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No. SC23-1333

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.

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.

AMICUS BRIEF OF THE SEMINOLE TRIBE OF FLORIDA IN SUPPORT OF RESPONDENTS

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**Pro Hac Vice motion filed concurrently with this Brief.*

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IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

The Seminole Tribe of Florida and the State of Florida entered into a gaming compact (2021 Compact) pursuant to the Indian Gaming Regulatory Act (IGRA) that, together with Florida legislation (Implementing Law), authorized the Tribe to conduct and regulate online sports betting. The agreement includes provisions addressing wagers placed by patrons physically located throughout Florida, which are deemed to be placed where they are accepted, on the Tribe's lands.

The Tribe has significant interests in the governmental revenue it will generate from sports betting, in upholding its negotiated-for contractual agreement, and in exercising its inherent sovereignty to regulate gaming, all of which are directly and materially impacted by the repeated and unsuccessful attempts of Petitioners West Flagler and Bonita Springs (collectively, West Flagler) to challenge the validity of the 2021 Compact, including in this suit.[1]

[1] The Tribe supports Respondents' argument that the Tribe is a necessary and indispensable party to this case and cannot be joined due to its sovereign immunity from suit. *See* Resp. 24–26.

SUMMARY OF ARGUMENT

The Tribe and State worked together under the authority of IGRA and Florida law to negotiate a carefully crafted gaming agreement that resolves years of previous disputes and greatly benefits both the Tribe and State.

Respondents' brief addressed in detail the procedural history leading up to this case, which we do not repeat here. *See* Resp. 13–18. West Flagler's federal court challenges have failed, and West Flagler now seeks extraordinary relief from this Court.[2] West Flagler's untimely, unwarranted, and impermissible attempt to use a writ of quo warranto to invalidate a duly enacted Florida statute should be denied, as explained in detail in Respondents' brief.[3]

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[2] Meanwhile, West Flagler has requested and received an extension of time to file its petition for a writ of certiorari with the U.S. Supreme Court, attempting to hedge its bets as it proceeds with its multi-faceted forum shopping. *W. Flagler Assocs., Ltd. v. Haaland*, No. 23A494 (U.S. Dec. 1, 2023) (Roberts, C.J., in chambers).

[3] The Tribe agrees with Respondents that quo warranto is not a permissible means to seek direct Supreme Court review of the constitutionality of a Florida law, Resp. 26, 31–34, and that, even if it were, West Flagler unreasonably delayed filing its Petition by waiting over two years to see how its claims would fare in federal court, *id.* 19–24.

On the merits, Respondents argue that sports betting is not covered by Article X, Section 30 of the Florida Constitution (Amendment 3), Resp. 36–45, and that, even if it were, the exception to Amendment 3 preserving the State's IGRA compacting authority (the IGRA Exception) broadly allows the State to negotiate and implement any compact provision permitted under IGRA, *id.* 45–50. Respondents also argue Amendment 3 did nothing to alter the Legislature's existing authority to deem wagers, as a matter of State law, to be placed where they are received for purposes of regulating those wagers. *Id.* 50–52. The Tribe submits this Amicus Brief to expand on this point.

The Implementing Law dictates that, for purposes of Florida law, the placement of wagers off the Tribe's lands is deemed to occur on the Tribe's lands, where those wagers are accepted. Thus, the wagers are considered to be placed on tribal lands *both* to carry out a regulatory allocation of jurisdiction pursuant to IGRA, *and* to authorize their placement as a matter of law, as long as they are permitted under the 2021 Compact.

The Legislature has authority to deem the initiation of online sports wagering to occur in one location or another as a matter of

law, and Amendment 3 by its plain language did not alter or remove that authority. In fact, it preserved it. The Legislature was not charting any new ground in taking this approach. The Implementing Law was modeled on laws enacted by six other states, each with constitutional or statutory restrictions on where gaming is permitted, that authorized forms of online gaming, including sports betting, by deeming the entire transaction to occur at the location where the wager is accepted.

The Legislature, in enacting the Implementing Law by an overwhelming bipartisan majority, reasonably interpreted the IGRA Exception to preserve this authority. The Legislature's contemporaneous, rational interpretation of a constitutional provision should be accorded deference.

ARGUMENT

I. The 2021 Compact Is a Negotiated Agreement Between Sovereigns Designed to Resolve Years of Disputes.

The 2021 Compact is an historic agreement between the Tribe and State that settled years of disputes.

