

SC23-1333

In the Supreme Court of Florida

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

v.

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

ON PETITION FOR A WRIT OF QUO WARRANTO

SUPPLEMENTAL APPENDIX

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**GAMING COMPACT BETWEEN THE SEMINOLE TRIBE OF FLORIDA
AND THE STATE OF FLORIDA**

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**Gaming Compact Between the Seminole Tribe of Florida
and the State of Florida**

This Compact is made and entered into by and between the Seminole Tribe of Florida, a federally-recognized Indian Tribe, and the State of Florida, with respect to the operation of Covered Games, as defined herein, on the Tribe's Indian lands as defined by the Indian Gaming Regulatory Act 25; U.S.C. ss. 2701 *et seq.*

Part I. TITLE

This document shall be referred to as the "Gaming Compact Between the Seminole Tribe of Florida and the State of Florida."

Part II. RECITALS

A. The Seminole Tribe of Florida is a federally-recognized tribal government possessing sovereign powers and rights of self-government.

B. The State of Florida is a state of the United States of America possessing the sovereign powers and rights of a state.

C. The State of Florida and the Seminole Tribe of Florida maintain a government-to-government relationship.

D. The United States Supreme Court has long recognized the right of an Indian Tribe to regulate activity on lands within its jurisdiction, but the United States Congress, through the Indian Gaming Regulatory Act, has given states a role in the conduct of tribal gaming in accordance with negotiated tribal-state compacts.

E. Pursuant to the Seminole Tribe Amended Gaming Ordinance, adopted by Resolution No. C-195-06, and approved by the Chairman of the National Indian Gaming

Commission on July 10, 2006, hereafter referred to as the Seminole Tribal Gaming Code, the Seminole Tribe of Florida desires to offer the play of Covered Games, as defined in Part III of this Compact, as a means of generating revenues for purposes authorized by the Indian Gaming Regulatory Act, including without limitation the support of tribal governmental programs, such as health care, housing, sewer and water projects, police, fire suppression, general assistance for tribal elders, day care for children, economic development, educational opportunities, per capita payments to tribal members, and other typical and valuable governmental services and programs for tribal members.

F. This Compact is the only gaming compact between the Tribe and the State.

G. It is in the best interests of the Seminole Tribe of Florida and the State of Florida for the State to enter into a compact with the Tribe that recognizes the Tribe's right to offer certain Class III gaming and provides substantial exclusivity of such activities in conjunction with a reasonable revenue sharing arrangement between the Tribe and the State that will entitle the State to significant revenue participation.

Part III. DEFINITIONS

As used in this Compact:

A. "Annual Oversight Assessment" means the amount for reimbursement to the State for the actual and reasonable costs of the State Compliance Agency to perform its monitoring functions set forth under the Compact.

B. "Class II video bingo terminals (or their equivalents)" means any electronic aid to a Class II bingo game that includes a video spinning reel and/or mechanical spinning reel display.

C. "Class III gaming" means the forms of Class III gaming defined in 25 U.S.C. s. 2703(8) and by the regulations of the National Indian Gaming Commission.

D. "Commission" means the Seminole Tribal Gaming Commission, which is the tribal governmental agency that has the authority to carry out the Tribe's regulatory and oversight responsibilities under this Compact.

E. "Compact" means this Gaming Compact between the Seminole Tribe of Florida and the State of Florida.

F. "Covered Game" or "Covered Gaming Activity" means the following Class III gaming activities:

1. (a) Slot machines, meaning any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system, except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic

credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both.

(b) If at any time, Florida law authorizes the use of electronic payments systems utilizing credit or debit card payment for the play or operation of slot machines for any person, the Tribe shall be authorized to use such payment systems.

2. Banking or banked card games, including baccarat, chemin de fer, and blackjack (21); provided, that the Tribe shall not offer such games at its Brighton or Big Cypress Facilities unless and until the State of Florida permits any other person, organization or entity to offer such games.

3. Raffles and drawings.

4. Any new game authorized by Florida law for any person for any purpose, except for banked card games authorized for any other federally recognized tribe pursuant to Indian Gaming Regulatory Act, provided that the tribe has land in federal trust in the State as of February 1, 2010.

G. "Covered Game Employee" or "Covered Employee" means any individual employed and licensed by the Tribe whose responsibilities include the rendering of services with respect to the operation, maintenance or management of Covered Games, including, but not limited to, the following: managers and assistant managers; accounting

personnel; Commission officers; surveillance and security personnel; cashiers, supervisors, and floor personnel; cage personnel; and any other employee whose employment duties require or authorize access to areas of the Facility related to the conduct of Covered Games or the technical support or storage of Covered Game components. This definition does not include the Tribe's elected officials provided that such individuals are not directly involved in the operation, maintenance, or management of Covered Games or Covered Games components.

H. "Documents" means books, records, electronic, magnetic and computer media documents and other writings and materials, copies thereof, and information contained therein.

I. "Effective Date" means the date on which the Compact becomes effective pursuant to Part XVI, Section A of this Compact.

J. "Electronic Bingo Machine" means a card minding device, which may only be used in connection with a bingo game, as defined in section 849.0931(1)(a), Florida Statutes, which is certified in advance by an independent testing laboratory approved by the Division of Pari-Mutuel Wagering as a bingo aid device that meets all of the following requirements:

1. The device must aid a bingo game player by (1) storing in the memory of the device not more than three (3) bingo faces of tangible bingo cards, as defined by section 849.0931(1)(b), Florida Statutes, purchased by a player; (2) comparing the numbers drawn and then individually entered into the device by the player to the bingo faces previously stored in the memory of the device and (3) identifying

preannounced winning bingo patterns marked or covered on the stored bingo faces.

2. The device must not be capable of accepting or dispensing any coins, currency, or tokens.
3. The device must not be capable of monitoring any bingo card face other than the faces of the tangible bingo card or cards purchased by the player for that game.
4. The device must not be capable of displaying or representing the game result through any means other than highlighting the winning numbers marked or covered on the bingo card face or giving an audio alert that the player's card has a prize-winning pattern. No casino game graphics, themes or titles, including but not limited to depictions of slot machine-style symbols, cards, craps, roulette, or lotto may be used.
5. The device must not be capable of determining the outcome of any game.
6. Progressive prizes in excess of two thousand five hundred dollars (\$2,500) are prohibited.
7. Other than progressive prizes not to exceed two thousand five hundred dollars (\$2,500), no prize exceeding one thousand dollars (\$1,000) may be awarded.
8. No Electronic Bingo Machine may contain more than one player position for playing bingo.
9. No Electronic Bingo Machine may contain or be linked to more than one video display.

10. Prizes must be awarded based solely on the results of the bingo game. No additional element of chance may be used.

K. "Facility" means a building or buildings of the Tribe in which the Covered Games authorized by this Compact are conducted.

L. "Guaranteed Minimum Compact Term Payment" means a minimum total payment for the first five (5) years of this Compact of One Billion Dollars (\$1,000,000,000) which shall include all Revenue Share Payments for the first five (5) years of this Compact.

M. "Guaranteed Minimum Revenue Sharing Cycle Payment" means a payment of One Hundred Fifty Million Dollars (\$150,000,000) in each of the two (2) years in the Initial Period and a minimum payment of Two Hundred Thirty-Three Million Dollars (\$233,000,000) for each of the first (1st) and second (2nd) Revenue Sharing Cycles and Two Hundred Thirty-Four Million Dollars (\$234,000,000) for the third (3rd) Revenue Sharing Cycle that the Tribe agrees to make to the State as provided by Part XI of the Compact.

N. "Historic Racing Machine" mean an individual historic race terminal linked to a central server as part of a network-based video game, where the terminals allow pari-mutuel wagering by players on the results of previously conducted horse or greyhound races, but only if the game is certified in advance by an independent testing laboratory approved by the Division of Pari-Mutuel Wagering as complying with all of the following requirements:

1. All data on previously conducted horse or greyhound races must be stored in a secure format on the central server, which is located at the pari-mutuel facility.
2. Only horse or greyhound races that were recorded at licensed pari-mutuel facilities in the United States after January 1, 2000, may be used.
3. One (1) or more of the following three (3) bet types must be offered on all Historic Racing Machines: Win-Place-Show, Quinella, or Tri-Fecta.
4. All Historic Racing Machines must offer one (1) or more of the following racing types: Thoroughbreds, Harness, or Greyhounds.
5. Progressive prizes in excess of two thousand five hundred dollars (\$2,500) are prohibited.
6. Other than progressive prizes not to exceed two thousand five hundred dollars (\$2,500), no prize exceeding one thousand dollars \$1,000 may be awarded.
7. After each wager is placed, the Historic Racing Machine must display a video of at least the final eight (8) seconds of the horse or greyhound race before any prize is awarded or indicated on the Historic Racing Machine.
8. The display of the video of the horse or greyhound race must occupy at least seventy percent (70%) of the Historic Racing Machine's video screen and no Historic Racing Machine may contain or be linked to more than one video display.

9. No casino game graphics, themes or titles, including but not limited to depictions of slot machine-style symbols, cards, craps, roulette, lotto, or bingo may be used.
10. No video or mechanical reel displays are permitted.
11. No Historic Racing Machine may contain more than one player position for placing wagers.
12. No coins, currency or tokens may be dispensed from a Historic Racing Machine.
13. Prizes must be awarded based solely on the results of a previously conducted horse or greyhound race. No additional element of chance may be used. However, a random number generator must be used to select the race from the central server to be displayed to the player(s) and to select numbers or other designations of race entrants that will be used in the various bet types for any "Quick Pick" bets. To prevent an astute player from recognizing the race based on the entrants and thus knowing the results before placing a wager, the entrants of the race may not be identified until after all wagers for that race have been placed.

O. "Indian Gaming Regulatory Act" or "IGRA" means the Indian Gaming Regulatory Act, Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, codified at 25 U.S.C. ss. 2701 *et seq.* and 18 U.S.C. ss. 1166 to 1168.

P. "Indian Lands" means the lands defined in 25 U.S.C. s. 2703(4).

Q. "Initial Period" means the first twenty-four (24) calendar months of the Compact commencing on the Effective Date.

R. "Lottery Vending Machine" means any of the following three (3) types of machines:

1. A machine to dispense pre-printed paper instant lottery tickets, but that does not read or reveal the results of the ticket, or allow a player to redeem any ticket. The machine, or any machine or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. This does not preclude the use of casino game themes or titles on such tickets or signage or advertising displays on the machines;
2. A machine to dispense pre-determined electronic instant lottery tickets that displays an image of the ticket on a video screen on the machine and the player must touch the image of the ticket on the video screen to reveal the outcome of the ticket, provided the machine does not permit a player to redeem winnings, does not make use of video reels or mechanical reels or simulate the play of any casino game, and the lottery retailer is paid the same amount as would be paid for the sale of paper instant lottery tickets; or
3. A machine to dispense a paper lottery ticket with numbers selected by the player or randomly by the machine. The machine does not reveal the winning numbers and the winning numbers are selected at a subsequent time and different location through a drawing by the Florida Lottery. The machine, or any machine or device linked to the machine, may not include or make use of video reels or mechanical reels or other video depictions of slot machine or casino game themes or titles for game play. The machine may not be used to redeem a winning ticket.

This does not preclude the use of casino game themes or titles for signage or advertising displays on the machine.

S. "Monthly Payment" means the monthly Revenue Share Payment which the Tribe remits to the State on the fifteenth (15th) day of the month following each month of the Initial Period or Revenue Sharing Cycle.

T. "Net Revenue Base" means the Net Win for the twelve (12) month period immediately preceding the offering of, for public or private use, Class III or other casino-style gaming at any of the licensed pari-mutuel facilities in Broward and Miami-Dade Counties, except that if the commencement of such new gaming is made during the Initial Period, "Net Revenue Base" means Net Win for the twelve (12) month period immediately preceding this Compact.

U. "Net Win" means the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe.

V. "Pari-Mutuel Wagering Activities" means those activities presently authorized by Chapter 550, Florida Statutes, which do not include any casino-style game or game or device that includes video reels or mechanical reels or other slot machine or casino game themes or titles.

W. "Patron" means any person who is on the premises of a Facility, or who is entering the Tribe's Indian lands for the purpose of playing Covered Games authorized by this Compact.

X. "Revenue Share Payment" means the periodic payment by the Tribe to the State provided for in Part XI of this Compact.

Y. "Revenue Sharing Cycle" means the annual (12-month) period of the Tribe's operation of Covered Games in its Facilities and whose first annual Cycle shall commence on the first day of the twenty-fifth (25th) month after the Effective Date.

Z. "Rules and regulations" means the rules and regulations promulgated by the Commission for implementation of this Compact.

AA. "State" means the State of Florida.

BB. "State Compliance Agency" or "SCA" means the state agency designated by the Florida Legislature that has the authority to carry out the State's oversight responsibilities under this Compact.

CC. "Tribe" means the Seminole Tribe of Florida or any affiliate thereof conducting activities pursuant to this Compact under the authority of the Seminole Tribe of Florida.

Part IV. AUTHORIZATION AND LOCATION OF COVERED GAMES

A. The Tribe and State agree that the Tribe is authorized to operate Covered Games on its Indian lands, as defined in the Indian Gaming Regulatory Act, in accordance with the provisions of this Compact. Except as otherwise provided in this Compact, nothing gives the Tribe the right to conduct roulette, craps, roulette-styled games, or craps-styled games; however, nothing herein is intended to prohibit the Tribe from operating slot machines that employ video and/or mechanical displays of roulette, wheels or other table game themes. Except for the provisions in Part XI, Section A, nothing in this Compact shall limit the Tribe's right to operate any game that is Class II under the Indian Gaming Regulatory Act.

B. The Tribe is authorized to conduct Covered Games under this Compact at only the following seven (7) existing Facilities, which may be expanded or replaced as provided for in Part IV, Section C below, on Indian Lands:

Seminole Indian Casino - Brighton
Okeechobee, FL

Seminole Indian Casino - Coconut Creek
Coconut Creek, FL

Seminole Indian Casino - Hollywood
Hollywood, FL

Seminole Indian Casino - Immokalee
Immokalee, FL

Seminole Indian Casino - Big Cypress
Clewiston, FL

Seminole Hard Rock Hotel & Casino - Hollywood
Hollywood, FL

Seminole Hard Rock Hotel & Casino - Tampa
Tampa, FL

C. Any of the Facilities existing on Indian Lands identified in Part IV, Section B may be expanded or replaced by another Facility on the same Indian Lands with advance notice to the State of sixty (60) calendar days.

Part V. RULES AND REGULATIONS; MINIMUM REQUIREMENTS FOR OPERATIONS

A. At all times during the term of this Compact, the Tribe shall be responsible for all duties which are assigned to it and the Commission under this Compact. The Tribe shall promulgate any rules and regulations necessary to implement this Compact, which at a minimum shall expressly include or incorporate by reference all provisions of

Part V, VI, VII and VIII of this Compact. Nothing in this Compact shall be construed to affect the Tribe's right to amend its rules and regulations, provided that any such amendment shall be in conformity with this Compact. The SCA may propose additional rules and regulations consistent with and related to the implementation of this Compact to the Commission at any time, and the Commission shall give good faith consideration to such suggestions and shall notify the SCA of its response or action with respect thereto.

B. All Facilities shall comply with, and all Covered Games approved under this Compact shall be operated in accordance with the requirements set forth in this Compact, including but not limited to, those set forth in Sections C and D of this Part and the Tribe's Internal Control Policies and Procedures. In addition, all Facilities and all Covered Games shall be operated in strict compliance with tribal internal control standards that provide a level of control that equals or exceeds those set forth in the National Indian Gaming Commission's Minimum Internal Control Standards, 25 C.F.R. Part 542 (2009), even if the 2009 regulations are determined to be invalid or are subsequently withdrawn by the NIGC. The Tribe may amend or supplement its internal control standards from time to time, provided that such changes continue to provide a level of control that equals or exceeds those set forth in 25 C.F.R. Part 542 (2009).

C. The Tribe and the Commission shall retain all Documents in compliance with the requirements set forth in the Tribe's Record Retention Policies and Procedures.

D. Compulsive Gambling.

The Tribe will continue and maintain its program to combat problem gambling and curtail compulsive gambling and work with the Florida Council on Compulsive

Gambling or other organizations dedicated to assisting problem gamblers. The Tribe will continue to maintain the following safeguards against problem gambling.

1. The Tribe will provide a comprehensive training and education program designed in cooperation with the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers to every new gaming employee.
2. The Tribe will make printed materials available to Patrons, which include contact information for the Florida Council on Compulsive Gambling 24-Hour Helpline or other hotline dedicated to assisting problem gamblers, and will work with the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers to provide contact information for the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers, and to provide such information on the Facilities' internet website. The Tribe will continue to display all literature from the Florida Council on Compulsive Gambling or other organization dedicated to assisting problem gamblers within the Facilities.
3. The Commission shall establish a list of the Patrons voluntarily excluded from the Tribe's Facilities, pursuant to subsection 5.
4. The Tribe shall employ its best efforts to exclude Patrons on such list from entry into its Facilities; provided that nothing in this Compact shall create for Patrons who are excluded but gain access to the Facilities, or any other person, a cause of action or claim against the State, the Tribe or the Commission or any other person, entity, or agency for failing to enforce such exclusion.

5. Patrons who believe they may be playing Covered Games on a compulsive basis may request that their names be placed on the list of Patrons voluntarily excluded from the Tribe's Facilities.

6. All Covered Game employees shall receive training on identifying players who have a problem with compulsive gambling and shall be instructed to ask them to leave. Signs bearing a toll-free help-line number and educational and informational materials shall be made available at conspicuous locations and automated teller machines in each Facility, which aim at the prevention of problem gaming and which specify where Patrons may receive counseling or assistance for gambling problems. All Covered Games employees shall also be screened by the Tribe for compulsive gambling habits. Nothing in this Section shall create for Patrons, or any other person, a cause of action or claim against the State, the Tribe or the Commission or any other person, entity, or agency for failing to identify a Patron or person who is a compulsive gambler and/or ask that person to leave.

7. The Tribe shall follow the rules for exclusion of Patrons set forth in the Seminole Tribal Gaming Code.

8. The Tribe shall make diligent efforts to prevent underage individuals from loitering in the area of each Facility where the Covered Games take place.

9. The Tribe shall assure that advertising and marketing of the Covered Games at the Facilities contain a responsible gambling message and a toll-free help-line number for problem gamblers, where practical, and that such advertising and marketing make no false or misleading claims.

E. The State may secure an annual independent audit of the conduct of Covered Games subject to this Compact, as set forth in Part VIII.

F. Summaries of the rules for playing Covered Games and promotional contests shall be visibly displayed in the Facilities. Complete sets of rules shall be available in the Facilities upon request. Copies of all such rules shall be provided to the SCA within thirty (30) calendar days of their issuance or their amendment.

G. The Tribe shall provide the Commission and SCA with a chart of the supervisory lines of authority with respect to those directly responsible for the conduct of Covered Games, and shall promptly notify those agencies of any material changes thereto.

H. The Tribe engages in and shall continue to maintain proactive approaches to prevent improper alcohol sales, drunk driving, underage drinking, and underage gambling. These approaches involve intensive staff training, screening and certification, Patron education, and the use of security personnel and surveillance equipment in order to enhance Patrons' enjoyment of the Facilities and provide for Patron safety. Staff training includes specialized employee training in nonviolent crisis intervention, driver's license verification and the detection of intoxication. Patron education is carried out through notices transmitted on valet parking stubs, posted signs in the Facilities, and in brochures. Roving and fixed security officers, along with surveillance cameras, assist in the detection of intoxicated Patrons, investigate problems, and engage with Patrons to de-escalate volatile situations. To help prevent alcohol-related crashes, the Tribe will continue to operate the "Safe Ride Home Program," a free taxi service. The Tribe shall maintain these programs and policies in its Alcohol Beverage Control Act for the

duration of the Compact but may replace such programs and policies with either stricter or more extensive programs and policies. The Tribe shall provide the State with written notice of any changes to the Tribe's Alcohol Beverage Control Act, which notice shall include a copy of such changes and shall be sent on or before the effective date of the change. Nothing in this Section shall create for Patrons, or any other person, a cause of action or claim against the State, the Tribe or the Commission or any other person, entity, or agency for failing to fulfill the requirements of this Section.

I. No person under the age of twenty-one (21) shall be allowed to play Covered Games, unless otherwise permitted by State law.

