

IN THE SUPREME COURT OF FLORIDA

WEST FLAGLER ASSOCIATES, LTD.,
et al.,
Petitioners,

v.

SC2023-1333

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

**PETITIONERS' AMENDED¹ RESPONSE IN OPPOSITION TO
RESPONDENTS' CORRECTED MOTION FOR EXTENSION OF
TIME TO FILE RESPONSE**

Petitioners, West Flagler Associates, Ltd. a Florida Limited Partnership, Bonita-Fort Myers Corporation, a Florida Corporation d/b/a Springs Poker Room and Isadore Havenick, hereby file their Response in Opposition to Respondents' Corrected Motion for Extension of Time to File Response.

1. The Petition raises a critical question about the authority of the Executive and Legislative branches to act in contravention of the limits placed upon them by the state constitution. Because the functions of government are affected, this Court has recognized that a quo warranto proceeding is an expedited proceeding. *See Chiles v.*

¹ The amendment pertains to clarifying the basis in Paragraph 1 for the calculation of 30 days for Respondents' response.

Phelps, 714 So. 2d 453, 457 n.6 (Fla. 1998) (original proceeding in quo warranto appropriate where functions of government affected absent immediate determination by Court). And the Court accordingly gave Respondents only until November 1, 2023 – 30 days, as calculated pursuant to Fla. R. Gen. Prac. J. Adm. 2.514, in which to respond.

2. Respondents previously raised the prospect of an extension when they responded to the Motion for Enlargement of Time to File Amicus Brief by No Casinos, Inc. In granting the enlargement of time, the Court indicated that they could address the need for enlargement after the amicus brief was filed. The implication in Respondents' response and the Court's order was that the Court would entertain a request for additional time from Respondents if it was related to something raised in the amicus brief.

3. Respondents have not asserted that they need additional time to respond because of the amicus brief. They rely on workload. Petitioners are respectful of the demands placed upon the Solicitor General's office and offered to agree to an additional 7 days as a courtesy in recognition of that workload. However, as explained to Respondents, the workload issue was something that likely was already foreseen by Respondents but not raised with the Court.

4. Respondents' argument that an additional 30 days will not prejudice Petitioners is misplaced. While Respondents have explained the injury they themselves will incur as a result of the actions of Respondents, the real party in interest in a quo warranto proceeding, especially one raising constitutional issues, is the people. The people who adopted Amendment 3 creating Art. X, Sec. 30 of the Florida constitution are entitled to have their will enforced.

5. Respondents' reliance on the supposed 2-year delay in the filing of the Petition is misplaced and already has been addressed in the Petition. Because the exemption language of Art. X, Sec. 30 depends on whether the off-reservation sports betting is authorized by a gaming compact pursuant to the Indian Gaming Regulatory Act, asking the federal courts to first address whether or not off-reservation sports betting was approved under such a compact was justified. Had Petitioners not done so, Respondents likely would have argued that the federal courts first had to address the embedded federal law questions in Art. X, Sec. 30.

6. While there is no imminent emergency, due to recent recall and stay of the circuit court of appeals' mandate by U.S. Supreme Court Chief Justice John Roberts issued on October 12, 2023. See Order,

Oct. 12, 2023, *West Flagler Assoc. Ltd., et al. v. Haaland, et al.*, United States Supreme Court Case No. 23A315 (attached hereto as Exhibit 1), neither Petitioners nor Respondents nor this Court can know whether or how the U.S. Supreme Court will proceed over the next two months -- or even whether the Seminole Tribe will decide to take matters into its own hands and launch its sports betting application state-wide. In their Petition, Petitioners have already asked Court to immediately use its All Writs authority to suspend the Implementing Law pending a final decision on the merits. Petition, at 5. Mindful of the then-existing stay in the court of appeals, Petitioners did not at that time ask for emergency relief. But they intend to do so should circumstances change. Any enlargement of time, if granted, should not serve as a shield for Respondents to argue for any delay in the Court's consideration of such a request, if needed.

Wherefore, Petitioners respectfully request that the Court deny the Respondents' request for a thirty-day extension of time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 19, 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 oag.civil.eserve@myfloridalegal.com, Henry C. Whitaker, Solicitor General, henry.whitaker@myfloridalegal.com; Jeffrey Paul De Sousa, Chief Deputy Solicitor General, jeffrey.desousa@myfloridalegal.com, Christopher J. Baum, B.C.S., Senior Deputy Solicitor General, christopher.baum@myfloridalegal.com, Office of the Attorney General, PL-01 The Capitol, Tallahassee, FL 32399, oag.civil.eserve@myfloridalegal.com.

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EXHIBIT A

Supreme Court of the United States

No. 23A315

WEST FLAGLER ASSOCIATES, LTD., ET AL.,

Applicants,

v.

DEBRA HAALAND, SECRETARY OF THE INTERIOR, ET AL.

O R D E R

UPON CONSIDERATION of the application of counsel for the applicants,

IT IS ORDERED that the mandate of the United States Court of Appeals for the District of Columbia Circuit, case No. 21-5265 (consolidated with 22-5022), is hereby recalled and stayed pending further order of the undersigned or of the Court. It is further ordered that a response to the application be filed on or before Wednesday, October 18, 2023, by 5 p.m., EDT.

/s/ John G. Roberts, Jr.
Chief Justice of the United States

Dated this 12th
day of October, 2023.