Shortly after IGRA was enacted in 1988, the Tribe requested the State negotiate a compact. The State initially refused, and in

1991 the Tribe filed suit in federal court, invoking IGRA's mandate that states negotiate compacts in good faith. Ultimately, the U.S. Supreme Court held, in part, that Congress lacked authority under the Indian Commerce Clause to abrogate the State's Eleventh Amendment immunity, and the Tribe's suit could not proceed. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 72–73 (1996).

Years of litigation and rounds of negotiations followed. In 2010, the Tribe and State agreed to a compact that authorized the Tribe to conduct various forms of gaming, including slot machines and banked card games. In return for substantial exclusivity rights to offer such games, the Tribe agreed to share significant revenue with the State, including an unprecedented guarantee of $1 billion over the first five years.

IGRA prohibits states from imposing any form of tax, fee, charge, or other assessment on tribal gaming. 25 U.S.C. § 2710(d)(4). Thus, the bargained-for exclusivity providing freedom from competition over covered gaming throughout Florida was necessary to justify the Tribe's payments to the State. *See Rincon Band of Luiseño Mission Indians v. Schwarzenegger*, 602 F.3d 1019, 1033 (9th Cir. 2010); *Artichoke Joe's Cal. Grand Casino v. Norton*,

353 F.3d 712, 731 (9th Cir. 2003) (recognizing state may exclusively authorize tribe to conduct gaming under IGRA).[4]

Only a year after the 2010 compact was approved, the State violated the Tribe's exclusivity rights by permitting State-regulated pari-mutuels to offer so-called "designated player games." The U.S. District Court for the Northern District of Florida held that these were in fact banked card games covered by the Tribe's exclusivity rights. *See Seminole Tribe of Fla. v. Florida*, 219 F. Supp. 3d 1177, 1187–88 (N.D. Fla. 2016). Yet, the State failed to halt the conduct. In response, the Tribe exercised its right under the 2010 compact to suspend revenue sharing payments to the State.

After lengthy negotiations involving the Governor, the Legislature, and the Tribe, with input from pari-mutuels, the Tribe and State settled years of disputes by entering into the 2021 Compact. The State enacted the Implementing Law to ratify and implement the 2021 Compact and make conforming amendments to

[4] Because the revenue sharing is consideration for the right to exclusivity, it is not a tax, fee, charge, or other assessment, provided the amount of the revenue share is reasonably commensurate with the value of the exclusivity. *See Rincon*, 602 F.3d at 1036.

Florida gaming laws. *See* § 285.710, Fla. Stat. As authorized by IGRA, 25 U.S.C. § 2710(d)(8)(C), the Department of the Interior allowed the 2021 Compact to take effect by operation of law, 86 Fed. Reg. 44,037 (Aug. 11, 2021).

The 2021 Compact and Implementing Law authorized the Tribe to conduct new forms of gaming, including online sports betting, with substantial exclusivity. *See* Pet. App. 7, 17–23, 57–66 (2021 Compact, Parts III.F, III.CC, IV.A, XII); § 285.710(13), Fla. Stat. The Tribe and State included language deeming online sports betting wagers to be placed where received on the Tribe's lands so the Tribe could regulate the entire gaming transaction from start to finish. In exchange for its new exclusivity rights, the Tribe agreed to resume and increase its revenue sharing payments to the State, guaranteeing $2.5 billion over the first five years. *Id.* 48–57 (2021 Compact, Part XI). In addition, the 2021 Compact requires the Tribe to contract with all requesting qualified pari-mutuels, allowing them to participate by marketing the Tribe's sportsbook in exchange for up to 60% of the Tribe's associated profit. *Id.* 19–20 (2021 Compact, Part III.CC.3(c)).

II. West Flagler Fails to Meet the High Standard for Demonstrating a Florida Law Is Unconstitutional.

Florida courts are "obligated to accord legislative acts a presumption of constitutionality." *Dep't of Rev. v. City of Gainesville*, 918 So. 2d 250, 256 (Fla. 2005) (citation omitted); *see also Greater Loretta Improvement Ass'n v. State ex rel. Boone*, 234 So. 2d 665, 670 (Fla. 1970) ("The courts should not and must not annul, as contrary to the Constitution, a statute passed by the Legislature, unless it can be said of the statute that it positively and certainly is opposed to the Constitution.").