J. The Tribe may establish and operate Facilities that operate Covered Games only on its Indian Lands as defined by the Indian Gaming Regulatory Act and as specified in Part IV.

K. The Commission shall keep a record of, and shall report at least quarterly to the SCA, the number of Covered Games in each Facility, by the name or type of each and its identifying number.

L. The Tribe and the Commission shall make available a copy of the following documents to any member of the public upon request within ten (10) business days: the minimum internal control standards of the National Indian Gaming Commission (25 C.F.R. Part 542 (2009)); the Seminole Tribal Gaming Code; this Compact; the rules of each Covered Game operated by the Tribe; and the administrative procedures for addressing Patron tort claims under Part VI.

Part VI. PATRON DISPUTES, WORKERS COMPENSATION, TORT CLAIMS;
PRIZE CLAIMS; LIMITED CONSENT TO SUIT

A. All Patron disputes involving gaming will be resolved in accordance with the procedures established in the Seminole Tribal Gaming Code.

B. Tort claims by employees of the Tribe's Facilities will be handled pursuant to the provisions of the Tribe's Workers' Compensation Ordinance, which shall provide workers the same or better protections as set forth in the State of Florida's workers' compensation laws.

C. Disputes by employees of the Tribe's Facilities will be handled pursuant to the provisions of the Tribe's policy for gaming employees, as set forth in the Employee Fair Treatment and Dispute Resolution Policy.

D. Tort remedies for Patrons.

1. A Patron who claims to have been injured after the Effective Date at one of the Tribe's Facilities where Covered Games are played is required to provide written notice to the Tribe's Risk Management Department or the Facility, in a reasonable and timely manner, but in no event later than three (3) years after the date of the incident giving rise to the claimed injury occurs, or the claim shall be forever barred.

2. The Tribe shall have thirty (30) days to respond to a claim made by a Patron. If the Tribe fails to respond within thirty (30) days, the Patron may file suit against the Tribe. When the Tribe responds to an incident alleged to have caused a Patron's injury or illness, the Tribe shall provide a claim form to the Patron. The form must include the address for the Tribe's Risk Management

Department and provide notice of the Tribe's administrative procedures for addressing Patron tort claims, including notice of the relevant deadlines that may bar such claims if the Tribe's administrative procedures are not followed. It is the Patron's responsibility to complete the form and forward the form to the Tribe's Risk Management Department within a reasonable period of time, and in a reasonable and timely manner. Nothing herein shall interfere with any claim a Patron might have arising under the Federal Tort Claim Act.

3. Upon receiving written notification of the claim, the Tribe's Risk Management Department shall forward the notification to the Tribe's insurance carrier. The Tribe will use its best efforts to assure that the insurance carrier contacts the Patron within a reasonable period of time following receipt of the claim.

4. The insurance carrier will handle the claim to conclusion. If the Patron and the Tribe and the insurance carrier are not able to resolve the claim in good faith within one (1) year after the Patron provided written notice to the Tribe's Risk Management Department or the Facility, the Patron may bring a tort claim against the Tribe in any court of competent jurisdiction in the county in which the incident alleged to have caused injury occurred, as provided in this Compact, and subject to a four (4) year statute of limitations, which shall begin to run from the date of the incident of the alleged claimed injury. A Patron's notice of injury to the Tribe pursuant to Section D.1. of this Part and the fulfillment of the good faith

attempt at resolution pursuant to Sections D.2. and 4. of this Part are conditions precedent to filing suit.

5. For tort claims of Patrons made pursuant to Section D. of this Part, the Tribe agrees to waive its tribal sovereign immunity to the same extent as the State of Florida waives its sovereign immunity, as specified in sections 768.28(1) and (5), Florida Statutes, as such provision may be amended from time-to-time by the Florida Legislature. In no event shall the Tribe be deemed to have waived its tribal immunity from suit beyond the limits set forth in section 768.28(5), Florida Statutes. These limitations are intended to include liability for compensatory damages, costs, pre-judgment interest, and attorney fees if otherwise allowable under Florida law arising out of any claim brought or asserted against the Tribe, its subordinate governmental and economic units, any Tribal officials, employees, servants, or agents in their official capacities and any entity which is owned, directly or indirectly by the Tribe. All Patron tort claims brought pursuant to this provision shall be brought solely against the Tribe, as the sole party in interest.

6. Notices explaining the procedures and time limitations with respect to making a tort claim shall be prominently displayed in the Facilities, posted on the Tribe's website, and provided to any Patron for whom the Tribe has notice of the injury or property damage giving rise to the tort claim. Such notices shall explain the method and places for making a tort claim, including where the Patron must submit the form, that the process is the exclusive method for asserting a tort claim arising under this section against the Tribe, that the Tribe and its insurance carrier

have one (1) year from the date the Patron gives notice of the claim to resolve the matter and after that time the Patron may file suit in a court of competent jurisdiction, that the exhaustion of the process is a pre-requisite to filing a claim in state court, and that claims which fail to follow this process shall be forever barred.

7. The Tribe shall maintain an insurance policy which shall:
 - (a) Prohibit the insurer or the Tribe from invoking tribal sovereign immunity for claims up to the limits to which the State of Florida has waived sovereign immunity as set forth in section 768.28(5), Florida Statutes, or its successor statute.
 - (b) Include covered claims made by a Patron or invitee for personal injury or property damage.
 - (c) Permit the insurer or the Tribe to assert any statutory or common law defense other than sovereign immunity.
 - (d) Provide that any award or judgment rendered in favor of a Patron or invitee shall be satisfied solely from insurance proceeds.
8. The Tribal Council of the Seminole Tribe of Florida may, in its discretion, consider claims for compensation in excess of the limits of the Tribe's waiver of its sovereign immunity.

Part VII. ENFORCEMENT OF COMPACT PROVISIONS

A. The Tribe, the Commission and the SCA, to the extent authorized by the Compact, shall be responsible for regulating activities pursuant to this Compact. As part of its responsibilities, the Tribe has adopted or issued standards designed to ensure that the Facilities are constructed, operated and maintained in a manner that adequately protects the environment and public health and safety. Additionally, the Tribe and the Commission shall ensure that:

1. Operation of the conduct of Covered Games is in strict compliance with:
 - (a) The Seminole Tribal Gaming Code;
 - (b) All rules, regulations, procedures, specifications, and standards lawfully adopted by the National Indian Gaming Commission and the Commission; and
 - (c) The provisions of this Compact, including, but not limited to, the standards and the Tribe's rules and regulations; and
2. Reasonable measures are taken to:
 - (a) Assure the physical safety of Facility Patrons, employees, and any other person while in the Facility;
 - (b) Prevent illegal activity at the Facilities or with regard to the operation of Covered Games, including, but not limited to, the maintenance of employee procedures and a surveillance system;
 - (c) Ensure prompt notification is given to appropriate law enforcement authorities of persons who may be involved in illegal acts in accordance with applicable law;

- (d) Ensure that the construction and maintenance of the Facilities comply with the standards of the Florida Building Code, the provisions of which the Tribe has adopted as the Seminole Tribal Building Code; and
- (e) Ensure adequate emergency access plans have been prepared to ensure the health and safety of all Covered Game Patrons.

B. All licenses for members and employees of the Commission shall be issued according to the same standards and terms applicable to Facility employees. The Commission's officers shall be independent of the Tribal gaming operations, and shall be supervised by and accountable only to the Commission. A Commission officer shall be available to the Facility during all hours of operation upon reasonable notice, and shall have immediate access to any and all areas of the Facility for the purpose of ensuring compliance with the provisions of this Compact. The Commission shall investigate any suspected or reported violation of this Part and shall officially enter into its files timely written reports of investigations and any action taken thereon, and shall forward copies of such investigative reports to the SCA within thirty (30) calendar days of such filing. The scope of such reporting shall be determined by a Memorandum of Understanding between the Commission and the SCA as soon as practicable after the Effective Date of this Compact. Any such violations shall be reported immediately to the Commission, and the Commission shall immediately forward the same to the SCA. In addition, the Commission shall promptly report to the SCA any such violations which it independently discovers.

C. In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this Compact, representatives of the Commission and

the SCA shall meet, not less than on an annual basis, to review past practices and examine methods to improve the regulatory scheme created by this Compact. The meetings shall take place at a location mutually agreed to by the Commission and the SCA. The SCA, prior to or during such meetings, shall disclose to the Commission any concerns, suspected activities, or pending matters reasonably believed to possibly constitute violations of this Compact by any person, organization or entity, if such disclosure will not compromise the interest sought to be protected.

Part VIII. STATE MONITORING OF COMPACT

A. It is the express intent of the Tribe and the State for the Tribe to regulate its own gaming activities, but that the State is entitled to conduct random inspections as provided for in this Part to assure that the Tribe is operating in accordance with the terms of the Compact. The State may secure, and the Tribe will be required to provide all necessary cooperation, an annual independent audit of the conduct of Covered Games subject to this Compact. The audit shall:

1. examine the Covered Games operated by the Tribe to assure compliance with the Tribe's Internal Control Policies and Procedures and any other standards, policies or procedures adopted by the Tribe, the Commission or the National Indian Gaming Commission which govern the play of Covered Games; and
2. examine revenues in connection with the conduct of Covered Games and shall include only those matters necessary to verify the determination of Net Win and the basis and amount of the Payments the Tribe is required to make to the State pursuant to Part XI of this Compact and as defined by this Compact.

B. A copy of the audit report for the conduct of Covered Games shall be submitted to the Commission and the SCA within thirty (30) calendar days of completion. Representatives of the SCA may, upon request, meet with the Tribe and its auditors to discuss the audit or any matters in connection therewith; provided, such discussions are limited to Covered Games information. The annual independent audit shall be performed by an independent firm, with experience in auditing casino operations, selected by the State, subject to the consent of the Tribe, which shall not be unreasonably withheld. The Tribe shall pay the auditing firm for the costs of the annual independent audit.

C. As provided herein, the SCA may monitor the conduct of Covered Games to ensure that the Covered Games are conducted in compliance with the provisions of this Compact. In order to properly monitor the conduct of Covered Games, agents of the SCA without prior notice shall have reasonable access to all public areas of the Facilities related to the conduct of Covered Games as provided herein.

1. While the Commission will act as the regulator of the Facilities, the SCA may review whether the Tribe's Facilities are in compliance with the provisions of this Compact and the Tribe's rules and regulations applicable to Covered Games and may advise on such issues as it deems appropriate. In the event of a dispute or disagreement between Tribal and SCA regulators, the dispute or disagreement shall be resolved in accordance with the dispute resolution provisions of Part XIII of this Compact.

2. In order to fulfill its oversight responsibilities, the State has identified specific oversight testing procedures, set forth below in subsection 3., paragraphs (a), (b), and (c), which the SCA may perform on a routine basis.

3. (a) The SCA may inspect any Covered Games in operation at the Facilities on a random basis. Such inspections shall not exceed one (1) inspection per Facility per calendar month and each inspection shall be limited to not more than ten (10) hours spread over two (2) consecutive days. The SCA may conduct inspections of more than ten (10) hours spread over those two (2) consecutive days, if the SCA determines that additional inspection hours are needed to address the issues of substantial non-compliance, provided that the SCA provides the Tribe with written notification of the need for additional inspection hours and provides the Tribe with a written summary of the substantial non-compliance issues that need to be addressed during the additional inspection hours. There is an annual limit of One Thousand Two Hundred (1,200) hours for all random inspections and audit reviews. Inspection hours shall be calculated on the basis of the actual amount of time spent by the SCA conducting the inspections at a Facility without a multiple for the number of SCA inspectors or agents engaged in the inspection activities. The purpose of the random inspections is to confirm that the Covered Games operate and play properly pursuant to the manufacturer's technical standards and are conducted in compliance with the Tribe's Internal Control Policies and Procedures and any other standards, policies or

procedures adopted by the Tribe, the Commission or the National Indian Gaming Commission which govern the play of Covered Games. The SCA shall provide notice to the Commission of such inspection at or prior to the commencement of the random inspections, and a Commission agent may accompany the inspection.

(b) For each Facility, the SCA may perform one annual review of the Tribe's slot machine compliance audit.

(c) At least on an annual basis, the SCA may meet with the Tribe's Internal Audit Department for Gaming to review internal controls and the record of violations of same for each Facility.

4. The SCA will seek to work with and obtain the assistance of the Commission in the resolution of any conflicts with the management of the Facilities, and the State and the Tribe shall make their best efforts to resolve disputes through negotiation whenever possible. Therefore, in order to foster a spirit of cooperation and efficiency, the parties hereby agree that when disputes arise between the SCA staff and Commission regulators from the day-to-day regulation of the Facilities, they should generally be resolved first through meeting and conferring in good faith. This voluntary process does not proscribe the right of either party to seek other relief that may be available when circumstances require such relief. In the event of a dispute or disagreement between Tribal and SCA regulators, the dispute or disagreement shall be resolved in accordance with the dispute resolution provisions of Part XIII of this Compact.

5. Access to each Facility by the SCA shall be during the Facility's operating hours only. No advance notice is required when the SCA inspection is limited to public areas of the Facility; however, representatives of the SCA shall provide notice and photographic identification to the Commission of their presence before beginning any such inspections.

6. Before the SCA agents enter any nonpublic area of a Facility, they shall provide one (1) hour notice and photographic identification to the Commission. The SCA agents shall be accompanied in nonpublic areas of the Facility by a Commission officer. Notice of at least one (1) hour by the SCA to the Commission is required to assure that a Commission officer is available to accompany the SCA agents at all times.

7. Any suspected or claimed violations of this Compact or law shall be directed in writing to the Commission; the SCA agents, in conducting the functions assigned them under this Compact, shall not unreasonably interfere with the functioning of any Facility.

D. Subject to the provisions herein, agents of the SCA shall have the right to review and request copies of Documents of the Facility related to its conduct of Covered Games. The review and copying of such Documents shall be during normal business hours unless otherwise allowed by the Tribe at the Tribe's discretion. The Tribe cannot refuse said inspection and copying of such Documents, provided that the inspectors cannot require copies of Documents in such volume that it unreasonably interferes with the normal functioning of the Facilities or Covered Games. To the extent that the Tribe provides the State with information which the Tribe claims to be confidential and

proprietary, or a trade secret, the Tribe shall clearly mark such information with the following designation: "Trade Secret, Confidential and Proprietary." If the State receives a request under Chapter 119, Florida Statutes that would include such designated information, the State shall promptly notify the Tribe of such a request and the Tribe shall promptly notify the State about its intent to seek judicial protection from disclosure. Upon such notice from the Tribe, the State shall not release the requested information until a judicial determination is made. This designation and notification procedure does not excuse the State from complying with the requirements of the State's public records law, but is intended to provide the Tribe the opportunity to seek whatever judicial remedy it deems appropriate. Notwithstanding the foregoing procedure, the SCA may provide copies of tribal Documents to federal law enforcement and other State agencies or State consultants that the State deems reasonably necessary in order to conduct or complete any investigation of suspected criminal activity in connection with the Tribe's Covered Games or the operation of the Facilities or in order to assure the Tribe's compliance with this Compact.

E. At the completion of any SCA inspection or investigation, the SCA shall forward any written report thereof to the Commission, containing all pertinent, non-confidential, non-proprietary information regarding any violation of applicable laws or this Compact which was discovered during the inspection or investigation unless disclosure thereof would adversely impact an investigation of suspected criminal activity. Nothing herein prevents the SCA from contacting tribal or federal law enforcement authorities for suspected criminal wrongdoing involving the Commission.

F. Except as expressly provided in this Compact, nothing in this Compact shall be deemed to authorize the State to regulate the Tribe's government, including the Commission, or to interfere in any way with the Tribe's selection of its governmental officers, including members of the Commission.

Part IX. JURISDICTION

The obligations and rights of the State and the Tribe under this Compact are contractual in nature, and are to be construed in accordance with the laws of the State of Florida. This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction in any way.

Part X. LICENSING

The Tribe and the Commission shall comply with the licensing and hearing requirements set forth in 25 C.F.R. Parts 556 and 558, as well as the applicable licensing and hearing requirements set forth in Articles IV-VI of the Seminole Tribal Gaming Code. The Commission shall notify the SCA of any disciplinary hearings or revocation or suspension of licenses.

Part XI. PAYMENTS TO THE STATE OF FLORIDA

A. The parties acknowledge and recognize that this Compact provides the Tribe with partial but 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. In consideration thereof, the Tribe covenants and agrees, subject to the conditions agreed upon in Part XII of this Compact, to make payments to the State derived from Net Win as set forth in Sections B. and D.

("Payments"). The Tribe further agrees to convert eighty percent (80%) of its Class II video bingo terminals (or their equivalents) to Class III slot machines within forty-eight (48) months from January 1, 2008. Within sixty (60) months from January 1, 2008, all Class II video bingo terminals (or their equivalents) shall be converted to Class III slot machines, or the Revenue Share Payment to the State shall include an additional revenue share on its operation of Covered Games to be calculated as if the conversion has been completed, whether or not the Tribe has fully executed its conversion. The Tribe further agrees that it will not purchase or lease any new Class II video bingo terminals (or their equivalents) for use at its Facilities after the Effective Date of this Compact.

B. Payments pursuant to Section A. above shall be made to the State via electronic funds transfer in a manner directed by the Florida Legislature. Of the amounts paid by the Tribe to the State, three (3) percent shall be distributed, as provided for by the Legislature, to those local governments (including both counties and municipalities) in Florida affected by the Tribe's operation of Covered Games. Payments will be due in accordance with the Payment Schedule set forth below.

1. Revenue Share amounts paid by the Tribe to the State shall be calculated as follows:

(a) During the Initial Period, the Tribe agrees to pay the State a Revenue Share Payment in the amount of Twelve Million Five Hundred

Thousand Dollars (\$12,500,000) per month through the end of Initial Period.

(b) Commencing with the first (1st) Revenue Sharing Cycle after the Initial Period, the Tribe agrees to pay for each Revenue Sharing Cycle a Revenue Share Payment to the State equal to the amount calculated in accordance with subsections (i) through (vi) below (the "Percentage Revenue Share Amount"). For the first (1st), second (2nd) and third (3rd) Revenue Sharing Cycles, the Tribe agrees to pay the greater of the (1) Percentage Revenue Share Amount or (2) the Guaranteed Minimum Revenue Sharing Cycle Payment for each such Revenue Sharing Cycle.

(i) Twelve percent (12%) of all amounts up to Two Billion Dollars (\$2,000,000,000) of Net Win received by the Tribe from the operation and play of Covered Games during each Revenue Sharing Cycle;

(ii) Fifteen percent (15%) of all amounts greater than Two Billion Dollars (\$2,000,000,000) up to and including Three Billion Dollars (\$3,000,000,000) of Net Win received by the Tribe from the operation and play of Covered Games during each Revenue Sharing Cycle;

(iii) Seventeen and one half percent (17.5%) of all amounts greater than Three Billion Dollars (\$3,000,000,000) up to and including Three Billion Five Hundred Million Dollars (\$3,500,000,000) of Net Win received by the Tribe from the

operation and play of Covered Games during each Revenue Sharing Cycle;

(iv) Twenty percent (20%) of all amounts greater than Three Billion Five Hundred Million Dollars (\$3,500,000,000) up to and including Four Billion Dollars (\$4,000,000,000) of Net Win received by the Tribe from the operation and play of Covered Games during each Revenue Sharing Cycle;

(v) Twenty-two and one half percent (22.5%) of all amounts greater than Four Billion Dollars (\$4,000,000,000) up to and including Four Billion Five Hundred Million Dollars (\$4,500,000,000) of Net Win received by the Tribe from the operation and play of Covered Games during each Revenue Sharing Cycle;

(vi) Twenty-five percent (25%) of all amounts greater than Four Billion Five Hundred Million Dollars (\$4,500,000,000) of Net Win received by the Tribe from the operation and play of Covered Games during each Revenue Sharing Cycle;

(c) Monthly Payment

(i) On or before the fifteenth (15th) day of the month following each month of the Initial Period or a Revenue Sharing Cycle, the Tribe will remit to the State or its assignee the Monthly Payment. For purposes of this Section, the Monthly Payment shall be eight and one-third percent (8.3%) of the estimated Revenue Share

Payment to be paid by the Tribe during such Revenue Sharing Cycle.

(ii) The Tribe will make available to the State at the time of the Monthly Payment the basis for the calculation of the payment.

