)(A) of the Florida Rules of Criminal Procedure to allow the court to consider underlying petitions).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 25, 2023, a true and accurate copy of the foregoing has been furnished via the E-Portal to: Ryan Newman, General Counsel, Executive Office of the Governor, 400 S. Monroe St., Tallahassee, FL 32399, ryan.newman@eog.myflorida.com, *counsel for Respondent Ron DeSantis, in his capacity as Governor of Florida*; David Axelman, General Counsel, Office of the General Counsel, Florida House of Representatives, 317 The Capitol, #402, Tallahassee, FL 32399, david.axelman@myfloridahouse.gov, *counsel for the Respondent Paul Renner, in his capacity as Speaker of the Florida House of Representatives*; Carols Rey, General Counsel, Florida Senate, 302 The Capitol, 404 S. Monroe St., Tallahassee, FL 32399, rey.carlos@flsenate.gov, *counsel for Kathleen Passimodo, in her capacity as President of the Senate*; and Ashley Moody, Attorney General, Office of the Attorney General, PL-01 The Capitol, Tallahassee, FL 32399, oag.civil.eserve@myfloridalegal.com.

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RULE 9.045(E) CERTIFICATE OF COMPLIANCE

I HERBY CERTIFY that this petition complies with the font requirements and word limitations of Florida Rules of Appellate Procedure 9.045(b) and 9.100(g), as it utilizes double-spaced Bookman Old Style 14-point font, and is 12,301 words.

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