For the reasons set out by Respondents and discussed herein, West Flagler falls far short of this high bar. West Flagler asks this Court to declare that Respondents exceeded their constitutional authority in executing the 2021 Compact and enacting the Implementing Law. West Flagler asserts that Amendment 3's IGRA Exception does not extend to authorization of placement of online sports betting wagers by patrons located outside the Tribe's lands, and argues the IGRA Exception is limited to compacts narrower than what IGRA permits—those that only regulate activity on tribal lands. Such a restrictive interpretation is contrary to the plain

language of IGRA, which specifically authorizes compacts to cover activity off Indian lands, the D.C. Circuit's decision in *Haaland II*,[5] traditional rules of construction, and the deference to be afforded legislative interpretation of constitutional provisions.

A. The IGRA Exception Preserves the Full Scope of the State's Compacting Authority Under IGRA.

The Tribe fully supports Respondents' arguments construing the IGRA Exception, and it therefore summarizes but does not repeat them in full herein.

The IGRA Exception preserves the right of the State and tribes "to negotiate gaming compacts pursuant to [IGRA] for the conduct of casino gambling on tribal lands." Art. X, § 30(c), Fla. Const. Nowhere does the plain language indicate that the gaming the parties agree to include in a compact must occur *only* or *exclusively* on tribal lands.

Instead, this "on tribal lands" language simply mirrors IGRA's language authorizing the Secretary of the Interior to approve any compact "governing gaming on Indian lands." 25 U.S.C.

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[5] *W. Flagler Assocs., Ltd. v. Haaland* (*Haaland II*), 71 F.4th 1059 (D.C. Cir. 2023), *rev'g W. Flagler Assocs., Ltd. v. Haaland* (*Haaland I*), 573 F. Supp. 3d 260 (D.D.C. 2021).

§ 2710(d)(8)(A). The D.C. Circuit in *Haaland II* declined to "read the extraneous word 'only' into" this language, concluding it is sufficient if the compact "authorizes a substantial amount of gaming on Indian lands separate and apart from" the off-Indian lands gaming activities. 71 F.4th at 1067. Moreover, Amendment 3 expressly references IGRA, so it must be interpreted in light of that framework. As held by the D.C. Circuit, IGRA allows parties to use its allocation of jurisdiction provisions to deem wagers to occur where received for regulatory purposes. *See id.* at 1066. There is no evidence that Amendment 3 was intended to limit this pre-existing authority.

Online sports betting is a subject that can be included in an IGRA compact because the wager is accepted, processed, paid, and regulated on the Tribe's lands, and the initiation of the wager occurring off the Tribe's lands is directly related to the gaming activity occurring on the Tribe's lands. The D.C. Circuit acknowledged this was sufficient to permit the Secretary of the Interior to approve the 2021 Compact. *Id.* at 1067. The D.C. Circuit held the placement of online sports betting wagers is an activity that is "'directly related to the operation of' the Tribe's

sports book, and thus falls within the scope of" subjects that may be included in an IGRA compact. *Id.* at 1066 (quoting 25 U.S.C. § 2710(d)(3)(C)(vii)). And, it acknowledged the wagers are placed on the Tribe's lands for regulatory purposes pursuant to IGRA, *id.* (discussing 25 U.S.C. § 2710(d)(3)(C)(i)–(ii)), due to the deeming language in the 2021 Compact and Implementing Law, *see* Pet. App. 18, 23 (2021 Compact, Parts III.CC.2, IV.A); § 285.710(13)(b)(7), Fla. Stat.

B. The IGRA Exception Preserves the Legislature's Existing Authority to Deem Wagers as Placed on Tribal Lands for Authorization Purposes Under State Law.

i. The Plain Language of Amendment 3 Leaves Untouched the Legislature's Existing Deeming Authority.

The plain language of a constitutional provision is paramount under Florida's rules of construction. *Zingale v. Powell*, 885 So. 2d 277, 282 (Fla. 2004). Thus, the analysis begins by examining Amendment 3's plain language with regard to its effects on the Legislature's existing authority.

The Legislature has broad and general authority under the Florida Constitution to enact laws. *See* Art. III, § 1, Fla. Const. This includes the authority to enact laws that deem commercial

transactions to occur in one location or another as a matter of law for tax, regulatory, and other purposes. Such laws, like the Implementing Law, address the practical challenges of regulating commercial transactions that take place in more than one location by deeming the entire transaction to occur in one location or another as a matter of law. *See* Resp. 51.

ii. The Implementing Law Uses the Same Approach as at Least Six Other States in Authorizing Online Wagering.