(iii) The Tribe will, on a monthly basis, internally "true up" the calculation of the estimated Revenue Share Payment based on the Tribe's un-audited financial statements related to Covered Games.

(d) Payment Verification after the Initial Period

(i) On or before the forty-fifth (45th) day after the third (3rd) month, sixth (6th) month, ninth (9th) month, and twelfth (12th) month of each Revenue Sharing Cycle, provided that the twelve (12) month period does not coincide with the Tribe's fiscal year end date as indicated in subsection (iii) below after the Initial Period, the Tribe will provide the State with an audit report by its independent auditors as to the annual Revenue Share calculation.

(ii) For each quarter within any Revenue Sharing Cycle, after the Initial Period, the Tribe agrees to engage its independent auditors to conduct a review of the un-audited net revenue from Covered Games. On or before the one hundred twentieth (120th) day after the end of the Tribe's fiscal year, the Tribe agrees to require its independent auditors to provide an audit report with respect to Net Win for Covered Games and the related payment of the annual Revenue Share to the SCA for State review. During the

Initial Period the Tribe will provide the State with annual audited revenue figures.

(iii) If the twelfth (12th) month of the Revenue Sharing Cycle does not coincide with the Tribe's fiscal year, the Tribe agrees to require its independent auditors to deduct Net Win from Covered Games for any of the months that are outside of the Revenue Sharing Cycle and to include Net Win from Covered Games for those months which fall outside of the Tribe's audit period but fall within the Revenue Sharing Cycle, prior to issuing the audit report.

(iv) No later than thirty (30) calendar days after the day the audit report is issued, the Tribe will remit to the State any underpayment of the annual Revenue Share, and the State will either reimburse to the Tribe any overpayment of the annual Revenue Share or authorize the overpayment to be deducted from the next successive monthly payment or payments.

2. **Guaranteed Minimum Compact Term Payment.** If, at the conclusion of each Revenue Sharing Cycle, the independent audit reports provided for in subsection B.1. (d) of this Part show that the total amount paid by the Tribe to the State is less than the Guaranteed Minimum Revenue Sharing Cycle Payment, then the Tribe shall, within forty-five (45) days after receipt of the independent audit report, remit to the State the difference between the amount paid for that Revenue Sharing Cycle and the Guaranteed Minimum Revenue Sharing Cycle Payment.

3. If, after any change in State law to affirmatively allow internet/on-line gaming (or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from a casino or other commercial gaming facility), the Tribe's Net Win from the operation of Covered Games at all of its Facilities combined drops more than five percent (5%) below its Net Win from the previous twelve (12) month period (Revenue Level A), the Tribe shall no longer be required to make payments to the State based on the Guaranteed Minimum Revenue Sharing Cycle and shall not be required to make the Guaranteed Minimum Compact Term Payment. However, the Tribe shall continue to make payments based on the Percentage Revenue Share Amount. The Tribe shall resume making the Guaranteed Minimum Revenue Sharing Cycle Payment for any subsequent Revenue Sharing Cycle in which its Net Win rises above Revenue Level A. This Subsection does not apply if:

- (a) the decline in Net Win is due to acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of its Facilities or property necessary to operate the Facility of Facilities; or
- (b) the Tribe offers internet/on-line gaming (or any functionally equivalent remote gaming system that permits a person to game from home or any other location that is remote from any of the Tribe's Facilities), as authorized by law.

C. The Annual Oversight Assessment, which shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000) per year, indexed for inflation as determined by the Consumer Price Index, shall be determined and paid in quarterly installments within thirty (30) calendar days of receipt by the Tribe of an invoice from the SCA. The Tribe reserves the right to audit the invoices on an annual basis, a copy of which will be provided to the SCA, and any discrepancies found therein shall be reconciled within forty-five (45) calendar days of receipt of the audit by the SCA.

D. The Tribe shall make an annual donation to the Florida Council on Compulsive Gaming as an assignee of the State in an amount not less than Two-Hundred Fifty Thousand Dollars (\$250,000.00) per Facility.

E. In recognition of the fact that the Tribe has been and is currently conducting Class III gaming with substantial exclusivity prior to the Effective Date of this Compact, the Tribe agrees to continue to pay the State Twelve Million Five Hundred Thousand Dollars (\$12,500,000) on or before the fifteenth (15th) day of the month following each month that the Tribe conducts Class III gaming prior to the Effective Date of this Compact.

F. On the Effective Date of this Compact, any moneys remitted by the Tribe before the Effective Date of this Compact shall be released to the State without further obligation or encumbrance.

G. Except as expressly provided in this Part, nothing in this Compact shall be deemed to require the Tribe to make payments of any kind to the State or any of its agencies.

Part XII. REDUCTION OF TRIBAL PAYMENTS BECAUSE OF LOSS OF
EXCLUSIVITY OR OTHER CHANGES IN FLORIDA LAW

The intent of this section is 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.

A. If, after February 1, 2010, Florida law is amended by action of the Florida Legislature or an amendment to the Florida Constitution to allow (1) the operation of Class III gaming or other casino-style gaming at any location under the jurisdiction of the State that was not in operation as of February 1, 2010, or (2) new forms of Class III gaming or other casino-style gaming that were not in operation as of February 1, 2010, the Payments due to the State pursuant to Part XI, Sections B. and D. of this Compact shall cease when the newly authorized gaming begins to be offered for public or private use. The cessation of payments due to the State pursuant to Part XI, Sections B. and D. of this Compact shall continue until such gaming is no longer operated, in which event the Payments shall resume. If the expansion of new Class III gaming or other casino-style gaming is implemented as a result of a court decision or administrative ruling or decision without specific authorization by the Florida Legislature after February 1, 2010, and the newly authorized gaming begins to be offered for public or private use as a result of such decision, then the Tribe shall make its Payments due to the State pursuant to Part XI, Sections B. and D. of this Compact into an escrow account to provide the Florida Legislature with the opportunity to pass legislation to reverse such decision or ruling. However, if the Florida Legislature fails to act or if such expanded gaming is not illegal after action by the Florida Legislature within twelve (12) months after the

commencement of such expanded gaming or by the end of the next session of the Florida Legislature, whichever is earlier, then all funds in the escrow account shall be returned to the Tribe and all further Payments due to the State pursuant to Part XI, Sections B. and D. of this Compact shall cease or be reduced as provided in Part XII, Section B. until such gaming is no longer operated, in which event the Payments shall resume.

For purposes of this provision, Class III gaming or other casino-style gaming includes, but is not limited to, the following: slot machines, electronically-assisted bingo or electronically-assisted pull-tab games, table games, and video lottery terminals (VLTs) or any similar games, whether or not such games are determined through the use of a random number generator.

B. Exceptions: The following are exceptions to the exclusivity provisions of Section A. above.

1. Any Class III gaming authorized by a compact between the State and any other federally recognized tribe pursuant to Indian Gaming Regulatory Act, provided that the tribe has land in federal trust in the State as of February 1, 2010.
2. The operation of slot machines, which does not include any game played with tangible playing cards, at each of the four (4) currently operating licensed pari-mutuel facilities in Broward County and the four (4) currently operating licensed pari-mutuel facilities in Miami-Dade County, whether or not currently operating slot machines, provided that such licenses are not transferred or otherwise used to move or operate such slot machines at any other location.
3. (a) If at any time, by action of the Florida Legislature or an amendment to the Florida Constitution, Florida law allows for the play of any

additional type of Class III or other casino-style gaming at any of the presently operating licensed pari-mutuel facilities in Broward and Miami-Dade Counties, the Tribe may be entitled to a reduction in the Revenue Sharing Payment as described in Part XII, Section B. 3.(b).

(b) If the Tribe's annual Net Win from its Facilities located in Broward County for the twelve (12) month period after the gaming specified in Part XII, subsection 3.(a) begins to be offered for public or private use is less than the Net Revenue Base, the Revenue Share Payments due to the State, pursuant to Part XI, Section B. 1.(b) of this Compact, for the next Revenue Sharing Cycle and future Revenue Sharing Cycles shall be calculated by reducing the Tribe's payment on revenue generated from its Facilities in Broward County by fifty percent (50%) of that reduction in annual Net Win from its facilities in Broward County. This paragraph does not apply if the decline in Net Win is due to acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of its Facilities or property necessary to operate the Facility or Facilities.

(c) If the Tribe's annual Net Win from its Facilities located in Broward County subsequently equals or exceeds the Net Revenue Base, then the Tribe's payments due to the State, pursuant to Part XI, Section B.1.(b) of this Compact shall again be calculated without any reduction, but may be reduced again under the provisions set forth above.

4. If at any time Florida law is amended by action of the Florida Legislature or an amendment to the Florida Constitution to allow the play of Class III gaming or other casino-style gaming, as defined in Part XII, Section A., at any location in

Miami-Dade County or Broward County under the jurisdiction of the State that is not presently licensed for the play of such games at such locations, other than those facilities set forth in Part XII, Sections B.2. and B.3., and such games were not in play as of February 1, 2010, and such gaming begins to be offered for public or private use, the Payments due the State pursuant to Part XI, Section B.1.(b) of this Compact, shall be calculated by excluding the Net Win from the Tribe's Facilities in Broward County.

5. The operation of a combined total of not more than Three Hundred Fifty (350) Historic Racing Machines, connected to a central server at that facility, and Electronic Bingo Machines, both as defined in Part III, at each pari-mutuel facility licensed as of February 1, 2010, and not located in either Broward County or Miami-Dade County.

6. The operation of Pari-Mutuel Wagering Activities at pari-mutuel facilities licensed by the State of Florida.

7. The operation of poker, including no-limit poker, at card rooms licensed by the State of Florida.

8. The operation by the Florida Department of Lottery of those types of lottery games authorized under chapter 24, Florida Statutes, on February 1, 2010, but not including (i) any player-activated or operated machine or device other than a Lottery Vending Machine or (ii) any banked or banking card or table game. However, not more than ten (10) Lottery Vending Machines may be installed at any facility or location and no Lottery Vending Machine that dispenses electronic instant tickets may be installed at any licensed pari-mutuel facility.

9. The operation of games authorized by chapter 849, Florida Statutes, on February 1, 2010.

Except for gaming activities covered by Part XII, Sections B.1., 2., 5., 6., 7., 8., and 9., any operation of expanded gaming as provided in Part XII, Section A. authorized by the State shall relieve the Tribe of its obligations to make both the Guaranteed Minimum Compact Term Payment and the Guaranteed Minimum Revenue Sharing Cycle Payment.

C. To the extent that the exclusivity provisions of this Part are breached or otherwise violated and the Tribe's ongoing payment obligations to the State pursuant to Part XI, Sections B. and D. of this Compact cease, any outstanding payments that would have been due the State from the Tribe's Facilities prior to the breach/violation shall be made within thirty (30) business days after the breach/violation.

D. The breach of this Part's exclusivity provisions and the cessation of Payments pursuant to Part XI, Sections B. and D. of this Compact shall not excuse the Tribe from continuing to comply with all other provisions of this Compact, including continuing to pay the State the Annual Oversight Assessment as set forth in Part XI, Section C. of this Compact.

Part XIII. DISPUTE RESOLUTION

In the event that either party to this Compact believes that the other party has failed to comply with any requirements of this Compact, or in the event of any dispute hereunder, including, but not limited to, a dispute over the proper interpretation of the terms and conditions of this Compact, the goal of the Parties is to resolve all disputes

amicably and voluntarily whenever possible. In pursuit of this goal, the following procedures may be invoked:

A. A party asserting noncompliance or seeking an interpretation of this Compact first shall serve written notice on the other party. The notice shall identify the specific Compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and any factual basis for the claim.

Representatives of the Tribe and State shall meet within thirty (30) calendar days of receipt of notice in an effort to resolve the dispute, unless they mutually agree to extend this period;

B. A party asserting noncompliance or seeking an interpretation of this Compact under this Part shall be deemed to have certified that to the best of the party's knowledge, information, and belief formed after reasonable inquiry, the claim of noncompliance or the request for interpretation of this Compact is warranted and made in good faith and not for any improper purpose, such as to harass or to cause unnecessary delay or the needless incurring of the cost of resolving the dispute;

C. If the parties are unable to resolve a dispute through the process specified in Sections A. and B. of this Part, either party can call for mediation under the Commercial Mediation Procedures of the American Arbitration Association (AAA) or any such successor procedures, provided that such mediation does not last more than sixty (60) calendar days, unless an extension to this time limit is negotiated by the parties. The disputes available for resolution through mediation are limited to matters arising under the terms of this Compact; If the parties are unable to resolve a dispute through the process specified in Sections A., B., and C. of this Part, notwithstanding any other

provision of law, either party may bring an action in a United States District Court ("federal court") having venue regarding any dispute arising under this Compact. If the federal court declines to exercise jurisdiction, or federal precedent exists that holds that the federal court would not have jurisdiction over such a dispute, either party may bring the action in the appropriate court of the Seventeenth Judicial Circuit in Broward County, Florida. The parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

D. For purposes of actions based on disputes between the State and the Tribe that arise under this Compact and the enforcement of any judgment resulting therefrom, the Tribe and the State each expressly waives its right to assert sovereign immunity from suit and from enforcement of any ensuing judgment, and further consents to be sued in federal or state court, including the rights of appeal specified above, as the case may be, provided that:

- (1) the dispute is limited solely to issues arising under this Compact;
- (2) there is no claim for monetary damages, except that payment of any money required by the terms of this Compact, as well as injunctive relief or specific performance enforcing a provision of this Compact requiring the payment of money to the State may be sought; and
- (3) nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Tribe with respect to any third party that is made a party or intervenes as a party to the action.

In the event that intervention, joinder, or other participation by any additional party in any action between the State and the Tribe would result in the waiver of the Tribe's sovereign immunity as to that additional party, the waiver of the Tribe provided herein may be revoked.

E. The State may not be precluded from pursuing any mediation or judicial remedy against the Tribe on the grounds that the State has failed to exhaust its Tribal administrative remedies.

F. Notwithstanding anything to the contrary in this Part, any failure of the Tribe to remit the Payments pursuant to the terms of Part XI will entitle the State to seek injunctive relief in federal or state court, at the State's election, to compel the Payments after exhausting the dispute resolution process in Sections A. and B. of this Part.

Part XIV. CONSTRUCTION OF COMPACT; SEVERANCE; FEDERAL APPROVAL

A. Each provision, section, and subsection of this Compact shall stand separate and independent of every other provision, section, or subsection. In the event that a federal district court in Florida or other court of competent jurisdiction shall find any provision, section, or subsection of this Compact to be invalid, the remaining provisions, sections, and subsections of this Compact shall remain in full force and effect, provided that severing the invalidated provision, section or subsection does not undermine the overall intent of the parties in entering into this Compact. However, if either Part III, Section F., Part XI or Part XII is held by a court of competent jurisdiction to be invalid, this Compact will become null and void.

B. It is understood that Part XII of this Compact, which provides for a cessation of the Payments to the State under Part XI, does not create any duty on the State of Florida but only a remedy for the Tribe if gaming under state jurisdiction is expanded.

C. This Compact is intended to meet the requirements of the Indian Gaming Regulatory Act as it reads on the Effective Date of this Compact, and where reference is made to the Indian Gaming Regulatory Act, or to an implementing regulation thereof, the reference is deemed to have been incorporated into this document as if set in full. Subsequent changes to the Indian Gaming Regulatory Act that diminish the rights of the State or Tribe may not be applied retroactively to alter the terms of this Compact, except to the extent that Federal law validly mandates that retroactive application without the respective consent of the State or Tribe.

In the event that a subsequent change in the Indian Gaming Regulatory Act, or to an implementing regulation thereof, mandates retroactive application without the respective consent of the State or Tribe, the parties agree that this Compact is voidable by either party if the subsequent change materially alters the provisions in the Compact relating to the play of Covered Games, revenue sharing payments, suspension or reduction of payments, or exclusivity.

D. Neither the presence in another state-tribal compact of language that is not included in this Compact, nor the absence in this Compact of language that is present in another state-tribal compact shall be a factor in construing the terms of this Compact.

E. Each party hereto agrees to defend the validity of this Compact.

F. The parties shall cooperate in seeking approval of this Compact from the Secretary of the Interior and the parties further agree that, upon execution and ratification by the Florida Legislature, the Tribe shall submit the Compact to the Secretary forthwith.

Part XV. NOTICES

All notices required under this Compact shall be given by certified mail, return receipt requested, commercial overnight courier service, or personal delivery, to the following persons:

The Governor
The Capitol
Tallahassee, Florida 32301

General Counsel to the Governor
The Capitol
Tallahassee, Florida 32301

Chairman
Seminole Tribe of Florida
6300 Stirling Road
Hollywood, Florida 33024

General Counsel
Seminole Tribe of Florida
6300 Stirling Road
Hollywood, Florida 33024

President of the Florida Senate
409 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Speaker of the Florida House of Representatives
420 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

Part XVI. EFFECTIVE DATE AND TERM

A. This Compact, if approved by the Florida Legislature, shall become effective upon its approval as a tribal-state compact within the meaning of the Indian Gaming Regulatory Act either by action of the Secretary of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8) upon publication of a notice of approval in the Federal Register under 25 U.S.C. s. 2710(d)(8)(D).

B. This Compact shall have a term of twenty (20) years (240 months) beginning on the first day of the month following the month in which the Compact becomes effective under Section A of this Part; provided, however, that the authorization for the Tribe to conduct banking or banked card games as defined in Part III, Section F(2) shall terminate on the last day of the sixtieth (60th) month after this Compact becomes effective unless the authorization to conduct such games is renewed by the parties or the State permits any other person, organization or entity, except for any other federally recognized tribe pursuant to Indian Gaming Regulatory Act, provided that the tribe has land in federal trust in the State as of February 1, 2010, to conduct such games. In the event that the Tribe's authorization to conduct banking or banked card games terminates, the Payments due the State pursuant to Part XI, Sections B.1.(b) and D of this Compact shall be calculated by excluding the Net Win from the Tribe's Facilities in Broward County. Such Payments remain subject to the provisions of Part XII.

C. The Tribe's authorization to offer banked or banking card games shall automatically terminate five (5) years from the Effective Date unless renewed by affirmative act of the Florida Legislature. In the event that the authorization to offer banked and banking card games is terminated, the Tribe shall have ninety (90) days to

close such games after which the State shall be entitled to seek immediate injunctive relief in any court of competent jurisdiction. The Tribe expressly waives its right to assert sovereign immunity in such action for immediate injunctive relief.

Part XVII. AMENDMENT OF COMPACT AND REFERENCES

A. Amendment of this Compact may only be made by written agreement of the parties, subject to approval by the Secretary either by publication of the notice of approval in the Federal Register or by operation of law under 25 U.S.C. s. 2710(d)(8).

B. Legislative ratification is required for any amendment to the Compact that alters the provisions relating to Covered Games, the amount of revenue sharing payments, suspension or reduction in payments, or exclusivity.

C. Changes in the provisions of tribal ordinances, regulations and procedures referenced in this Compact may be made by the Tribe with thirty (30) calendar days advance notice to the State. If the State has an objection to any change to the tribal ordinance, regulation or procedure which is the subject of the notice on the ground that its adoption would be a violation of the Tribe's obligations under this Compact, the State may invoke the dispute resolution provisions provided in Part XIII of this Compact.

Part XVIII. MISCELLANEOUS

A. Except to the extent expressly provided in this Compact, this Compact is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

B. If, after the Effective Date of this Compact, the State enters into a Compact with any other Tribe that contains more favorable terms with respect to the provisions of this Compact and the U.S. Secretary of the Interior approves such compact, either by publication of the notice of approval in the Federal Register or by operation of law under 25 U.S.C. s. 2710(d)(8), upon tribal notice to the State and the Secretary, this Compact shall be deemed amended to contain the more favorable terms, unless the State objects to the change and can demonstrate, in a proceeding commenced under Part XIII, that the terms in question are not more favorable.

C. Upon the occurrence of certain events beyond the Tribe's control, including acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of its Facilities or property necessary to operate the Facility or Facilities, the Tribe's obligation to pay the Guaranteed Minimum Revenue Share Cycle Payment described in Part XI shall be reduced pro rata to reflect the percentage of the total Net Win lost to the Tribe from the impacted Facility or Facilities and the Net Win specified under Part XII, Section B, for purposes of determining whether the Tribe's Payments described in Part XI shall cease, shall be reduced pro rata to reflect the percentage of the total Net Win lost to the Tribe from the impacted Facility or Facilities. The foregoing shall not excuse any obligations of the Tribe to make Payments to the State as and when required hereunder or in any related document or agreement.

