

IN THE SUPREME COURT OF FLORIDA

WEST FLAGLER ASSOCIATES, LTD.,
et al.,

Petitioners,

v.

SC2023-1333

RON D. DESANTIS, etc., et al.,

Respondents.

_____/

NOTICE OF SUPPLEMENTAL AUTHORITY

Petitioners, West Flagler Associates, Ltd., Bonita-Fort Myers Corporation d/b/a Springs Poker Room and Isadore Havenick (collectively, “Petitioners”), pursuant to Florida Rule of Appellate Procedure 9.225, hereby submit the attached order recently entered by the Supreme Court of the United States in *West Flagler Assoc., Ltd., et al. v. Haaland, et al.*, 23A315, 2023 WL 7011331 (U.S. Oct. 25, 2023), vacating the stay granted by the Chief Justice (the “Order”), as supplemental authority in support of their pending Petition for Writ of Quo Warranto (the “Petition”). In the order, Justice Kavanaugh noted that:

I agree that the stay application should be denied in light of the D. C. Circuit’s pronouncement that the compact between Florida and the Seminole Tribe authorizes the Tribe to conduct only on-reservation gaming operations, and not

off-reservation gaming operations. If the compact authorized the Tribe to conduct off-reservation gaming operations, **either directly or by deeming off-reservation gaming operations to somehow be on-reservation**, then the compact would likely violate the Indian Gaming Regulatory Act, as the District Court explained.

To the extent that a separate Florida statute (as distinct from the compact) authorizes the Seminole Tribe—and only the Seminole Tribe—to conduct certain off-reservation gaming operations in Florida, the state law raises serious equal protection issues. But the state law’s constitutionality is not squarely presented in this application, and the Florida Supreme Court is in any event currently considering state-law issues related to the Tribe’s potential off-reservation gaming operations.

Id. (internal citations omitted; emphasis supplied).

Justice Kavanaugh’s statement about “off-reservation gaming operations to somehow be on-reservation” is pertinent to this Court’s determination of whether Respondents exceeded their authority in granting the Seminole Tribe of Florida the exclusive right to offer off-reservation online and in-person sports betting throughout the state of Florida in contravention of article X, section 30 of the Florida Constitution, as argued in the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 26, 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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Exhibit A

Statement of KAVANAUGH, J.

SUPREME COURT OF THE UNITED STATES

No. 23A315

WEST FLAGLER ASSOCIATES, LTD., ET AL. *v.* DEBRA
HAALAND, SECRETARY OF THE INTERIOR, ET AL.

ON APPLICATION FOR STAY

[October 25, 2023]

The application for stay presented to THE CHIEF JUSTICE and by him referred to the Court is denied. The order heretofore entered by THE CHIEF JUSTICE is vacated.

Statement of JUSTICE KAVANAUGH respecting the denial of the application for stay.

I agree that the stay application should be denied in light of the D. C. Circuit’s pronouncement that the compact between Florida and the Seminole Tribe authorizes the Tribe to conduct only on-reservation gaming operations, and not off-reservation gaming operations. 71 F. 4th 1059, 1062, 1065–1068 (2023); Response in Opposition to Application for Stay 7–10, 13–14. If the compact authorized the Tribe to conduct off-reservation gaming operations, either directly or by deeming off-reservation gaming operations to somehow be on-reservation, then the compact would likely violate the Indian Gaming Regulatory Act, as the District Court explained. 573 F. Supp. 3d 260, 272–274 (DC 2021); see 25 U. S. C. §§2710(d)(1), (d)(8)(A).

To the extent that a separate Florida statute (as distinct from the compact) authorizes the Seminole Tribe—and only the Seminole Tribe—to conduct certain off-reservation gaming operations in Florida, the state law raises serious equal protection issues. See *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U. S. 181, 206 (2023); *Adarand Constructors, Inc. v. Peña*, 515

Statement of KAVANAUGH, J.

U. S. 200, 221–222 (1995). But the state law’s constitutionality is not squarely presented in this application, and the Florida Supreme Court is in any event currently considering state-law issues related to the Tribe’s potential off-reservation gaming operations.