The Legislature did not break any new ground in enacting the Implementing Law. Rather, it simply followed the same approach other states had already used to authorize online wagering. At the time the Legislature was developing and enacting the Implementing Law in mid-2021, at least six other states with constitutional or statutory restrictions on where gaming could be conducted had enacted statutes authorizing online gaming by deeming it to occur at the location where the wager is accepted. Even before then, when Amendment 3 and its IGRA Exception were under consideration in the November 2018 election, at least two states had authorized online gaming via deeming statutes, and others were considering similar measures.

For example, New Jersey's constitution generally limits gaming to Atlantic City, *see* Art. IV, § 7, ¶ 2(D), N.J. Const., so the New Jersey Casino Control Act authorized statewide online gaming using a "deeming" provision that says "[i]nternet gaming in this State shall be deemed to take place where a casino's server is located in Atlantic City regardless of the player's physical location within this State," N.J. Stat. Ann. § 5:12-95.20 (enacted Feb. 26, 2013). Consistent with New Jersey's constitutional limitation, no enterprise could engage in online gaming "other than a casino located in Atlantic City . . . [that] has located all of its equipment used to conduct Internet gaming, including computers, servers, monitoring rooms, and hubs, in Atlantic City." *Id.* § 5:12-95.30. New Jersey's approach was well-known and predated not only the Implementing Law but also Amendment 3 and the IGRA Exception.

In March 2018, also prior to ratification of the IGRA Exception, West Virginia's Lottery Sports Wagering Act was enacted, allowing operators to "accept wagers on sports events and other events authorized under this article from persons physically present in a licensed gaming facility where authorized sports wagering occurs, or from persons not physically present who wager by means of

electronic devices." W. Va. Code Ann. § 29-22D-15(a) (enacted Mar. 3, 2018). This approach was necessary because lawful gaming in West Virginia is limited to its "four racetracks and the historic resort hotel." *See id.* § 29-22D-2(b)(1). West Virginia later expanded on its deeming statutory scheme. *Id.* § 29-22E-15(b), (f) (enacted Mar. 9, 2019) ("An operator may accept wagers [on interactive games] from an individual physically located within this state using a mobile or other digital platform or an interactive wagering device . . . and such gaming activities shall be deemed to occur at the licensed gaming facilities authorized to conduct interactive wagering.").

Rhode Island soon followed this approach as well, enacting its deeming law only four months after the IGRA Exception was ratified. Its constitution requires a voter referendum to expand types or locations of gambling, *see* Art. VI, § 22, R.I. Const., yet the state was able to authorize "online sports wagering" whereby "all such wagers shall be deemed to be placed and accepted at the premises of a hosting facility," 42 R.I. Gen. Laws Ann. § 42-61.2-1(22) (enacted Mar. 25, 2019). This statute has already been upheld, with a state court finding it "does not expand the locations

of gambling which are permitted within the state and thus did not require voter approval pursuant to . . . the Rhode Island Constitution." *Harrop v. R.I. Div. of Lotteries*, No. PC-2019-5273, 2020 WL 3033494, at *13 (R.I. Super. Ct. June 1, 2020), *appeal dismissed*, No. SU-2020-0183-A (R.I. Dec. 9, 2022).

Michigan also used a deeming approach first proposed in 2016 and later enacted in 2019. Michigan has similar constitutional restrictions that require a voter referendum to expand gaming and limit gaming to certain locations. *See* Art. IV, § 41, Mich. Const. Yet, the Michigan Lawful Internet Gaming Act provides: "An internet wager received by an internet gaming operator or its internet gaming platform providers is considered to be gambling or gaming that is conducted in the internet gaming operator's casino located in this state, regardless of the authorized participant's location at the time the participant initiates or otherwise places the internet wager." Mich. Comp. Laws Ann. § 432.304(2) (enacted Dec. 20, 2019).

Still other states have legalized online gaming this way, including New York.[6] As explained by Respondents, Florida, like other states, has deemed other types of transactions that occur in multiple locations to occur at one location for taxation, regulatory, and other purposes. *See* Resp. 51 (citing §§ 456.47(5), 212.054(3)(a), 212.05(1)(e)1.a.(II), Fla. Stat.).