D. Smoking

The Tribe and the State recognize that opportunities to engage in gaming in smoke-free or reduced-smoke environments provides both health and other benefits to Patrons, and the Tribe has already instituted a non-smoking section at its Seminole Hard

Rock Hotel & Casino – Hollywood Facility. As part of its continuing commitment to this issue, the Tribe will:

1. Install and utilize a ventilation system at all new construction at its Facilities, which system exhausts tobacco smoke to the extent reasonably feasible under existing state-of-the-art technology;
2. Designate a smoke-free area for slot machines at all new construction at its Facilities;
3. Install non-smoking, vented tables for table games installed in its Facilities sufficient to reasonably respond to demand for such tables; and
4. Designate a non-smoking area for gaming within all of its Facilities within five (5) years after the Effective Date of the Compact.

E. The annual average minimum pay-out of all slot machines in each Facility shall not be less than eighty-five percent (85%).

F. Nothing in this Compact shall alter any of the existing memoranda of understanding, contracts, or other agreements entered into between the Tribe and any other federal, state, or local governmental entity.

G. The Tribe currently has as set forth in its Employee Fair Treatment and Dispute Resolution Policy, and agrees to maintain, standards that are comparable to the standards provided in federal laws and State laws forbidding employers from discrimination in connection with the employment of persons working at the Facilities on the basis of race, color, religion, national origin, gender, age, disability/handicap, or marital status. Nothing herein shall preclude the Tribe from giving preference in

employment, promotion, seniority, lay-offs, or retention to members of the Tribe and other federally recognized tribes.

H. The Tribe shall, with respect to any Facility where Covered Games are played, adopt and comply with tribal requirements that meet the same minimum state requirements applicable to Florida businesses with respect to environmental and building standards.

Part XIX. EXECUTION

The Governor of the State of Florida affirms that he has authority to act for the State in this matter and that after approval by the Florida Legislature, no further action by the State or any State official is necessary for this Compact to take effect upon federal approval by action of the Secretary of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8) by publication of the notice of approval in the Federal Register. The Governor also affirms that he will take all appropriate steps to effectuate its purposes and intent. The undersigned Chairman of the Tribal Council of the Seminole Tribe of Florida affirms that he is duly authorized and has the authority to execute this Compact on behalf of the Tribe. The Chairman also affirms that he will take all appropriate steps to effectuate its purposes and intent.

APPROVED:

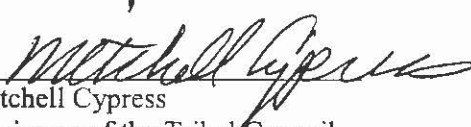
State of Florida



Charlie Crist
Governor

Date: 4/7, 2010

Seminole Tribe of Florida



Mitchell Cypress
Chairman of the Tribal Council

Date: 4/7/, 2010

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WEST FLAGER ASSOCIATES, LTD., d/b/a
MAGIC CITY CASINO, and BONITA-FORT MYERS CORPORATION,
d/b/a BONITA SPRINGS POKER ROOM

(b) County of Residence of First Listed Plaintiff Miami-Dade

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Buchanan Ingersoll & Rooney PC
2 South Biscayne Blvd, Suite 1500
Miami, Florida 33130 Phone: 305-347-4080

DEFENDANTS

RONALD DION DESANTIS, in his official capacity
as Governor of the State of Florida, and JULIE IMANUEL BROWN, in
her official capacity as Secretary of Florida Department of Business

County of Residence of First Listed Defendant Leon

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act		
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 2201, 2202

Brief description of cause:

Plaintiffs challenge as ultra vires portions of the 2021 Gaming Compact between the Seminole Tribe and the State

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
Injunctive Relief

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/02/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Sheila Oretsky

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FEE

JUDGE

MAG. JUDGE

Supp. App. 58

**IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

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

Plaintiffs,

v.

RONALD DION DESANTIS, in his
official capacity as Governor of the
State of Florida, and JULIE IMANUEL
BROWN, in her official capacity as Secretary
of the Florida Department of Business
and Professional Regulation,

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

Plaintiffs, West Flagler Associates, Ltd. (hereinafter “West Flagler” or
“Magic City Casino”), and Bonita-Fort Myers Corporation (hereinafter “Bonita
Springs Poker Room”) (collectively, “Southwest Pari-mutuels”), by and through
their undersigned counsel, hereby file this Complaint for Declaratory Judgment
and Injunctive Relief against Ronald Dion DeSantis, in his official capacity as
Governor of the State of Florida (hereinafter “Gov. DeSantis”) and Julie Imanuel

Brown, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation (hereinafter “DBPR Secretary”) (collectively, “Defendants”) to enjoin Defendants from cooperating with the Seminole Tribe of Florida (the “Tribe”) to secure approval of the 2021 Indian Gaming Compact and/or implementing the provisions of Section 285.710, Florida Statutes, because the online sports betting portions of the 2021 Indian Gaming Compact and Section 285.710 violate Federal law and are therefore *ultra vires*.

INTRODUCTION

1. Plaintiffs Southwest Pari-mutuels challenge as *ultra vires* portions of the 2021 Gaming Compact (the “2021 Compact”),¹ between the Tribe and the state of Florida (the “State”) and Section 285.710, Florida Statutes, (the “Implementing Law”),² because they are unauthorized or otherwise unlawful under Federal law pursuant to the Supremacy Clause of the United States Constitution.

2. Specifically, online gambling, including sports betting, is illegal in Florida. The Implementing Law purports to legalize it, but only if conducted by the Tribe under the 2021 Compact. It remains illegal otherwise.

¹ A true and correct copy of the 2021 Compact is attached hereto as ***Exhibit A***.

² A true and correct copy of Senate Bill 2-A: Implementation of the 2021 Gaming Compact Between the Seminole Tribe of Florida and the state of Florida, which amended Section 285.710, Florida Statutes, is attached hereto as ***Exhibit B***.

3. Plaintiffs seek declaratory and injunctive relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202 and Federal Rules of Civil Procedure 57 and 65 on the grounds that the 2021 Compact and the Implementing Law unlawfully purport to authorize off-reservation sports betting by allowing anyone with a mobile phone or computer to place and collect online wagers on sporting events “via the internet [or] web application” from anywhere in Florida or to place sports bets at off-reservation Florida pari-mutuels chosen by the Tribe—all without being physically present on Indian lands.³

4. Pursuant to the 2021 Compact and the Implementing Law, sports bets initiated by persons located physically anywhere within Florida (or even outside the state) are “deemed” to have occurred on Indian lands because the “servers” and “devices” purportedly receiving the bets are to be located on the Tribe’s reservation.

5. “Deeming” the bet to have been placed on Indian lands because the servers are located there contradicts decades of well-established precedent interpreting applicable federal law. Contrary to the legal fiction created by the 2021 Compact and Implementing Law, a bet is placed both where the bettor and the casino are each located. *See* Brief for the United States of America as Amicus Curiae Supporting Appellee, *Couder d’Alene Tribe v. AT&T Corporation*, 1999 WL

³ The 2021 Compact adopts the definition of “Indian lands” set forth in 25 U.S.C. § 2703(4), which is used herein.

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”).⁴

6. The off-reservation sports betting sections of the 2021 Compact and the Implementing Law are *ultra vires* for at least three (3) reasons: (1) the 2021 Compact is unauthorized under the Indian Gaming Regulatory Act (“IGRA”) because they purport to allow bettors to place bets on sporting events from outside the Tribe’s six (6) reservations, although the bettors are not on “Indian land” as defined in the IGRA, 25 U.S.C. § 2703(4); (2) the 2021 Compact and the Implementing Law violate the Wire Act of 1961 (“Wire Act”) by purporting to allow bettors to place online bets on sporting events from outside the Tribe’s six (6) reservations and through the means of interstate commerce, because sports betting is illegal in Florida; and (3) the 2021 Compact and Implementing Law violate the Unlawful Internet Gaming Enforcement Act (“UIGEA”) by purporting to allow bettors to place online bets on sporting events from outside the Tribe’s six (6) reservations, because such bets are illegal where placed.

7. Because controlling federal law preempts conflicting state law under the Supremacy Clause of the United States Constitution, the off-reservation sports

⁴ The Ninth Circuit Court of Appeals did not reach the merits of the case, as it held the appellant, AT&T, lacked standing to challenge the compact. *AT&T Corp. v. Coeur d’Alene Tribe*, 295 F.3d 899 (9th Cir. 2002).

betting provisions of the 2021 Compact and the Implementing Law are invalid and thus *ultra vires*.

8. Southwest Pari-mutuels seek judicial intervention to declare the off-reservation sports betting portions of the 2021 Compact and the Implementing Law *ultra vires* and enjoin: (a) Gov. DeSantis from cooperating with the Tribe to secure approval of the 2021 Compact in its current form as mandated by the Implementing Law; and (b) the DBPR Secretary from implementing the provisions of § 285.710, Florida Statutes, with respect to sports betting from anywhere outside the Tribe's reservations.⁵

PARTIES

9. Plaintiff West Flagler is a limited partnership registered in the State of Florida, formed in 1963, with its principal place of business located at 401 N.W. 38th Court, Miami, Florida, 33126. West Flagler has been owned and operated by the Havenick family for over 65 years when the patriarch of the family, Isadore Hecht, bought Flagler Greyhound Park in the early 1950s.

10. Since 2009, West Flagler has owned and operated the casino that has been known as Magic City Casino located at 540 N.W. 37th Ave, Miami, Florida,

⁵ Plaintiffs hereby reserve all rights to challenge the lawfulness of the 2021 Compact under the Florida Constitution in the state courts of Florida. This Complaint is limited to claims arising under federal law, and it does not seek relief pursuant to the state constitution.

33125. Magic City Casino is a licensed pari-mutuel⁶ facility authorized to operate a jai alai fronton, a dog track,⁷ slots and a card room.

11. Magic City Casino, under the name Magic City Racing, also sponsors thoroughbred racehorses that compete on local tracks such as Gulfstream Park under the name Magic City Racing Silks.

12. Magic City Casino has held a pari-mutuel permit to conduct greyhound racing in Miami-Dade County for over 50 years. In 1996, the state also permitted “simulcasting,” which allowed customers physically present at Magic City Casino’s track to bet on other jai alai, horse and dogs races broadcasts from tracks around the nation.

13. Under §849.086, Florida Statutes, licensed pari-mutuel facilities may also operate cardrooms. Magic City Casino began operating poker rooms in 1996 with a \$10 pot limit that permits unlimited pot poker games. In addition, the casino currently has a separate poker room at the facility that is open seven (7) days a week and features nineteen (19) tables, spreading the most popular games such as limit and no limit Texas hold’em, Omaha, and 7-card stud.

⁶ “Pari-mutuel” means a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* § 550.002(22), Fla. Stat.

⁷ As a result of voter approval of Amendment 13 in 2018, live greyhound racing was banned in Florida as of January 1, 2021. However, broadcasting greyhound racing for wagering from other locations is still permitted at Florida pari-mutuels.

14. Pursuant to the 2004 Florida constitutional amendment authorizing slot machines in Miami-Dade and Broward Counties, Magic City Casino's greyhound racing facility qualified as an "eligible facility" for slot machine gaming. The casino was added to Magic City Casino's greyhound racetrack in October of 2009 and was the first casino in Miami to offer Las Vegas-style slot machines, which were authorized by Florida and Miami-Dade County's voters in 2004 and 2008, respectively. Magic City Casino offers over 800 slot machines, electronic table games, such as blackjack, roulette, craps and baccarat, poker tables and tournaments, off track betting and other live entertainment that draws in both in-state and out-of-state visitors.

15. Even though live greyhound and other dog racing were banned in Florida through a 2018 constitutional amendment, slots and poker were allowed to continue as "grandfathered" businesses. *See Fla. Const. Art. X, § 32.*

16. Magic City Casino's greyhound track underwent extensive renovations to build out the casino. To date, over \$55,000,000 have been spent on capital improvements and Magic City Casino continues to make additional capital improvements to the casino each year. In 2018, following a successful declaratory judgment confirming that a jai alai permit holder is an "eligible facility" under the state's slot machine law, Magic City Casino added live-action jai alai and a state-of-the-art glass-walled jai alai fronton. Magic City Casino has its own jai-alai roster

and, prior to COVID-19, was drawing over 1,000 fans per week. Simulcast betting is open 7 days a week, year-round, and the performances are simulcast to 15 additional pari-mutuel sites, with a daily viewing audience of over 5,000 people. In 2020, Magic City Casino launched its Jai Alai Channel on YouTube.

17. Magic City Casino has approximately 425 employees and is located less than thirty (30) miles from the Tribe's Hard Rock Hollywood Casino and competes with the Tribe for gaming patrons.

18. Plaintiff Bonita-Fort Myers Corporation d/b/a Bonita Springs Poker Room is a corporation registered in the State of Florida, formed in 1956, with its principal place of business located at 401 N.W. 38th Court, Miami, FL 33126. Bonita Springs Poker Room is an affiliate of Magic City Casino and opened its card room at 28010 Race Track Road, Bonita Springs, FL 34135 in October 2020. Newly constructed after the closure of the Naples-Fort Myers Greyhound Track by the Havenick family, Bonita Springs Poker Room operates a 37-table live casino-style poker room, a state-of-the-art sports room where patrons can wager on simulcast horse racing and jai-alai, and a taproom with over 150+ craft beers from around the world.

19. 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.

20. Following the 2018 constitutional amendment prohibiting wagering on live racing by greyhounds or other dogs, the racetrack was closed in May 2020 and scheduled for demolition in the summer of 2021. A new 32,000-square foot facility that cost approximately \$10,000,000 was constructed to house what is now the Bonita Springs Poker Room. Similar to its sister property, Magic City Casino, the Bonita Springs Poker Room offers simulcast of horse racing and jai-alai where patrons can place bets and wagers on the events.

21. The Bonita Springs Poker Room features such games such as ultimate Texas hold'em, three-card poker, high-card flush, jackpot hold'em and DJ wild, year round. It is located approximately twenty-one (21) miles from the Tribe's Immokalee Casino, and one hundred and fifty (150) miles from the Tribe's Tampa Hard Rock Casino. With approximately 150 employees, it also competes with the Tribe for gaming patrons.

22. Both Magic City Casino and Bonita Springs Poker Room are owned by a Florida corporation called Southwest Florida Enterprises, Inc.

23. Defendant, Ronald Dion DeSantis ("Gov. DeSantis"), is the current Governor of the State of Florida (the "State"). By law, the Governor is the designated state officer responsible for negotiating and executing, on behalf of the State, tribal-state gaming compacts. § 285.712(1), Fla. Stat. Pursuant to § 285.710(3)(b), Florida Statutes, the "Governor shall cooperate with the Tribe in

seeking approval of such compact ratified and approved under this paragraph from the United States Secretary of the Interior.” Gov. DeSantis is being sued in his official capacity.

24. Defendant, Julie Imanuel Brown, is the Secretary of the Florida Department of Business and Professional Regulation (“DBPR”). The DBPR’s Division of Pari-Mutuel Wagering is responsible for regulating pari-mutuels and managing any compact between the Tribe and the State. §§ 550.01215, 550.0251, 285.710(7), Fla. Stat. Although the Implementing Law created the Florida Gaming Control Commission pursuant to §285.710(1)(f), Florida Statutes, such legislation does not take effect until July 1, 2022. In the interim, the Division of Pari-Mutuel Wagering continues to regulate pari-mutuels, including the issuance of permits, and management of any compact between the Tribe and the State. The DBPR Secretary is being sued in her official capacity.

JURISDICTION AND VENUE

25. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because the matters in controversy arise under the laws of the United States.

26. Venue is proper in this District, in the Tallahassee Division, under 28 U.S.C. § 1391(b) because under Florida’s home venue privilege, when a civil action is brought against the state or one of its agencies or subdivisions, venue lies properly

in the county where the state, agency, or subdivision, maintains its principal headquarters and the seat of government. The offices of the Governor and the DBPR are located in the City of Tallahassee, Leon County, Florida.

STATUTORY AND REGULATORY BACKGROUND

27. There are two types of casino gaming in the United States: (i) “tribal” gaming operated by Indian tribes (or private parties who are permitted to manage tribal casinos, which remain the sole proprietary interest of the tribe) on Indian lands pursuant to the IGRA; and (ii) “commercial” gaming operated by private entities on non-Indian lands, which are governed by state law, such as casino gaming conducted in Las Vegas, Atlantic City or the slots approved by voters in Miami-Dade and Broward Counties.

28. Both types of casino gaming must still comply with applicable federal law.

Tribal Gaming: The Indian Gaming Regulatory Act

29. By enacting the IGRA in 1988, Congress created a comprehensive framework for regulation of tribal gaming on tribal lands. Among other things, the IGRA created the National Indian Gaming Commission (“NIGC”), an independent federal regulatory agency within the Department of Interior (“DOI”) focused solely on the regulation of Indian gaming on tribal lands.

30. In enacting the IGRA, Congress found that “Indian tribes have the exclusive right to regulate gaming activity **on Indian lands** if the gaming activity is **not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.**” 25 U.S.C. § 2701(5) (emphasis supplied).

31. Binding precedent dictates that the “IGRA affords tools . . . to regulate gaming on Indian lands, **and nowhere else.**” *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 795 (2014) (emphasis supplied).

32. The IGRA categorizes gaming into three classes⁸ and allocates authority to regulate such gaming on Indian lands.

33. Class III gaming, at issue here, is defined as “all forms of gaming that are not class I or class II gaming.” 25 U.S.C. § 2703(8). Class III gaming includes, but is not limited to, slot machines, any house banking game, sports betting, and lotteries. 25 C.F.R. § 502.4.

34. The IGRA allows federally recognized tribes to conduct Class III gaming that is “lawful on Indian lands” *only* if such gaming is: (a) authorized by a

⁸ Class I gaming includes “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.” 25 U.S.C. § 2703(6). Class II gaming includes bingo and non-banking card games. Expressly excluded from Class II gaming is banking card games (such as blackjack, baccarat and chemin de fer), electronic games of chance, and slot machines. *Id.* at § 2703(7). As a result, these games all fall into Class III gaming.

tribal ordinance or resolution approved by the NIGC's Chairman; (b) located in a state that permits such gaming; *and* (c) conducted in conformance with a tribal-state compact. *See* 25 U.S.C. § 2710(d)(1).

35. If a state legalizes Class III gaming, the IGRA grants a tribe the right to demand that the state engage in good faith negotiations with the tribe to enter into a compact authorizing such gaming on tribal lands. 25 U.S.C. § 2710(d)(3)(A) (a state “shall negotiate with the Indian tribe in good faith to enter into such a compact”). If the parties successfully negotiate a compact and the DOI's Secretary approves it, the compact takes effect when notice of approval is published in the Federal Register. *Id.* at §§ 2710(d)(3)(B), (d)(8)(D).

36. Under § 2710 of the IGRA, the DOI's Secretary can approve or disapprove of the compact, or, in the event no affirmative action disapproving the compact is taken after forty-five (45) days, the compact is “deemed approved,” although it must still comply with all applicable federal law.

37. Pursuant to the IGRA, the DOI Secretary has a legal obligation to disapprove a tribal-state compact purporting to authorize gaming if the compact violates: (1) any provision of the IGRA; (2) “any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands;” or (3) “the trust obligations of the United States to Indians.” 25 U.S.C. § 2710(d)(8)(B).

38. The DOI's Secretary's obligation is both mandatory and judicially enforceable. *Amador Cnty. v. Salazar*, 640 F.3d 373, 379-83 (D.C. Cir. 2011).

39. The DOI's Secretary cannot approve a compact ratified in violation of federal law. *See* 25 U.S.C. § 2710(d)(8)(B)(ii).

40. The IGRA restricts tribal gaming to "Indian lands," which are either Indian reservations or lands held in trust by the United States for the benefit of a federally recognized Indian tribe. *See* 25 U.S.C. § 2703(4).

41. Importantly, the IGRA does not authorize tribal gaming outside of Indian lands (unless there is an applicable exception). *See* 25 U.S.C. §§ 2701(5); 2702(3); 2710(a), (b)(1), (d)(1).⁹ No exception applies here.

42. The NIGC has consistently maintained the position that the IGRA does not provide for any form of gaming off Indian lands. *See* Letter from Kevin Washburn, General Counsel, NIGC, to Joseph Speck, Nic-A-Bob Productions, re: WIN Sports Betting Game (Mar. 13, 2001) ("The use of the Internet, even though the computer server may be located on Indian lands, would constitute off-reservation

⁹ The exceptions, not applicable here, are for lands acquired for Indians in trust by the DOI Secretary after October 17, 1988, if the land is (1) acquired after the DOI Secretary determines acquisition to be in the best interest of the tribe and not detrimental to the local community and the governor of the state concurs; (2) acquired for tribes that had no reservation on the date of enactment of IGRA; (3) acquired as part of a land claim settlement; (4) acquired as part of an initial reservation for a newly recognized tribe; and (5) acquired as part of the restoration of lands for a tribe restored to federal recognition. 25 U.S.C. § 2719(a)-(b).

gaming to the extent any of the players were located off Indian lands.”); Letter from Kevin Washburn, General Counsel, NIGC, to Robert Rossette, Monteau, Peebles & Crowell, re: Lac Vieux Dessert Internet Bingo Operation (Oct. 26, 2000) (as the [Indian operated internet bingo] “seeks to draw any player who can log on to the internet site from any location and who is willing to pay the fee . . . The game itself does not depend on the player being located in a tribal bingo facility or even on Indian lands” and is not authorized by IGRA); Letter from Penny J. Coleman, Deputy General Counsel, NIGC, to Terry Barnes, Director of Gaming, Bingo Networks (June 9, 2000) (concluding game described as a center located on tribal lands but allowing players to open an account with the gaming center through the Internet was off-reservation gaming not authorized by the IGRA); Letter from Kevin Washburn, General Counsel, NIGC, to Ernest L. Stensgar, Chairman, Coeur d’Alene Trien, re: National Indian Lottery (June 22, 1999) (concluding an Indian internet lottery gambling enterprise, involving off reservation gaming, was not authorized by the IGRA) (collectively, the “NIGC Letters”) ; *see also* Amicus Brief of the United States, 1999 WL 33622333 at *2, *9 (arguing for affirmance of district court decision holding that the IGRA did not authorize interstate National Indian Lottery through telephonic communications connecting tribal reservations in several states). True and correct copies of the NIGC Letters are attached hereto as Composite *Exhibit C*.

43. The IGRA grants neither the NIGC nor the Chairman of the NIGC any jurisdiction to exercise regulatory authority over gaming conducted off Indian lands.

Gambling Via Wires: The Wire Act Of 1961

44. The Wire Act of 1961, 18 U.S.C. §§ 1081, *et seq.*, applies to transmissions in interstate or foreign commerce and prohibits interstate online sports betting. Specifically, the Wire Act makes it illegal for:

Whoever being engaged in the business of “**betting or wagering**” knowingly uses a **wire communication facility** for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the bets or wagers **on any sporting event or contest**, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers...

18 U.S.C. § 1084(a) (emphasis supplied).

45. “Wire communication facility” is defined as “any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.” 18 U.S.C. § 1081. Telephone or cellular communications, debit or credit card transactions, and bank wire or credit card transfers are common examples of wire communication facilities.

46. Wagering via the Internet or by mobile phone can involve interstate commerce because the wire and cellular transmissions that make data transmission possible to be sent and received routinely cross state lines.

47. In fact, although a player may be located in one state, his or her Internet transaction will likely be transmitted to a satellite and that signal is transmitted down to a ground station before being routed to intended receiving servers.

48. Moreover, credit or debit card transactions are transmitted through a network and involve acquiring, processing and issuing credits and debits to or from banks or card processors at multiple locations throughout the United States.

49. The Tribe operates seven (7) casinos in Florida and is engaged in the business of “betting and wagering” under 18 U.S.C. §1084.

50. The Wire Act prohibits the Tribe, or any other casino located in a state that prohibits sports betting, from transmitting several types of wagering-related communications by knowingly:

- (1) using the internet for the transmission of bets or wagers on any sporting event or contest;
- (2) using the internet for the transmission of information assisting in the placing of bets or wagers on any sporting event or contest;
- (3) transmitting a bank wire transfer which entitles the recipient to receive money or credit as a result of bets or wagers; and
- (4) transmitting a bank wire transfer which entitles the recipient to receive money or credit for information assisting in the placing of bets or wagers.

See 18 U.S.C. § 1084(a).

51. The Wire Act contains a very narrow exception for interstate transmissions where the transmission is “from a *State* or foreign country where betting on that sporting event or contest is legal into a *State* or foreign country in which such betting is legal.” 18 U.S.C. § 1084(b) (emphasis supplied).

52. Under the Wire Act, “State” means a “State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.” 18 U.S.C. § 1084(e).

53. The exceptions to the Wire Act do not apply to the 2021 Compact because the Tribe is not a “State” as that term is defined under the Wire Act nor is the Tribe a “foreign country.”

54. Instead, the Tribe is a “federally-recognized tribal government possessing sovereign powers and rights of self-government.” *Ex. A, 2021 Compact*, Part II, Sec. A; *see also* <https://www.semtribe.com/stof/history/introduction> (“We [the Tribe] are a sovereign government with our own schools, police, and courts.”).

55. Except as otherwise specified in law, casino gambling, including sports betting, is illegal in Florida. By constitutional amendment adopted by the voters in 2018 (“Amendment 3”), the legislature cannot authorize casino gambling unless approved by the voters pursuant to a citizen’s initiative. Fla. Const. Art. X, § 30.

56. In an effort to circumvent this clear prohibition in the State constitution, the 2021 Compact and Implementing Law provide that a person sitting on her

poolside lounge chair or his couch at home placing a sports bet through the Tribe is “deemed” not to be placing a bet that is otherwise illegal in the state. The 2021 Compact unlawfully deems the bet to be placed on the Tribe’s reservation, where the servers will be located. However, this is nothing more than a legal fiction belied by the fact that sports betting is still taking place outside the Tribe’s reservations in a state where sports betting remains illegal.

57. The 2021 Compact violates the Wire Act in that it permits the placement of a bet or wager on sports events from outside the Tribe’s reservations using an electronic device that is connected to a server on the Tribe’s reservations via the Internet, a cellular signal, or a web application.

Online Gambling: The Unlawful Internet Gambling Enforcement Act

58. Congress enacted the Unlawful Internet Gambling Enforcement Act (“UIGEA”) in 2006 to strengthen the enforcement of existing prohibitions against illegal gambling on the Internet. *See* 31 U.S.C. § 5361(4).

59. The UIGEA prohibits anyone “engaged in the business of betting or wagering” from “knowingly accept[ing]” various kinds of payments “in connection with the participation of another person in unlawful Internet gambling.” *Id.*

60. Unlawful Internet gambling occurs when an individual places, receives or transmits a “bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or

State Law in the State or Tribal lands in which the bet or wager is initiated, received or otherwise made.” *See* 31 U.S.C. § 5362(10)(A).

61. Under the UIGEA, for a bet or wager placed over the Internet to be lawful, the bet must be legal **in the State or Tribal lands where** the bet or wager is **placed and in the State or Tribal lands where** the bet or wager is **received**. *See* 31 U.S.C. § 5362(10)(A).

62. “Bet or wager” includes the “staking or risking by any person of something of value upon the outcome of a contest of others, *a sporting event*, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.” *See* 31 U.S.C. § 5362(1)(A) (emphasis supplied).

63. A “bet or wager” has at least three components: (1) a decision by a person to risk something of value; (2) an agreement between that person and another person that the bettor will receive something of value in the event of a certain outcome; and (3) the payment or delivery of the thing of value in payment of the bet. *See* Amicus Brief of the United States, 1999 WL 33622333, at *13.

64. The UIGEA excludes from coverage certain bets or wagers that are “initiated and received or otherwise made **exclusively within a single State**” and done so in accordance with the laws of such state, even if the routing of those wire

transmissions was done in a manner that involved interstate commerce. *See* 31 U.S.C. § 5362(10)(B) (emphasis supplied).

65. The term “States” means any “State of the United States, the District of Columbia, or any commonwealth, territory or other possession of the United States.” *See* 31 U.S.C. § 5362(9).

66. The Tribe is not a “State” under the UIGEA.

67. The UIGEA also excludes from coverage certain bets or wagers that are “initiated and received or otherwise made **exclusively *within the Indian lands of a single Indian tribe*** (as such terms are defined under the Indian Gaming Regulatory Act); or between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act.” *See* 31 U.S.C. § 5362(10)(C) (emphasis supplied).

68. Neither the 2021 Compact nor the Implementing Law fits within either of the foregoing exceptions.

69. There is no exception for online bets or wagers placed in a State from outside Indian lands *to* any Indian lands located in a state where the bet or wager is otherwise unlawful. *See California v. Iipay Nation of Santa Ysabel* (“*Desert Rose*”), 898 F.3d 960, 967 (9th Cir. 2018) (holding that gaming that does not occur on Indian lands is not subject to jurisdiction under the IGRA and the IGRA cannot serve as a shield from the application of the UIGEA).

70. Because sports betting is illegal in Florida, a bet or wager that is placed from outside the Tribe's reservations using an electronic device that is connected via the Internet, cell signal or web application to a server on the Tribe's reservations, violates the UIGEA.

Florida Gambling Law

71. Except for a few statutorily approved exceptions, gambling in Florida is largely illegal. *See generally* Ch. 849, Fla. Stat.; The Florida Senate-Bill Analysis and Fiscal Impact Statement, SB 2A Implementation of the 2021 Gaming Compact, Prepared By: The Professional Staff of the Committee on Appropriations <https://www.flsenate.gov/Session/Bill/2021A/2A/Analyses/2021s00002A.pre.ap.PDF> (last visited July 1, 2021).

72. For example, Florida law prohibits keeping a gambling house, running a lottery,¹⁰ or the manufacture, sale, lease, play, or possession of slot machines. *See* § 849.01, Fla. Stat.; § 849.09, Fla. Stat.; § 849.15, Fla. Stat.

73. However, the following gaming activities are authorized by law and regulated by the state:

(1) Pari-mutuel wagering at licensed horse tracks and jai alai frontons;¹¹

¹⁰ The state's voters approved a *state-run* lottery by constitutional amendment in 1986.

¹¹ § 849.086, Fla. Stat.

(2) Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;¹² and

(3) Cardrooms at licensed pari-mutuel facilities.¹³

74. Under certain specific and limited conditions, the conduct of penny-ante games, bingo, charitable drawings, game promotions (sweepstakes), and bowling tournaments are also permitted. *See* § 849.085, Fla. Stat.; § 849.0937, Fla. Stat.; § 849.0935, Fla. Stat.; § 849.094, Fla. Stat.; § 849.141, Fla. Stat.

75. During the 2018 General Election, the Florida electorate overwhelmingly approved a constitutional amendment, now Article X, Section 30 of the Florida Constitution (“Amendment 3”) seeking to limit the expansion of gambling in the state.

76. Amendment 3 provides that a vote proposed by a citizen initiative to amend the State Constitution pursuant to Article XI, Section 3 of the State Constitution is the *exclusive* method of authorizing “casino gambling” in Florida:

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’

¹² Art. X, § 23, Fla. Const.

¹³ § 849.086, Fla. Stat.

initiatives the exclusive method of authorizing casino gambling.

77. As used in Amendment 3, “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. 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.”

78. No voter-initiated petition has amended the state Constitution to legalize sports betting in Florida.

79. Sports betting remains illegal in Florida. *See* § 849.14, Fla. Stat.

FACTUAL BACKGROUND

80. The Tribe is the only tribe in Florida that has negotiated a gaming compact with the State.

81. The Tribe has seven (7) existing facilities on six (6) reservations statewide: Seminole Indian Casino-Brighton, Seminole Indian Casino-Coconut Creek, Seminole Indian Casino-Immokalee, Seminole Indian Casino-Big Cypress, Seminole Hard Rock Hotel & Casino-Hollywood and Seminole Hard Rock Hotel and Casino-Tampa.

82. On November 14, 2007, the Tribe signed a compact with then Florida Governor Charlie Crist (the “2007 Compact”). The 2007 Compact expanded casino gaming, permitting the Tribe to offer within its reservations slots, and card games,

such as blackjack and baccarat, that were otherwise prohibited by law. On January 7, 2008, upon publication of the DOI's Secretary approval, the 2007 Compact went into effect.

83. The Florida Legislature did not authorize Governor Crist to negotiate the 2007 Compact before it was signed and has not ratified it since. Shortly after the 2007 Compact was signed, the Florida House of Representative and its Speaker filed a petition for a writ of quo warranto in the Supreme Court of Florida, disputing then-Governor Crist's authority to unilaterally bind the state to the 2007 Compact.

84. In *Florida House v. Crist*, 990 So. 2d 1035 (Fla. 2008), the Florida Supreme Court held that then-Governor Crist lacked authority under the Florida Constitution when he executed a compact that changed the state's express public policy as set forth in criminal statutes and legislation. Because the type of gaming the compact authorized was prohibited under state law, Governor Crist had exceeded his authority and could not bind the state to the 2007 Compact.

85. As the Supreme Court aptly noted, "[n]either the Governor nor anyone else in the executive branch has the authority to execute a contract that violates state criminal law." *Crist*, 990 So. 2d at 1050.

86. In 2010, following the Florida Supreme Court's decision in *Florida House v. Crist*, Florida enacted a statute addressing tribal-state gaming compacts and providing that the Governor is 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” to authorize “class III gaming, as defined in [the IGRA], **on Indian lands within the state.**” § 285.712(1), Fla. Stat. (emphasis supplied).

87. As recognized by the state Supreme Court and enshrined in statute, the Florida Legislature must ratify the compact for it to be effective. §§ 285.712(2) - (3), Fla. Stat. The Governor is thereafter directed to file the ratified, executed compact with the Florida Secretary of State, who is to then forward a copy of the executed compact and the ratifying act to the DOI for review and approval by the DOI Secretary, in accordance with 25 U.S.C. § 2710(d)(8). *See* §§ 285.712(3) - (4), Fla. Stat.

88. In accordance with this process, on April 7, 2010, then-Governor Crist and the Tribe executed a new compact (the “2010 Compact”), that was ratified by the Florida Legislature and submitted for approval by the DOI, which approval was announced in the Federal Register on July 6, 2010.

89. The 2010 Compact, which is still in effect, has a term of 20 years, ending July 31, 2030.

90. The 2010 Compact allows the Tribe to operate slot machines, banking or banked card games, including baccarat, chemin de fer and blackjack, and raffles and drawings in exchange for a revenue share payment in the amount of twelve

million five hundred thousand dollars (\$12,500,000) per month through the first two years of the 2010 Compact, in addition to the revenue sharing cycle that begins after the initial two-year period.

91. The 2010 Compact contains an “exclusivity” clause providing that if any other entity was authorized to operate Class III gaming or any new forms of Class III gaming or other casino-style gaming that was not in operation as of February 1, 2010, the Tribe is no longer required to pay Florida its share of the revenue until such gaming was no longer operated.

92. In 2011, pari-mutuels began operating their own designated-player games at cardrooms. In 2014, state regulators adopted an official rule allowing designated-player games at cardrooms, thereby allowing the pari-mutuel cardrooms to conduct designated-player games in which players compete only against each other.

93. The Tribe took the position that these designated-player games violated the exclusivity provisions of the 2010 Compact and, thereby, relieved it of the obligation to continue paying revenue sharing to the state under the 2010 Compact.

94. In 2016, the Tribe sued the State in this Court. The Tribe asserted that Florida gambling regulators broke their exclusivity agreement by allowing pari-mutuels to offer “banked” card games. Under the 2010 Compact, if the “State permits any other person, organization or entity, except for any other federally

recognized tribe” to conduct banked card games, the Tribe can continue to offer the banked card gaming without sharing any revenue with the state.

95. When the Tribe prevailed in the federal lawsuit, it stopped all revenue sharing to the State.¹⁴

96. In ensuing years, the State had tried and failed, until now, to negotiate a new compact with the Tribe and revive the revenue sharing.

The 2021 Compact and the Implementing Law

97. On April 23, 2021, Gov. DeSantis and the Tribe signed the 2021 Compact.

98. The 2021 Compact is intended to supersede the 2010 Compact. Once effective upon publication of approval by the DOI Secretary, the 2021 Compact has a thirty (30) year term, terminating July 31, 2051. ***Ex. A, 2021 Compact***, Part XVI, Sec. A.

99. Under the 2021 Compact, the Tribe is authorized to offer “Covered Games” on its reservations. ***Ex. A, 2021 Compact***, Part IV, Sec. A.

100. Covered Games means: (1) slot machines; (2) raffles and drawings; (3) table games; (4) “Fantasy Sports Contest(s)”; (5) “Sports Betting”; and (6) any new

¹⁴ The State sought to repeal previously adopted designated-player rules that caused the alleged 2010 Compact violation. However, the Florida First District Court of Appeal enjoined the repeal. *Dep’t of Bus. & Pro. Regul. v. Dania Enter. Ctr., LLC*, 229 So. 3d 1259 (Fla. 1st DCA 2017).

game authorized by Florida law for any person for any purpose. *See Ex. A, 2021 Compact*, Part III, Sec. F.

101. The 2021 Compact is similar to the 2010 Compact in that it continues to allow the Tribe to conduct slot machines, raffles and drawings, and banked card games, including baccarat, chemin de fer, and blackjack.

102. However, the 2021 Compact allows the Tribe to conduct new forms of gaming, including craps, roulette, “Fantasy Sports Contests” and “Sports Betting.”

103. The 2021 Compact defines “Sports Betting” as:

wagering on any past or future professional sport or athletic event, competition or contest, any Olympic or international sports competition event, any collegiate sport or athletic event (but not including proposition bets on such collegiate sport or event), or any motor vehicle race, or any portion of any of the foregoing, including but not limited to the individual performance statistics of an athlete or other individual participant in any event or combination of events, or any other ‘in-play’ wagering with respect to any such sporting event, competition or contest, except ‘Sports Betting’ does not include Fantasy Sports Contests.

Ex. A, 2021 Compact, Part III, Sec. CC.

104. On May 17, 2021, the 2021 Compact was modified such that online off-reservation Sports Betting will not be effective before October 15, 2021. A true and correct copy of the addendum is attached hereto as *Exhibit D*.

105. As originally drafted, Part XVIII, Section A of the 2021 Compact also provided the State and the Tribe “agree to engage in good faith negotiations within

thirty-six (36) months after the Effective Date of this Compact to consider 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.”

106. Part XVIII, Section A contemplated the Tribe would be authorized to offer not only Sports Betting, but also slot machines, craps, roulette, raffles and drawings, and any other “Covered Games” online or via mobile devices in the near future.

107. During the Florida Legislature’s special session, there was a swift objection by a number of members regarding statewide online casino gambling under Part XVIII, Section A. The political backlash was so severe that the Tribe released a letter stating that the State was not obligated to negotiate under Part XVIII, Section A and that the provision was not enforceable against the State.

108. On May 17, 2021, the 2021 Compact was amended to delete Part XVIII, Section A in its entirety. The 2021 Compact was also amended to change certain revenue sharing provisions relating to the counties where the reservations are located.

109. The 2021 Compact also includes provisions regarding “Fantasy Sports Contest,” which means a “fantasy or simulation sports game or contest offered by a contest operator or noncommercial contest operator in which a contest participant manages a fantasy or simulation sports team composed of athletes from a professional sports organization” where (1) the prizes and awards are established and known to participants in advance of the contest; (2) winning outcomes reflect the knowledge and skill of the participants; (3) no winning outcome is based on the score, point spread or any performance of any single actual team; and (4) there are no casino graphics displayed. *Ex A, 2021 Compact*, Part III, Sec L.

110. The Florida Legislature did not take up legislation to regulate and ban others from conducting Fantasy Sports Contests as provided under the 2021 Compact, which described them as “games of skill.” As a result, Fantasy Sports Contests continue to be unregulated in Florida, but the Tribe, while able to conduct Fantasy Sports Contests, will not obtain a monopoly over them (at least for now).

111. On May 19, 2021, the Florida Legislature ratified the 2021 Compact as amended, passing the Implementing Law. *See Ex. B, Implementing Law*.

112. The Implementing Law adopts the definitions in the 2021 Compact and amends § 285.710, Florida Statutes, which was previously enacted to ratify the 2010 Compact, to ratify and approve the “gaming compact between the Seminole Tribe

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

113. On May 25, 2021, the Implementing Law was approved by Gov. DeSantis. The Implementing Law recognizes that the 2021 Compact only supersedes the 2010 Compact upon becoming effective, and if it is not approved by the DOI Secretary or invalidated by court action, then the 2010 Compact remains in effect. § 285.710(3)(b), Fla. Stat.