Nothing in the plain language of Amendment 3 or the IGRA Exception restricts the Legislature's existing and broad deeming authority. In fact, Amendment 3 specifically preserves the Legislature's broad authority to regulate gaming, stating "[n]othing 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." Art. X, § 30(c), Fla. Const.; *see also* Initial Br. of Sponsor at 9 n.1, *Advisory Op. to Att'y Gen. re Voter Control of Gambling in Fla.*, 215 So. 3d 1209 (Fla. 2017) (per

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[6] *See* N.Y. Rac. Pari-Mut. Wag. & Breed. Law § 1367-a(2)(d) (enacted Apr. 19, 2021) ("All sports wagers through electronic communication . . . are considered placed or otherwise made when and where received . . . , regardless of the authorized sports bettor's physical location within the state at the time the sports wager is placed."). Similar language was first proposed in March 2018. *See* S.B. 7900C § 1(z), 2017-2018 Leg., Gen. Sess. (N.Y. 2018).

curiam) (Nos. SC16-778, SC16-871), 2016 WL 3655206, at *9 n.1 (explaining Amendment 3 "does not affect the legislature's tax and regulatory authority over gambling").

Thus, under the plain language of Amendment 3, the Legislature was well within its authority to deem the placement of the online sports betting wagers, where aspects of each transaction occur both on and off tribal lands, to occur exclusively where accepted on tribal lands as a matter of law. Amendment 3 preserves the Legislature's authority to deem the entire gaming transaction to occur on tribal lands under State law when the gaming is properly included in an IGRA compact.

iii. The Legislature's Interpretation of Amendment 3 as Preserving Its Deeming Authority Should Receive Deference.

Even if the plain language of Amendment 3 were ambiguous, in Florida, "[w]here a constitutional provision is susceptible to more than one meaning, the meaning adopted by the legislature is *conclusive*." *Vinales v. State*, 394 So. 2d 993, 994 (Fla. 1981) (emphasis added) (citation omitted); *Greater Loretta*, 234 So. 2d at 669 ("[W]here a constitutional provision may well have either of several meanings, it is a fundamental rule of constitutional

construction that, if the Legislature has by statute adopted one, its action in this respect is well-nigh, if not completely, controlling.").

a. The Implementing Law Is a Contemporaneous Interpretation of Amendment 3.

The Legislature's "contemporaneous construction" of a constitutional provision is especially persuasive, being "*presumptively correct* unless manifestly erroneous." *State v. Kaufman*, 430 So. 2d 904, 907 (Fla. 1983) (emphasis added) (citations omitted); *see also Am. Bankers Ins. Co. v. Chiles*, 675 So. 2d 922, 924 (Fla. 1996) ("[A] contemporaneous construction of the constitution by the legislature is presumed to be correct.") (citation omitted). A statute need not explicitly reference a constitutional provision to construe it, but rather it may do so by implication. *See, e.g.*, *Vinales*, 394 So. 2d at 994. Nor must a legislative interpretation immediately follow a constitutional provision's adoption to be sufficiently "contemporaneous." *See Am. Bankers*, 675 So. 2d at 924; *Brock v. Dep't of Mgmt. Servs.*, 98 So. 3d 771, 774 (Fla. 4th DCA 2012).

Here, the Legislature adopted the deeming approach through the Implementing Law enacted in May 2021, just 2.5 years after

Amendment 3 and its IGRA Exception were ratified in November 2018. *See* Ch. 2021-268, § 2, Laws of Fla. Both the 2021 Compact and Implementing Law deem online sports betting wagers to take place on the Tribe's lands, where the wagers are accepted and processed. Pet. App. 18, 23 (2021 Compact, Parts III.CC.2, IV.A); § 285.710(13)(b)(7), Fla. Stat. (providing online sports betting wagers "shall be deemed 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"). The Implementing Law further made clear that "gaming activities authorized under this subsection and conducted pursuant to a gaming compact . . . do not violate the laws of this state." § 285.710(13), Fla. Stat.; *see also id.* § 285.710(14).

In enacting the Implementing Law, the Legislature communicated its contemporaneous interpretation of Amendment 3 and the IGRA Exception as preserving the Legislature's existing deeming authority. Indeed, the 2021 Compact records the State's express affirmation that it complies "in all respects with the Florida Constitution," *see* Pet. App. 6 (2021 Compact, Part II.I), and the

Legislature ratified this statement by enacting the Implementing Law, *see* § 285.710(3)(b), Fla. Stat.

b. The Implementing Law Is a Rational Interpretation of Amendment 3.

As long as the Legislature's contemporaneous construction of a constitutional provision is not "manifestly erroneous," *Kaufman*, 430 So. 2d at 907; *Brock*, 98 So. 3d at 774, but rather is a "rational" construction, *Agency for Health Care Admin. v. Associated Indus. of Fla., Inc.*, 678 So. 2d 1239, 1247 (Fla. 1996), a reviewing court should defer to the Legislature's interpretation.

The Legislature's interpretation of Amendment 3 and its IGRA Exception as preserving the Legislature's deeming authority was perfectly rational, especially considering the body of deeming laws already in place inside and outside of Florida when the Implementing Law was enacted. *See Crescent Miami Ctr., LLC v. Dep't of Rev.*, 903 So. 2d 913, 918 (Fla. 2005) ("Florida's well-settled rule of statutory construction [is] that the legislature is presumed to know the existing law when a statute is enacted . . . ." (alteration in original) (citations omitted)); *Zingale*, 885 So. 2d at 282 (explaining

"constitutional interpretation follows principles parallel to those of statutory interpretation" (citation omitted)).

As discussed above, the Legislature—along with the rest of the gaming world—would have been well aware that other states with geographic restrictions on gaming were authorizing online gaming by deeming wagers to be placed where they were received, consistent with their respective constitutional and statutory limitations. This body of deeming laws also sheds light on what the drafters and voters may have understood the IGRA Exception to allow at the time it was ratified. *See Brinkmann v. Francois*, 184 So. 3d 504, 510 (Fla. 2016) ("[A] constitutional amendment must be assessed in light of the historical development of the decisional law extant at the time of its adoption." (citation omitted)).

West Flagler states that the D.C. Circuit found the 2021 Compact's deeming provisions "did not convert online off-reservation sports betting to gaming on tribal lands." Pet. 55 (citing *Haaland II*, 71 F.4th at 1066). What the D.C. court actually said, however, was:

> [A]n IGRA gaming compact can legally authorize a tribe to conduct gaming only on its own lands. But at the same time, IGRA does not *prohibit* a gaming compact—which is,

> at bottom, an agreement between a tribe and a state—from discussing other topics, including those governing activities "outside Indian lands[.]"

Haaland II, 71 F.4th at 1062 (second alteration in original) (quoting *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014)).[7] The court then noted that "[w]hether it is otherwise lawful for a patron to place bets from non-tribal land" is a matter for state court determination. *Id.* There is no disagreement on this point. States have capacious authority to control gaming within their borders, including by deeming a gaming transaction to occur where received for purposes of authorizing it under state law. *See Fla. Gaming Ctrs., Inc. v. Dep't of Bus. & Prof. Regul.*, 71 So. 3d 226, 229 (Fla. 1st DCA 2011) (recognizing Florida's broad authority to regulate gaming within its borders under its police powers). And that is precisely why many states have lawfully utilized this deeming approach to authorize online gaming.[8]

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[7] *See also AT&T Corp. v. Coeur d'Alene Tribe*, 45 F. Supp. 2d 995, 1004 (D. Idaho 1998), *rev'd on other grounds*, 283 F.3d 1156, *amended & superseded*, 295 F.3d 899 (9th Cir. 2002); *California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 966–67 (9th Cir. 2018).

[8] In fact, state law may treat a gaming transaction as incomplete until the wager is accepted at a server, such that it requires authorization only at that point.

Here, the Legislature in the Implementing Law deemed the wagers placed on tribal lands for authorization purposes under State law to facilitate implementation of IGRA's authority to shift regulatory jurisdiction over those wagers from the State to the Tribe via the 2021 Compact. *See, e.g.*, *Haaland II*, 71 F.4th at 1066.

The Legislature's interpretation of Amendment 3 as preserving its authority to deem online sports betting transactions to occur entirely where wagers are received, on tribal lands, was rational and in keeping with existing legal principles. The Implementing Law should receive heightened deference and the Legislature's contemporaneous interpretation should therefore be treated as dispositive.

CONCLUSION

For the foregoing reasons, the Tribe respectfully requests that this Court deny West Flagler's Petition for Writ of Quo Warranto.

Dated: December 8, 2023

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared in Bookman Old Style, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure, and that it contains 4,414 words, in compliance with Rules 9.370(b) and 9.210(b).

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