114. The Implementing Law provides in § 285.710(3), Fla. Stat., that it shall become effective “upon becoming law,” which was immediately upon the Governor’s approval on May 25, 2021. *See also Negron v. State*, 932 So. 2d 1250, 1251 (Fla. 3d DCA 2006).

115. On information and belief, on or about June 21, 2021, the State and/or the Tribe submitted the 2021 Compact to the DOI Secretary for approval.

**The 2021 Compact and Implementing Law Contradict
Decades of Federal Legislation and Established Precedent
Defining Where a Bet or Wager is Placed**

116. The Implementing Law purports to legalize sports betting in Florida, but only for purposes of attempting to shoehorn the online Sports Betting provisions of the 2021 Compact into the requirements of the IGRA. § 285.710(13)(b), Fla. Stat. (“for the purpose of satisfying the requirement in 25 U.S.C. s. 2710(d)(1)(B) that the gaming activities authorized under an Indian gaming compact must be permitted in

the state for any purpose by any person, organization, or entity,” sports betting is “authorized to be conducted by the Tribe pursuant to the [2021 C]ompact . . . when such compact has been approved by the United States Secretary of the Interior, has not been invalidated by court action or change in federal law, and is effective”).

117. Under the 2021 Compact, Sports Betting 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 Ex. A, 2021 Compact*, Part III, Sec. CC.2.

118. Further, the 2021 Compact states:

[W]agers on Sports Betting and Fantasy Sports Contests 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.

Ex. A, 2021 Compact, Part IV, Sec. A (emphasis supplied).

119. The Implementing Law, copying the language of the 2021 Compact, similarly states, “[w]agers on sports betting, including wagers made by players physically located within the state using a mobile or other electronic device, 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.”

§ 285.710(13)(b)(7), Fla. Stat.

120. The 2021 Compact and Implementing Law expand sports betting beyond the Tribe’s Indian lands and permit sports betting all over the state – subject only to the Tribe’s monopoly.

121. Indeed, persons over the age of twenty-one (21), who are physically present in Florida, but not on the Tribe’s Indian lands, may participate in sports betting and “all such wagering **shall be deemed at all times to be exclusively conducted by the Tribe at its Facilities** where the sports book(s), including servers and devices to conduct the same, are located.” *See Ex. A, 2021 Compact*, Part III, Sec. CC.2 (emphasis supplied).

122. For example, under the 2021 Compact and the Implementing Law, an individual over the age of twenty-one (21), who places a wager on a sporting event using his mobile device from his couch in Okaloosa, Florida, is “deemed” to have placed the bet over 600 miles away at the Seminole Hard Rock Hotel & Casino-Hollywood, simply because the Tribe’s servers are located there.

123. The 2021 Compact further allows online off-reservation sports betting to occur at pari-mutuel facilities to be selected by the Tribe.¹⁵ *Ex. A, 2021 Compact*,

¹⁵ The 2021 Compact allows the Tribe to enter into marketing and revenue-sharing agreements with pari-mutuels who are referred to as “Qualified Pari-mutuel Permitholder(s).” The Qualified Pari-mutuel Permitholder is allowed to perform

Part III, Sec. CC (d) (“all such wagering is conducted exclusively at one or more of the Tribal Facilities...even if Qualified Pari-mutuel Permitholders market the Tribe’s sports book by providing dedicated areas within *their facilities* wherein Patrons may access or use electronic devices to place wagers via the Internet, web applications, or otherwise to the Tribe’s sports book”). This arrangement has been described as a “hub and spoke”, whereby the Tribe is the hub of the betting operation, and the participating pari-mutuels are the spokes. *See* <https://floridapolitics.com/archives/430065-senate-passes-fantasy-sports-regulations-over-draftkings-and-fanduels-fears/> (Rep. Sam Garrison stating “There’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, triggers Amendment 3”) (last visited July 1, 2021).

124. In fact, several legislators and others have questioned the legality and/or constitutionality associated with providing a hub-and-spoke off-reservation online gambling model:

- (1) “It is not legal and permissible to have tribal gambling exceed the boundaries of tribal land.” - John Sowinski, president of No

“wagering undertaken through the use of electronic devices that will utilize the digital sports book(s) provided by the Tribe, and that use a brand of the Qualified Pari-mutuel Permitholder(s).” *See Ex. A, 2021 Compact*, Part III, Sec. CC.3(a).

Casinos, an organization that opposes gambling advocated for the adoption of Amendment 3. Forrest Saunders, *Florida Poised to Approve New Gaming Rules When Lawmakers Return Next Week*, WPTV (May 14, 2021) <https://www.wptv.com/news/state/florida-poised-to-approve-new-gaming-rules-when-lawmakers-return-next-week> (last visited July 1, 2021).

(2) “We’re going to allow the Seminole Tribe to offer sports betting where you can be sitting in your bathtub or sitting on your couch, thinking about a football game and you can make a wager, regardless of where you physically are, on your cellphone.” - Rep. Randy Fine, R-Palm Bay, the House Chair of the Select Committee on Gaming. William P., *House Legislators Approve Deal that Grants Seminole Tribe Expanded Gambling Rights in Florida—Includes Roulette, Craps, and Sports*, Florida Insider (May 19, 2021) <https://floridainsider.com/business/house-legislators-approve-deal-that-grants-seminole-tribe-expanded-gambling-rights-in-florida-includes-roulette-craps-and-sports/> (last visited July 1, 2021).

(3) “There’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. “It’s an open legal

question. Period.” “There is no black and white answer whether the hub and spoke model is going to be permitted or not. As we’ve said from Day One, and as the parties have contemplated, [whether the hub and spoke model is constitutional] is an open question.” - Rep. Sam Garrison. Ryan Nicol, *Dan Gerber, Philip Levine Argue Voters Should Have a Say in New Gaming Deal*, Florida Politics (May 17, 2021) <https://floridapolitics.com/archives/430075-gelber-levine-voters-gaming-deal/> (last visited July 1, 2021); Mary Ellen Klas & Ana Ceballos, *Florida Legalizes Sports Betting, Hard Rock to Add Roulette, Craps*, Tampa Bay Times (May 19, 2021) <https://www.tampabay.com/news/florida-politics/2021/05/19/florida-legalizes-sports-betting-but-hurdles-remain/> (last visited July 1, 2021).

(4) “You’re going to get into a legal question about where the servers are located and where does the bet take place? You’re going to have folks that argue that the bet actually takes place on tribal land, because that’s where the servers are located. But then the other side is going to say, well, you know, the offer takes place...where the bet was placed.” - Sen. Jason Brodeur. Jim Rosica, *High Stakes: Is Florida Ready for Smartphone-Based Online Sports Betting?*, Tallahassee Democrat (May 14, 2021)

<https://www.tallahassee.com/story/news/local/state/2021/05/14/florida-legal-sports-betting-seminole-tribe-compact-desantis-gambling-deal-special-session/4988655001/> (last visited July 1, 2021).

(5) “[T]he Department [of Interior] will have to look at whether the gaming – when a bet is placed outside Indian lands and the server is on Indian land, whether that satisfies the IGRA requirement that it’s gaming on Indian lands. And I think there is language in [the Desert Rose] opinion that indicate that this is going to be a difficult decision for the department . . .” George Skibine, former Deputy Assistant Secretary of Indian Affairs at Department of the Interior. House Select Committee on Gaming, May 18, 2021.

<https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=7311>

125. The Governor’s office itself also acknowledged that the legality of online betting was an open question: **“The main concern is whether online gaming is considered gambling ‘in tribal lands.’”** *See* 2021 Compact, Governor’s Office Materials: FAQ, (last visited July 1, 2021).

<https://www.myfloridahouse.gov/api/document/house?Leaf=HouseContent/Lists/LegislatorUResources/Attachments/66/2021.05.12%20Compact%20FAQs.pdf>

126. Even Jim Allen, Chairman of Hard Rock International (the Tribe’s casino operation) has acknowledged the possibility that the online sports betting

portions of the 2021 Compact will be struck down: “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.” <https://floridapolitics.com/archives/430058-house-panel-approves-gaming-compact-amid-open-legal-question/> (last visited July 1, 2021).

127. Plaintiffs recognize that the State could compact with the Tribe to permit in person sports betting by patrons physically *on its reservations*. However, the State cannot circumvent its own laws or federal law in an attempt to legalize off-reservation sports betting for the Tribe only.

128. Notably, the 2021 Compact itself contemplates that the courts may in fact invalidate provisions of the compact, and specifically the off-reservation sports betting provisions, by including the following severability provisions:

Each provision, section, and subsection of this Compact shall stand separate and independent of every other provision, section, or subsection, and shall be interpreted to ensure compliance with IGRA. In the event that a federal district court in Florida or other court of competent jurisdiction shall find any provision, sections, and subsections of this Compact to be invalid, the remaining provisions, sections and subsections of this Compact shall remain in full force and effect.

If 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...

Ex. A, 2021 Compact, Part XIV, Sec. A (emphasis supplied).

129. While the 2021 Compact asserts that operation of online off-reservation sports betting will be in “strict compliance” with the provisions of the federal Wire Act, 18 U.S.C. § 1084, and all other applicable federal laws with respect to the conduct of sports betting, as well as the IGRA, that is just not the case. *See Ex. A, 2021 Compact*, Part VII, Sec. A.1(c) and Part XIV, Sec. D.

The 2021 Compact and the Implementing Law, Granting the Tribe Exclusive Operation of Online Sports Betting Throughout the Entire State of Florida, Injures Pari-mutuel Facilities

130. The pari-mutuel business model allows pari-mutuels to profit by offering pari-mutuel betting pools to the public and collecting a percentage of the money collected from bettors. Pari-mutuel betting is a gambling framework, utilized primarily in horse racing, jai alai, and any authorized event, where the competitors finish in a ranked order, from first to last. For example, bettors will bet on horses to “Win,” “Place” or “Show”—the first three horses across the finish line. The payout is determined once the betting event (the race or round) commences, which is when the betting pool is closed. The sportsbook or racetrack where the wager is placed collects a percentage from the pool, called the vigor, in exchange for offering the wager. The higher the number of patrons placing wagers in the betting pool, the

greater the vigor and; thus, the greater the net revenue to the pari-mutuel. In Miami-Dade County, pari-mutuels like the Magic City Casino can also offer Las Vegas-style slot machines. And all pari-mutuels in Florida can obtain a card room permit. Patrons must visit the pari-mutuels in order to play slots or poker.

131. The 2021 Compact and Implementing Law prohibit pari-mutuels and others from offering sports betting unless they enter into an agreement with the Tribe.

132. While the 2021 Compact provides that “Within three (3) months of the effective date, the Tribe shall negotiate in good faith with any and all willing Qualified Pari-mutuel Permitholders to enter into written contracts as provided in [the] Section,” in reality, the Tribe has complete discretion with respect to these contracts. Aside from certain specific conditions, the Tribe exclusively determines the terms and conditions of the contracts. The only consequence of not entering into at least three (3) contracts with Qualified Pari-Mutuel Permitholders under the 2021 Compact is that the Tribe will pay the state an additional 2% of its “Net Win” from Sports Betting. Once it enters into contracts with the first three pari-mutuels, again, it is up to the Tribe to negotiate in good faith with other willing pari-mutuels. *See Ex. A, 2021 Compact*, Part III, Sec. CC.3-4.

133. Under the 2021 Compact, bettors can either place sports bets directly with the Tribe from their phones, computers and other mobile devices, or they can

place such wagers either in-person or online via a licensed pari-mutuel authorized by the Tribe to provide marketing services on its behalf. *See Ex. A, 2021 Compact*, Part III, Sec CC.2-3.

134. As State Representative Sam Garrison explained, the 2021 Compact creates a “hub-and-spoke model.”¹⁶ The Tribe is at the center of the hub and, at its option, one or more pari-mutuels not located on Indian lands are at the spokes of the sports betting wheel. The Tribe has the exclusive power to decide whether it will enter into such arrangements.

135. Indeed, the Tribe has already begun soliciting potential spokes for its off-reservation online sports betting. On June 24, 2021, the Tribe, through Jim Allen, Chairman of Hard Rock International and CEO of Seminole Gaming, reached out to Magic City “to initiate discussions...regarding the proposed sports book offering in the state” pursuant to the 2021 Compact (the “Allen Letter”). A true and correct copy of the Allen Letter is attached hereto as *Exhibit E*. The purpose of the Tribe’s letter is to have Southwest Pari-mutuels, and presumably other pari-mutuel facilities, respond to the Tribe’s request for information regarding the their facilities and “proposed framework for branding and marketing the sportsbook.” Following receipt of the pari-mutuels responses to the request for information, the Tribe will

¹⁶ <https://www.bradenton.com/news/politics-government/state-politics/article251528698.html> (last visited July 1, 2021).

schedule meetings with interested pari-mutuels to discuss a proposed marketing agreement and sports betting offering. *Ex. E, Allen Letter.*

136. As the 2021 Compact and the Allen Letter make clear, the only way a pari-mutuel can participate in online off-reservation sports betting is to be one of the spokes on terms and conditions dictated exclusively by the Tribe. In addition to placing bets at kiosks at pari-mutuel facilities throughout Florida, the bettors can also place bets from the comfort of their living room or mobile device. The role of the pari-mutuel with respect to online betting is limited to solely providing the “skin” for the mobile or web gaming application.¹⁷ As a result of these provisions, pari-mutuels that are unable to, or choose not to, enter into a marketing agreement with the Tribe are completely shut out of any opportunity to offer sports betting. Accordingly, the pari-mutuels will not only lose the walk-in traffic on which their business models are based, which will ultimately affect their revenue from slot machines, card rooms, and pari-mutuel wagering, as well as the ancillary

¹⁷ Under the 2021 Compact, the Qualified Pari-mutuel Permitholder(s) will be contractually responsible for performing “marketing or similar services for the Tribe’s sports book(s) related to, for and including such wagering undertaken through the use of electronic devices,” which includes the “development or procurement of customizable web or mobile assets for marketing services.” *Ex. A, 2021 Compact*, Part III, Sec. CC.3. In essence, the pari-mutuels procure, develop, and advertise the web application that patrons will use to place sports betting wagers with the Tribe.

entertainment and dining options offered to patrons of their facilities--but they are also being denied the opportunity to compete on a level playing field with the Tribe.

137. While under the IGRA, a state legitimately may grant “exclusivity” to an Indian tribe in exchange for a share to the Tribe’s gaming revenue, the IGRA does not authorize any compact that grants tribes the right to conduct gambling outside tribal lands, much less a monopoly on gaming outside tribal lands.

138. The 2021 Compact’s and Implementing Law’s unauthorized purported legalization of online, off-reservation sports betting, will have an adverse effect on Southwest Pari-mutuels’ revenues, due to the expected cannibalization of in-person betting at pari-mutuel facilities once the 2021 Compact is approved and online sports betting becomes available through the Tribe’s exclusive arrangements.

139. This is not ameliorated by the pre-ordained arrangements in the 2021 Compact that require the Tribe receive 40% of the Net Win of all sports bets placed through the hub-and-spoke arrangement with willing pari-mutuels which the Tribe permits to participate in its monopoly.

140. “Home casinos,” as contemplated by the 2021 Compact, will significantly diminish revenue at Southwest Pari-mutuels’ brick and mortar locations because individuals in Florida can now gamble from the comfort of their homes, which will significantly, it not completely, impair Southwest Pari-mutuels’ ability to compete with the Tribe.

141. The Florida gaming industry, at large, will also suffer irreparable injury due to a substantial decline in revenues, as the Tribe will be permitted to operate online off-reservation sports betting without having to require patrons be physically present on Indian lands.

142. Southwest Pari-mutuels, as direct competitors of the Tribe, will lose millions in revenue if the *ultra vires* online, off-reservation sports betting of the 2021 Compact and the Implementing Law are not enjoined from implementation.

143. For this reason, the off-reservation sports betting provisions of the 2021 Gaming Compact and the Implementing Law should be declared unlawful and the Court should enjoin Governor DeSantis from cooperating with the Tribe to secure approval of the 2021 Compact as written, and the DBPR Secretary from implementing the online provisions of the 2021 Compact as directed in the Implementing Law.

144. All conditions precedent to the bringing of this action, if any, have occurred, have been waived or are excused.

145. Southwest Pari-mutuels have retained the undersigned counsel and have agreed to pay the firm a reasonable fee for its services. Southwest Pari-mutuels have incurred costs in bringing this action.

CLAIMS FOR RELIEF

COUNT I

DECLARATORY AND INJUNCTIVE RELIEF (28 U.S.C. §§ 2201, 2202)

Ultra Vires Under the Indian Gaming Regulatory Act

146. Southwest Pari-mutuels re-allege and incorporate the allegations in paragraphs 1 through 146 as if fully set forth herein.

147. This is an action brought pursuant to 28 U.S.C. §§ 2201 and 2202 and under this Court’s inherent equitable powers for declaratory and injunctive relief.

148. This Court has the inherent authority to hear suits in equity where state laws violate or are preempted by federal law.

149. As economic competitors of the Tribe, Southwest Pari-mutuels have standing to bring this claim because there is a controversy over whether or not the IGRA authorizes online Class III gaming, including sports betting, by persons who are not physically present on Indian lands. Implementation of the off-reservation and online sports betting provisions of the 2021 Compact pursuant to the Implementing Law will place Southwest Pari-mutuels at a competitive disadvantage with the Tribe, and therefore, a finding by this Court that such provisions are *ultra vires* will operate to the economic advantage of Southwest Pari-mutuels.

150. Congress designed the IGRA “to facilitate on-reservation gaming.” *See Connecticut v. U.S. DOI*, 344 F. Supp. 3d 279, 302 (D.D.C. 2018). The IGRA does not authorize tribal gaming outside of Indian lands. *See* 25 U.S.C. § 2710(d)(1); *see*

also *Ex. C, NIGC Letters*; Amicus Brief of the United States, 1999 WL 33622333 at 4-5; Brief for Amici Curiae in Support of AT&T Corporation and Affirmance, 1999 WL 33622330 at 4-5 (9th Cir. June 22, 1999, Case No. 99-35088) (filed by the Florida and Minnesota attorneys general).

151. The State of Florida itself has taken the position that off-reservation betting is unauthorized under the IGRA because a bet is placed *both* where the bettor is physically located and where the bet is accepted:

The “on Indian lands” requirement of IGRA clearly mandates that any Indian gaming activity, including a consumer’s play or participation in the game, physically take place on tribal land. 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 [National Indian Lottery] 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.**

Brief of *Amici Curiae* in Support of AT&T Corporation and Affirmance, *Couer d'Alene Tribe v. AT&T Corporation*, 1999 WL 33622330 at 4 (9th Cir. June 20, 1999, Case No. 99-35088) (emphasis supplied).

152. “Indian lands” means Indian reservations and lands held in trust by the United States for the benefit of any federally-recognized Indian tribe. *See* 25 U.S.C. § 2703(4).

153. The 2021 Compact and the Implementing Law provide that online, off-reservation sports betting “shall be deemed at all times to be exclusively conducted by the Tribe at its Facilities where the sports book(s), including servers and devices to conduct the same, are located, including any such wagering undertaken by a Patron **physically located in the State but not on Indian Lands** using an electronic device connected via the internet, web application or otherwise, including, without limitation, any Patron connected via the 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 Ex. A, 2021 Compact*, Part III, Sec. CC.2 (emphasis supplied).

154. The IGRA does not authorize a tribe to offer online gaming to patrons located off Indian lands in jurisdictions where gaming is otherwise illegal despite the servers’ accepting the bets being located on Indian lands. *Desert Rose*, 898 F.3d at 968 (holding the tribe could not operate an online bingo site despite the server

being on Indian lands as “the patrons [were] engaging in ‘gaming activity’ by initiating a bet or wager in California and off Indian lands . . . [thus,] some of ‘gaming activity’ associated with [Dessert Rose Bingo] d[id] not occur on Indian lands”).

155. A wager placed off Indian lands cannot be “deemed” to be placed on Indian lands simply because of the location of the server. *Id.* at 968 (“IGRA protects gaming activity conducted on Indian lands. However, the patrons’ act of placing a bet or wager on a game of DRB while located in California constitutes a gaming activity that is not located on Indian lands.”).

156. Based on the plain language of the IGRA, the 2021 Compact and the Implementing Law do not comply with the IGRA’s “Indian lands” requirement, and contradict the meaning of “Indian lands” under the IGRA.

157. Because the portions of the 2021 Compact and the Implementing Law that purport to authorize any off-reservation sports betting fail to comply with the IGRA’s “on Indian lands” requirement, these portions of the 2021 Compact and the Implementing Law are unauthorized under the IGRA and are thus *ultra vires*. 25 U.S.C. §§ 2703(4); 2710(d).

158. Southwest Pari-mutuels have raised doubts as to the validity of the off-reservation and online sports betting provisions of the 2021 Compact and the Implementing Law as well as the authority of Gov. DeSantis to execute the 2021

Compact, the legislature's authority to ratify the compact as drafted and the DBPR Secretary's authority to implement these provisions. Plaintiffs are entitled to have such doubt removed.

159. Effective October 1, 2021, the Implementing Law will make it a third-degree felony (currently, it is a second degree misdemeanor) to engage in any form of sports betting. Senate Bill 8-A, amending § 849.14, Fla. Stat. However, select pari-mutuels chosen by the Tribe will be able to engage in this otherwise illegal activity only if they contract with the Tribe for the privilege.

160. Under the 2021 Compact and Implementing Law, selected pari-mutuels will serve as the spokes in the "hub-and-spoke model" of off-reservation sports betting, where the Tribe serves as the hub.

161. In addition to placing bets at designated pari-mutuel facilities throughout Florida, bettors can also place bets from the comfort of their living room on a computer or even from a car via a mobile device. With respect to the online sports betting, the expected role of the pari-mutuels is to provide the "skin" for the mobile or web gaming application.

162. Under the Implementing Law, pari-mutuels that are unable to or choose not to enter into a marketing agreement with the Tribe are completely shut out of any opportunity to offer sports betting and thus will be unable to compensate for the loss of revenue from patrons diverted by online sports betting.

163. Specifically, Plaintiffs Southwest Pari-mutuels request that this Court declare the off-reservation sports betting provisions in the 2021 Compact and the Implementing Law are unauthorized under the IGRA because a wager placed off Indian lands cannot be deemed to be placed on Indian lands, notwithstanding the fanciful and contradictory definition purported to be created under the 2021 Compact and Implementing Law.

164. There is a present and ascertainable state of facts of a present case or controversy between the parties within the jurisdiction of this Court that justifies the declaratory relief sought by Southwest Pari-mutuels.

165. There is a bona fide, actual, present, and practical need for this declaration. The harm to Southwest Pari-mutuels as a direct result of the actions and threatened actions of Defendants is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment and prospective injunctive relief.

166. Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of the declaratory relief sought by Southwest Pari-mutuels, and all antagonistic and adverse interest over whom this Court is able to exercise jurisdiction are before this Court by proper process.¹⁸

¹⁸ Plaintiffs would have added the Tribe as a party defendant; however, Indian tribes generally enjoy sovereign immunity from unconsented suit. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (“Among the core aspects of sovereignty that tribes possess—subject, again, to congressional action—is the ‘common-law immunity from suit traditionally enjoyed by sovereign powers.’”).

167. The declaration sought is not merely the giving of legal advice to answer questions propounded from curiosity.

WHEREFORE, Plaintiffs West Flagler Associates, Ltd., and Bonita-Fort Myers Corporation respectfully request that this Court, pursuant to 28 U.S.C. §§ 2201 and 2202 and its inherent equitable powers, (1) enter a declaratory judgment declaring that the off-reservation sports betting provisions of the 2021 Compact are unauthorized under the IGRA and are thus *ultra vires*, because they purport to authorize Class III gaming outside of Indian lands; (2) enter a declaratory judgment declaring that the off-reservation sports betting provisions of the Implementing Law are unauthorized under the IGRA and are thus *ultra vires*, because they purport to authorize Class III gaming outside of Indian lands; (3) enjoin Defendant Governor Ronald Dion DeSantis from cooperating with the Tribe to secure approval of the 2021 Compact in its current form as mandated by the Implementing Law; (4) enjoin Defendant Secretary Julie Imanuel Brown from implementing the provisions of Section 285.710, Florida Statutes, with respect to the off-reservation sports betting provisions of the 2021 Compact; and (5) award costs to Plaintiffs together with such other and further relief as the Court deems just and equitable.

Plaintiffs do not object to the Tribe's intervention in this action as a party defendant—and its concomitant waiver of tribal sovereign immunity—should it so choose.

COUNT II
DECLARATORY AND INJUNCTIVE RELIEF (28 U.S.C. §§ 2201, 2202)
Ultra Vires Under the Wire Act

168. Southwest Pari-mutuels re-allege and incorporate the allegations in paragraphs 1 through 146 as if fully set forth herein.

169. This is an action brought pursuant to 28 U.S.C. §§ 2201 and 2202 and under this Court's inherent equitable powers for declaratory and injunctive relief.

170. This Court has the inherent authority to hear actions in equity where state laws violate or are preempted by federal law.

171. As economic competitors of the Tribe, Southwest Pari-mutuels have standing to bring this claim because there is a controversy over whether or not the Wire Act prohibits online sports betting by persons who are not physically present on Indian lands when the bet is placed, but are in Florida, where sports betting is illegal. Implementation of the online Sports Betting provisions of the 2021 Compact pursuant to the Implementing Law will place Southwest Florida Pari-mutuels at a competitive disadvantage to the Tribe, and therefore, a finding by this Court that such provisions are *ultra vires* will operate to the economic advantage of Southwest Pari-mutuels.

172. The Wire Act makes it illegal for:

Whoever being engaged in the business of betting or
wagering knowingly **uses a wire communication
facility for the transmission in interstate or foreign
commerce of bets or wagers or information assisting**

in the bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers...

See 18 § U.S.C. 1084(a) (emphasis supplied).

173. The Tribe is engaged in the business of betting or wagering.

174. The 2021 Compact authorizes the Tribe to conduct off-reservation sports betting through the use of an “electronic device connected via the internet, web application or otherwise, including, without limitation, any Patron connected via the 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.**” *Ex. A, 2021 Compact*, Part III, Sec. CC.2 (emphasis supplied). Unless enjoined, the State of Florida has purported to authorize the Tribe and pari-mutuels that contract with the Tribe to knowingly use a “wire communication facility” in interstate commerce for bets and wagers on sporting events or transmission of information with respect thereto.

175. Usage of the Internet, mobile devices, or web applications for placing sports bets from outside the Tribe’s reservations uses “a wire communication facility in interstate commerce,” notwithstanding the fact that the bettor is located in Florida, where sports betting remains illegal, and the servers are on the Tribe’s reservations.

176. Internet and cellular communications initiating or paying bets placed from anywhere in Florida outside the Tribe’s reservations use the facilities of interstate commerce in order to communicate with the Tribe’s on-reservation servers.

177. The fact that the bettor is in the same state as the server does not render the “wire communication facility” an *intrastate* communication when the server is located on Indian lands but the bettor is not.

178. The Tribe is not a “State” under the Wire Act. 18 U.S.C. §1084(e) (“the term ‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States”).

179. The Tribe is not a “foreign country” under the Wire Act.

180. The Tribe is a “federally-recognized tribal government possessing sovereign powers and rights of self-government.” *Ex. A, 2021 Compact*, Part II, Sec. A; *see also* <https://www.semtribe.com/stof/history/introduction> (“We [the Tribe] are a sovereign government with our own schools, police, and courts.”).

181. The 2021 Compact and the Implementing Law, by authorizing online, off-reservation sports betting, are permitting Internet and mobile gambling that is unlawful under the Wire Act because sports gambling is unlawful under Florida law.

182. Thus, the 2021 Compact and the Implementing Law impermissibly conflict with and thereby violate the Wire Act, 18 U.S.C. § 1084(a), rendering the execution of the 2021 Compact and adoption of the Implementing Law *ultra vires* with respect to the online sports betting provisions.

183. The 2021 Compact contradicts decades of federal law and settled precedent by stating that it is compliant with the Wire Act. *See Ex. A, 2021 Compact*, Part VII, A.1(c).

184. Southwest Pari-mutuels have raised doubts as to the validity of the sports betting portions of the 2021 Compact and the Implementing Law and the authority of Gov. DeSantis to execute the 2021 Compact under these circumstances and of the State to implement these provisions.

185. Pari-mutuels are the spokes in the “hub-and-spoke model” of online, off-reservation sports betting where the Tribe is at the hub. In addition to placing bets at kiosks at pari-mutuel facilities throughout Florida, bettors can also place bets from the comfort of their living room, from their computer or mobile device, or from anywhere with a mobile phone. In such instances, the role of the pari-mutuels who contract with the Tribe is to provide the “skin” for the mobile or web gaming application.

186. As a result of these provisions, pari-mutuels that are unable to, or choose not to, enter into a marketing agreement with the Tribe will be unable to compensate for the loss of revenue from patrons diverted by online sports betting.

187. Plaintiffs are entitled to have doubts about the *ultra vires* nature of the online sports betting provisions of the 2021 Compact and Implementing Law removed.

188. Specifically, Southwest Pari-mutuels request that this Court declare that the online, off-reservation sports betting provisions in the 2021 Compact and the Implementing Law violate the Wire Act because they permit an individual to place an off-reservation sports bet or wager by a means which involve wire communications in interstate commerce through the Internet, mobile devices or otherwise, where such bet is otherwise unlawful under the laws of the State of Florida.

189. There is a present and ascertainable state of facts of a present case or controversy between the parties within the jurisdiction of this Court that justifies the declaratory relief sought by Southwest Pari-mutuels. The harm to Southwest Pari-mutuels as a direct result of the actions and threatened actions of Defendants is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment and prospective injunctive relief.

190. There is a bona fide, actual, present, and practical need for this declaration.

191. Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of the declaratory relief sought by Southwest Pari-mutuels, and all antagonistic and adverse interest over whom this Court is able to exercise jurisdiction are before this Court by proper process.¹⁹

192. The declaration sought is not merely the giving of legal advice to answer questions propounded from curiosity.

WHEREFORE, Plaintiffs West Flagler Associates, Ltd., and Bonita-Fort Myers Corporation respectfully request that this Court, pursuant to 28 U.S.C. §§ 2201 and 2202 and its inherent equitable powers, (1) enter a declaratory judgment declaring the online, off-reservation sports betting provisions of the 2021 Compact violate the Wire Act and are thus *ultra vires*, because they permit an individual in Florida located outside the Tribe's reservation to place a sports bet or wager by a means of a wire communication facility for transmission in interstate commerce; (2) enter a declaratory judgment declaring the online, off-reservation sports betting provisions of the Implementing Law violate the Wire Act and are thus *ultra vires*, because they permit an individual in Florida located outside the Tribe's reservation to place a sports bet or wager by a means of a wire

¹⁹ See *supra* n. 18.

communication facility for transmission in interstate commerce; (3) enjoin Governor Ronald Dion DeSantis from cooperating with the Tribe to secure approval of the 2021 Compact in its current form as mandated by the Implementing Law; (4) enjoin the Defendant Secretary Julie Imanuel Brown from implementing the provisions of Section 285.710, Florida Statutes, with respect to online sports betting or use of any communications facility for transmission in interstate commerce from anywhere outside the Tribe's reservations; and (5) award costs to Plaintiffs together with such other and further relief as the Court deems just and equitable.

COUNT III
DECLARATORY AND INJUNCTIVE RELIEF (28 U.S.C. §§ 2201, 2202)
Ultra Vires under the Unlawful Internet Gambling Enforcement Act

193. Southwest Pari-mutuels re-allege and incorporate the allegations in paragraphs 1 through 146 as if fully set forth herein.

194. This is an action brought pursuant to 28 U.S.C. §§ 2201 and 2202 for declaratory and injunctive relief under this Court's inherent equitable powers.

195. This Court has the inherent authority to hear suits in equity where state laws violate or are preempted by federal law.

196. As an economic competitor of the Tribe, Southwest Pari-mutuels have standing to bring this claim because there is a controversy over whether or not the UIGEA prohibits financial transactions associated with the placing or receiving of a

sports bet through the Internet where online gambling is illegal in Florida, where the bet is placed. Implementation of the online sports betting provisions of the 2021 Compact pursuant to the Implementing Law will place Southwest Florida Pari-mutuels at a competitive disadvantage to the Tribe, and therefore, a finding by this Court that such provisions are *ultra vires* will operate to the economic advantage of Southwest Pari-mutuels.

197. Unlawful Internet gambling occurs when an individual places or receives a “bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.” 31 U.S.C. § 5362(10).

198. The 2021 Compact and the Implementing Law provide that online, off-reservation sports betting “shall be deemed at all times to be exclusively conducted by the Tribe at its Facilities where the sports book(s), including servers and devices to conduct the same, are located, including any such wagering undertaken by a Patron **physically located in the State but not on Indian Lands** using an electronic device connected via the internet, web application or otherwise, including, without limitation, any Patron connected via the 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.” *Ex. A, 2021 Compact*, Part III, Sec. CC.2 (emphasis supplied); § 285.710(13)(b)(7), Fla. Stat.

199. The 2021 Compact further provides in part: “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.” *Ex. A, 2021 Compact*, Part IV, Sec. A (emphasis supplied).

200. The UIGEA makes illegal certain financial transactions associated with gaming on Indian lands facilitated by the Internet when the wager is being placed outside the reservation in a state whether the wager is otherwise illegal. *Desert Rose*, 898 F.3d at 968.

201. In *Desert Rose*, the Ninth Circuit Court of Appeals found that “a patrons’ act of placing a bet or wager over the internet while located in a jurisdiction where those bets or wagers is illegal” makes a tribe’s decision to accept financial payments associated with those bets or wagers a violation of the UIGEA despite the fact that the tribe’s servers were located on Indian lands. 898 F.3d at 968-69. A wager placed off Indian lands cannot be considered made on Indian lands simply because of the location of the server. *Id.* at 968.

202. The provisions of the 2021 Compact and Implementing Law purporting to redefine where the bet is placed, by deeming the bet “to be exclusively conducted by the Tribe at its Facilities where the sports book(s), including servers and devices to conduct the same, are located” contradict decades of well-established law that holds a bet or wager is made *both* at the location where the bettor is located when the bet is made and where the bet is accepted. *See* Amicus Brief of the United States, 1999 WL 33622333 at *4 (“Gaming activity necessarily includes the player’s placing of the wager or other participation in the game . . . persons physically present in any of the *amici* states, not on the Coeur d’Alene reservation does not change the uncontested fact that person making the wager is located outside of Idaho, and clearly not on the Coeur d’Alene reservation.”); Brief of *Amici Curiae*, 1999 WL 33622330 at 4 (“[t]he 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”); *see also Ex. C, NIGC Letters*.

203. It is undisputed the 2021 Compact and Implementing Law are authorizing bets to be made from outside Indian lands in Florida, notwithstanding the fact that sports betting is and will remain illegal otherwise unless the State’s voters approve an amendment to the state constitution authorizing sports betting.

204. Online gambling, as well as sports betting, is illegal in Florida and will remain illegal unless the State's voters approve an amendment to the state constitution authorizing online gambling.

205. Only gambling and wagering expressly authorized by law is legal in the State of Florida. *See* § 849.01, Fla. Stat., § 849.08, Fla. Stat., § 849.26, Fla. Stat.

206. Because Florida has not legalized sports betting or online gambling generally throughout the state, it cannot authorize a person to place a sports bet remotely with the Tribe under the auspices of the 2021 Compact, because a bet or wager has to be legal both where the bet is initiated and where it is received.

207. The 2021 Compact and the Implementing Law violate the UIGEA in at least three ways:

(a) A “[p]atron physically located in the State but not on Indian Lands using an electronic device connected via the internet, web application or otherwise” would be initiating a bet where such bet is unlawful under Florida law;

(b) The 2021 Compact and Implementing Law purport to authorize the Tribe and all those in the financial chain of the transaction to knowingly accept financial payments from unlawful online gambling by accepting bets from individuals in Florida who are not physically present on Indian lands when the bet is placed; and

(c) A wager made by a patron outside the Tribe’s reservation via the Internet to a server located on the Tribe’s reservation is not “made exclusively within the Indian lands of a single Indian tribe” or “made exclusively within a single State.”

208. Because online sports betting is illegal under the Wire Act and Florida gambling law, it is also unlawful under the UIGEA.

209. According to their express terms, the online sports betting provisions of the 2021 Compact and the Implementing Law authorize unlawful online gambling, violate the UIGEA and are thus *ultra vires*. See 31 U.S.C. §§ 5363; 5362.

210. Southwest Pari-mutuels have raised doubts as to the legality of these provisions of the 2021 Compact and the Implementing Law. Pari-mutuels are the spokes in the “hub-and-spoke model” of online off-reservation sports betting where the Tribe is at the hub. In addition to placing bets at kiosks at pari-mutuel facilities throughout Florida that communicate online to the Tribe’s servers, bettors can also place bets via the Internet from a computer in the comfort of their living room or from their mobile device anywhere in the state without ever entering the Tribe’s reservation. The role of the pari-mutuels with respect to online sports betting is to provide the “skin” for the mobile or web gaming application.

211. As a result of these provisions, pari-mutuels that are unable to or choose not to enter into a marketing agreement with the Tribe will be unable to compensate for the loss of revenue from in person patrons diverted by online sports betting.

212. Plaintiffs are entitled to have doubts about the *ultra vires* nature of the sports betting provisions of the 2021 Compact and Implementing Law removed.

213. Specifically, Southwest Pari-mutuels request this Court declare that the online, off-reservation sports betting provisions in the 2021 Compact and the Implementing law violate the UIGEA and are thus *ultra vires* because they permit an individual to place a sports bet or wager by a means which involves the use of the Internet where such bet is otherwise unlawful under the laws of the State of Florida.

214. There is a present and ascertainable state of facts of a present case or controversy between the parties within the jurisdiction of this Court that justifies the declaratory relief sought by Southwest Pari-mutuels. The harm to Southwest Pari-mutuels as a direct result of the actions and threatened actions of Defendants is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment and prospective injunctive relief.

215. There is a bona fide, actual, present, and practical need for this declaration.

216. Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of the declaratory relief sought by Southwest Pari-mutuels, and

all antagonistic and adverse interests over whom this Court is able to exercise jurisdiction are before this Court by proper process.²⁰

217. The declaration sought is not merely the giving of legal advice to answer questions propounded from curiosity.

WHEREFORE, Plaintiffs West Flagler Associates, Ltd., and Bonita-Fort Myers Corporation respectfully request this Court, pursuant to 28 U.S.C. §§ 2201 and 2202 and its inherent equitable powers, (1) enter a declaratory judgment, declaring that the online off-reservation sports betting provisions of the 2021 Compact violate the UIGEA and are thus *ultra vires*, because any online sports betting wager and related financial transactions initiated in Florida and off Indian lands are unlawful online gambling and is prohibited by the UIGEA; (2) enter a declaratory judgment, declaring that the online off-reservation sports betting provisions of the Implementing Law violate the UIGEA and are thus *ultra vires*, because any online sports betting wager and related financial transactions initiated in Florida and off Indian lands are unlawful online gambling and is prohibited by the UIGEA; (3) enjoin Defendant Governor Ronald Dion DeSantis from cooperating with the Tribe to secure approval of the 2021 Compact in its current form as mandated by the Implementing Law; (4) enjoin the Defendant Secretary Julie Imanuel Brown from implementing the provisions of Section 285.710,

²⁰ See *supra* n. 18.

Florida Statutes, with respect to online sports betting from anywhere outside the Tribe's reservations; and (5) award costs to Plaintiffs together with such other and further relief as this Court deems just and equitable.

Dated: July 2, 2021

Respectfully Submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

Case No. 4:21-cv-00270-AW-MJF

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

Plaintiffs,

v.

RONALD DION DESANTIS, in his
official capacity as Governor of the
State of Florida, and JULIE IMANUEL
BROWN, in her official capacity as Secretary
of the Florida Department of Business
and Professional Regulation,

Defendants.

**AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

Plaintiffs, West Flagler Associates, Ltd. (hereinafter “West Flagler” or “Magic City Casino”), and Bonita-Fort Myers Corporation (hereinafter “Bonita Springs Poker Room”) (collectively, “Southwest Pari-mutuels”), by and through their undersigned counsel, hereby file this Amended Complaint for Declaratory Judgment and Injunctive Relief against Ronald Dion DeSantis, in his official

capacity as Governor of the State of Florida (hereinafter “Gov. DeSantis”) and Julie Imanuel Brown, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation (hereinafter “DBPR Secretary”) (collectively, “Defendants”) to enjoin Defendants from implementing the 2021 Indian Gaming Compact and/or implementing the provisions of Section 285.710, Florida Statutes, because the online sports betting portions of the 2021 Indian Gaming Compact and Section 285.710 violate Federal law and the United States Constitution and are therefore *ultra vires* and unconstitutional.

INTRODUCTION

1. Plaintiffs Southwest Pari-mutuels challenge as *ultra vires* portions of the 2021 Gaming Compact (the “2021 Compact”),¹ between the Seminole Tribe of Florida (the “Tribe”) and the state of Florida (the “State”) and Section 285.710, Florida Statutes, (the “Implementing Law”),² because they are unauthorized or otherwise unlawful under Federal law pursuant to the Supremacy Clause of the United States Constitution. Plaintiffs further challenge as unconstitutional portions of the 2021 Compact and Implementing Law because they violate the Fourteenth Amendment of the United States Constitution.

¹ A true and correct copy of the 2021 Compact is attached hereto as ***Exhibit A***.

² A true and correct copy of Senate Bill 2-A: Implementation of the 2021 Gaming Compact Between the Seminole Tribe of Florida and the state of Florida, which amended Section 285.710, Florida Statutes, is attached hereto as ***Exhibit B***.

2. Specifically, online gambling, including sports betting, is illegal in Florida. The Implementing Law purports to legalize it, but only if conducted by the Tribe under the 2021 Compact. It remains illegal otherwise.

3. Plaintiffs seek declaratory and injunctive relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202 and Federal Rules of Civil Procedure 57 and 65 on the grounds that the 2021 Compact and the Implementing Law unlawfully and unconstitutionally purport to authorize off-reservation sports betting by allowing anyone with a mobile phone or computer to place and collect online wagers on sporting events “via the internet [or] web application” from anywhere in Florida or to place sports bets at off-reservation Florida pari-mutuels chosen by the Tribe—all without being physically present on Indian lands.³

4. Pursuant to the 2021 Compact and the Implementing Law, sports bets initiated by persons located physically anywhere within Florida (or even outside the state) are “deemed” to have occurred on Indian lands because the “servers” and “devices” purportedly receiving the bets are to be located on the Tribe’s reservation.

5. “Deeming” the bet to have been placed on Indian lands because the servers are located there contradicts decades of well-established precedent interpreting applicable federal law. Contrary to the legal fiction created by the 2021

³ The 2021 Compact adopts the definition of “Indian lands” set forth in 25 U.S.C. § 2703(4), which is used herein.

Compact and Implementing Law, a bet is placed both where the bettor and the casino are each located. *See* Brief for the United States of America as Amicus Curiae Supporting Appellee, *Coeur 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”).⁴

6. The off-reservation sports betting sections of the 2021 Compact and the Implementing Law are *ultra vires* and unconstitutional for at least four (4) reasons: (1) the 2021 Compact is unauthorized under the Indian Gaming Regulatory Act (“IGRA”) because it purports to allow bettors to place bets on sporting events from outside the Tribe’s six (6) reservations, although the bettors are not on “Indian land” as defined in the IGRA, 25 U.S.C. § 2703(4); (2) the 2021 Compact and the Implementing Law violate the Wire Act of 1961 (“Wire Act”) by purporting to allow bettors to place online bets on sporting events from outside the Tribe’s six (6) reservations and through the means of interstate commerce, because sports betting is illegal in Florida; (3) the 2021 Compact and Implementing Law violate the Unlawful Internet Gaming Enforcement Act (“UIGEA”) by purporting to allow bettors to place online bets on sporting events from outside the Tribe’s six (6)

⁴ The Ninth Circuit Court of Appeals did not reach the merits of the case, as it held the appellant, AT&T, lacked standing to challenge the compact. *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899 (9th Cir. 2002).

reservations, because such bets are illegal where placed; and (4) the 2021 Compact and Implementing Law violate the Fourteenth Amendment to the United States Constitution because they purport to allow a race-based and tribe-based disparate treatment of gaming operations by granting a state-wide monopoly to offer gaming via the internet to the Tribe in violation of the Equal Protection Clause.

7. Because controlling federal law preempts conflicting state law under the Supremacy Clause of the United States Constitution, the off-reservation sports betting provisions of the 2021 Compact and the Implementing Law are invalid and thus *ultra vires*. Further, because the United States Constitution proscribes the denial of the equal protection of the laws, the off-reservation sports betting provisions of the 2021 Compact and the Implementing Law are unconstitutional.

8. Southwest Pari-mutuels seek judicial intervention to declare the off-reservation sports betting portions of the 2021 Compact and the Implementing Law *ultra vires* and unconstitutional and enjoin: (a) Gov. DeSantis from implementing the 2021 Compact in its current form as mandated by the Implementing Law; and (b) the DBPR Secretary from implementing the provisions of § 285.710, Florida Statutes, with respect to sports betting from anywhere outside the Tribe's reservations.⁵

⁵ Plaintiffs hereby reserve all rights to challenge the lawfulness of the 2021 Compact under the Florida Constitution in the state courts of Florida. This

PARTIES

9. Plaintiff West Flagler is a limited partnership registered in the State of Florida, formed in 1963, with its principal place of business located at 401 N.W. 38th Court, Miami, Florida, 33126. West Flagler has been owned and operated by the Havenick family for over 65 years when the patriarch of the family, Isadore Hecht, bought Flagler Greyhound Park in the early 1950s.

10. Since 2009, West Flagler has owned and operated the casino that has been known as Magic City Casino located at 540 N.W. 37th Ave, Miami, Florida, 33125. Magic City Casino is a licensed pari-mutuel⁶ facility authorized to operate a jai alai fronton, a dog track,⁷ slots and a card room.

11. Magic City Casino, under the name Magic City Racing, also sponsors thoroughbred racehorses that compete on local tracks such as Gulfstream Park under the name Magic City Racing Silks.

12. Magic City Casino has held a pari-mutuel permit to conduct greyhound racing in Miami-Dade County for over 50 years. In 1996, the state also permitted

Complaint is limited to claims arising under federal law, and it does not seek relief pursuant to the state constitution.

⁶ “Pari-mutuel” means a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* § 550.002(22), Fla. Stat.

⁷ As a result of voter approval of Amendment 13 in 2018, live greyhound racing was banned in Florida as of January 1, 2021. However, broadcasting greyhound racing for wagering from other locations is still permitted at Florida pari-mutuels.

“simulcasting,” which allowed customers physically present at Magic City Casino’s track to bet on other jai alai, horse and dogs races broadcasts from tracks around the nation.

13. Under § 849.086, Florida Statutes, licensed pari-mutuel facilities may also operate cardrooms. Magic City Casino began operating poker rooms in 1996 with a \$10 pot limit that permits unlimited pot poker games. In addition, the casino currently has a separate poker room at the facility that is open seven (7) days a week and features nineteen (19) tables, spreading the most popular games such as limit and no limit Texas hold’em, Omaha, and 7-card stud.

14. Pursuant to the 2004 Florida constitutional amendment authorizing slot machines in Miami-Dade and Broward Counties, Magic City Casino’s greyhound racing facility qualified as an “eligible facility” for slot machine gaming. The casino was added to Magic City Casino’s greyhound racetrack in October of 2009 and was the first casino in Miami to offer Las Vegas-style slot machines, which were authorized by Florida and Miami-Dade County’s voters in 2004 and 2008, respectively. Magic City Casino offers over 800 slot machines, electronic table games, such as blackjack, roulette, craps and baccarat, poker tables and tournaments, off track betting and other live entertainment that draws in both in-state and out-of-state visitors.

15. Even though live greyhound and other dog racing were banned in Florida through a 2018 constitutional amendment, slots and poker were allowed to continue as “grandfathered” businesses. *See* Fla. Const. Art. X, § 32.

16. Magic City Casino’s greyhound track underwent extensive renovations to build out the casino. To date, over \$55,000,000 have been spent on capital improvements and Magic City Casino continues to make additional capital improvements to the casino each year. In 2018, following a successful declaratory judgment confirming that a jai alai permit holder is an “eligible facility” under the state’s slot machine law, Magic City Casino added live-action jai alai and a state-of-the-art glass-walled jai alai fronton. Magic City Casino has its own jai-alai roster and, prior to COVID-19, was drawing over 1,000 fans per week. Simulcast betting is open 7 days a week, year-round, and the performances are simulcast to 15 additional pari-mutuel sites, with a daily viewing audience of over 5,000 people. In 2020, Magic City Casino launched its Jai Alai Channel on YouTube.

17. Magic City Casino has approximately 425 employees and is located less than thirty (30) miles from the Tribe’s Hard Rock Hollywood Casino and competes with the Tribe for gaming patrons.

18. Plaintiff Bonita-Fort Myers Corporation d/b/a Bonita Springs Poker Room is a corporation registered in the State of Florida, formed in 1956, with its principal place of business located at 401 N.W. 38th Court, Miami, FL 33126. Bonita

Springs Poker Room is an affiliate of Magic City Casino and opened its card room at 28010 Race Track Road, Bonita Springs, FL 34135 in October 2020. Newly constructed after the closure of the Naples-Fort Myers Greyhound Track by the Havenick family, Bonita Springs Poker Room operates a 37-table live casino-style poker room, a state-of-the-art sports room where patrons can wager on simulcast horse racing and jai-alai, and a taproom with over 150+ craft beers from around the world.

19. 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.

20. Following the 2018 constitutional amendment prohibiting wagering on live racing by greyhounds or other dogs, the racetrack was closed in May 2020 and demolition of the racetrack began in the summer of 2021. A new 32,000-square foot facility that cost approximately \$10,000,000 was constructed to house what is now the Bonita Springs Poker Room. Similar to its sister property, Magic City Casino, the Bonita Springs Poker Room offers simulcast of horse racing and jai-alai where patrons can place bets and wagers on the events.

21. The Bonita Springs Poker Room features such games such as ultimate Texas hold'em, three-card poker, high-card flush, jackpot hold'em and DJ wild, year round. It is located approximately twenty-one (21) miles from the Tribe's Immokalee

Casino, and one hundred and fifty (150) miles from the Tribe's Tampa Hard Rock Casino. With approximately 150 employees, it also competes with the Tribe for gaming patrons.

22. Both Magic City Casino and Bonita Springs Poker Room are owned by a Florida corporation called Southwest Florida Enterprises, Inc.

23. Defendant, Ronald Dion DeSantis ("Gov. DeSantis"), is the current Governor of the State of Florida (the "State"). By law, the Governor is the, designated state officer responsible for negotiating and executing, on behalf of the State, tribal-state gaming compacts. § 285.712(1), Fla. Stat. Pursuant to § 285.710(3), Florida Statutes, the "Governor shall cooperate with the Tribe in seeking approval of such compact ratified and approved under this paragraph from the United States Secretary of the Interior." Further, under the specific language of the 2021 Compact, Gov. DeSantis, as a party thereto, agreed to defend its validity. ***Ex. A, 2021 Compact***, Part XIV, Sec. F. Gov. DeSantis is being sued in his official capacity. Article IV, Section 1(a) of the Florida Constitution also provides that it is the duty of Gov. DeSantis, in his capacity as Governor, to "take care that the laws be faithfully executed." Gov. DeSantis is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Amended Complaint.

24. Defendant, Julie Imanuel Brown, is the Secretary of the Florida Department of Business and Professional Regulation (“DBPR”). The DBPR’s Division of Pari-Mutuel Wagering is responsible for regulating pari-mutuels and managing any compact between the Tribe and the State. §§ 550.01215, 550.0251, 285.710(7), Fla. Stat. Although the Implementing Law created the Florida Gaming Control Commission pursuant to §285.710(1)(f), Florida Statutes, such legislation does not take effect until July 1, 2022. In the interim, the Division of Pari-Mutuel Wagering continues to regulate pari-mutuels, including the issuance of permits, and management of any compact between the Tribe and the State. The DBPR Secretary is being sued in her official capacity. The DBPR Secretary is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Amended Complaint.

JURISDICTION AND VENUE

25. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because the matters in controversy arise under the laws of the United States.

26. Venue is proper in this District, in the Tallahassee Division, under 28 U.S.C. § 1391(b) because under Florida’s home venue privilege, when a civil action is brought against the state or one of its agencies or subdivisions, venue lies properly in the county where the state, agency, or subdivision, maintains its principal

headquarters and the seat of government. The offices of the Governor and the DBPR are located in the City of Tallahassee, Leon County, Florida.

STATUTORY AND REGULATORY BACKGROUND

27. There are two types of casino gaming in the United States: (i) “tribal” gaming operated by Indian tribes (or private parties who are permitted to manage tribal casinos, which remain the sole proprietary interest of the tribe) on Indian lands pursuant to the IGRA; and (ii) “commercial” gaming operated by private entities on non-Indian lands, which are governed by state law, such as casino gaming conducted in Las Vegas, Atlantic City or the slots approved by voters in Miami-Dade and Broward Counties.

28. Both types of casino gaming must still comply with applicable federal law.

Tribal Gaming: The Indian Gaming Regulatory Act

29. By enacting the IGRA in 1988, Congress created a comprehensive framework for regulation of tribal gaming on tribal lands. Among other things, the IGRA created the National Indian Gaming Commission (“NIGC”), an independent federal regulatory agency within the Department of Interior (“DOI”) focused solely on the regulation of Indian gaming on tribal lands.

30. In enacting the IGRA, Congress found that “Indian tribes have the exclusive right to regulate gaming activity **on Indian lands** if the gaming activity is

not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.” 25 U.S.C. § 2701(5) (emphasis supplied).

31. Binding precedent dictates that the “IGRA affords tools . . . to regulate gaming on Indian lands, **and nowhere else.**” *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 795 (2014) (emphasis supplied).

32. The IGRA categorizes gaming into three classes⁸ and allocates authority to regulate such gaming on Indian lands.

33. Class III gaming, at issue here, is defined as “all forms of gaming that are not class I or class II gaming.” 25 U.S.C. § 2703(8). Class III gaming includes, but is not limited to, slot machines, any house banking game, sports betting, and lotteries. 25 C.F.R. § 502.4.

34. The IGRA allows federally recognized tribes to conduct Class III gaming that is “lawful on Indian lands” *only* if such gaming is: (a) authorized by a tribal ordinance or resolution approved by the NIGC’s Chairman; (b) located in a

⁸ Class I gaming includes “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.” 25 U.S.C. § 2703(6). Class II gaming includes bingo and non-banking card games. Expressly excluded from Class II gaming is banking card games (such as blackjack, baccarat and chemin de fer), electronic games of chance, and slot machines. *Id.* at § 2703(7). As a result, these games all fall into Class III gaming.

state that permits such gaming; *and* (c) conducted in conformance with a tribal-state compact. *See* 25 U.S.C. § 2710(d)(1).

35. If a state legalizes Class III gaming, the IGRA grants a tribe the right to demand that the state engage in good faith negotiations with the tribe to enter into a compact authorizing such gaming on tribal lands. 25 U.S.C. § 2710(d)(3)(A) (a state “shall negotiate with the Indian tribe in good faith to enter into such a compact”). If the parties successfully negotiate a compact and the DOI’s Secretary approves it, the compact takes effect when notice of approval is published in the Federal Register. *Id.* at §§ 2710(d)(3)(B), (d)(8)(D).

36. Under § 2710 of the IGRA, the DOI’s Secretary can approve or disapprove of the compact, or, in the event no affirmative action disapproving the compact is taken after forty-five (45) days, the compact is “deemed approved,” although it must still comply with all applicable federal law.

37. Pursuant to the IGRA, the DOI Secretary has a legal obligation to disapprove a tribal-state compact purporting to authorize gaming if the compact violates: (1) any provision of the IGRA; (2) “any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands;” or (3) “the trust obligations of the United States to Indians.” 25 U.S.C. § 2710(d)(8)(B).

38. The DOI’s Secretary’s obligation is both mandatory and judicially enforceable. *Amador Cnty. v. Salazar*, 640 F.3d 373, 379-83 (D.C. Cir. 2011).

39. The DOI's Secretary cannot approve a compact ratified in violation of federal law. *See* 25 U.S.C. § 2710(d)(8)(B)(ii).

40. The IGRA restricts tribal gaming to "Indian lands," which are either Indian reservations or lands held in trust by the United States for the benefit of a federally recognized Indian tribe. *See* 25 U.S.C. § 2703(4).

41. Importantly, the IGRA does not authorize tribal gaming outside of Indian lands (unless there is an applicable exception). *See* 25 U.S.C. §§ 2701(5); 2702(3); 2710(a), (b)(1), (d)(1).⁹ No exception applies here.

42. The NIGC has consistently maintained the position that the IGRA does not provide for any form of gaming off Indian lands. *See* Letter from Kevin Washburn, General Counsel, NIGC, to Joseph Speck, Nic-A-Bob Productions, re: WIN Sports Betting Game (Mar. 13, 2001) ("The use of the Internet, even though the computer server may be located on Indian lands, would constitute off-reservation gaming to the extent any of the players were located off Indian lands."); Letter from Kevin Washburn, General Counsel, NIGC, to Robert Rossette, Monteau, Peebles &

⁹ The exceptions, not applicable here, are for lands acquired for Indians in trust by the DOI Secretary after October 17, 1988, if the land is (1) acquired after the DOI Secretary determines acquisition to be in the best interest of the tribe and not detrimental to the local community and the governor of the state concurs; (2) acquired for tribes that had no reservation on the date of enactment of IGRA; (3) acquired as part of a land claim settlement; (4) acquired as part of an initial reservation for a newly recognized tribe; and (5) acquired as part of the restoration of lands for a tribe restored to federal recognition. 25 U.S.C. § 2719(a)-(b).

Crowell, re: Lac Vieux Dessert Internet Bingo Operation (Oct. 26, 2000) (as the [Indian operated internet bingo] “seeks to draw any player who can log on to the internet site from any location and who is willing to pay the fee . . . The game itself does not depend on the player being located in a tribal bingo facility or even on Indian lands” and is not authorized by IGRA); Letter from Penny J. Coleman, Deputy General Counsel, NIGC, to Terry Barnes, Director of Gaming, Bingo Networks (June 9, 2000) (concluding game described as a center located on tribal lands but allowing players to open an account with the gaming center through the Internet was off-reservation gaming not authorized by the IGRA); Letter from Kevin Washburn, General Counsel, NIGC, to Ernest L. Stensgar, Chairman, Coeur d’Alene Trien, re: National Indian Lottery (June 22, 1999) (concluding an Indian internet lottery gambling enterprise, involving off reservation gaming, was not authorized by the IGRA) (collectively, the “NIGC Letters”) ; *see also* Amicus Brief of the United States, 1999 WL 33622333 at *2, *9 (arguing for affirmance of district court decision holding that the IGRA did not authorize interstate National Indian Lottery through telephonic communications connecting tribal reservations in several states). True and correct copies of the NIGC Letters are attached hereto as Composite *Exhibit C*.

43. The IGRA grants neither the NIGC nor the Chairman of the NIGC any jurisdiction to exercise regulatory authority over gaming conducted off Indian lands.

Gambling Via Wires: The Wire Act Of 1961

44. The Wire Act of 1961, 18 U.S.C. §§ 1081, *et seq.*, applies to transmissions in interstate or foreign commerce and prohibits interstate online sports betting. Specifically, the Wire Act makes it illegal for:

Whoever being engaged in the business of **“betting or wagering”** knowingly uses a **wire communication facility** for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the bets or wagers ***on any sporting event or contest***, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers...

18 U.S.C. § 1084(a) (emphasis supplied).

45. “Wire communication facility” is defined as “any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.” 18 U.S.C. § 1081. Telephone or cellular communications, debit or credit card transactions, and bank wire or credit card transfers are common examples of wire communication facilities.

46. Wagering via the Internet or by mobile phone can involve interstate commerce because the wire and cellular transmissions that make data transmission possible to be sent and received routinely cross state lines.

47. In fact, although a player may be located in one state, his or her Internet transaction will likely be transmitted to a satellite and that signal is transmitted down to a ground station before being routed to intended receiving servers.

48. Moreover, credit or debit card transactions are transmitted through a network and involve acquiring, processing and issuing credits and debits to or from banks or card processors at multiple locations throughout the United States.

49. The Tribe operates seven (7) casinos in Florida and is engaged in the business of “betting and wagering” under 18 U.S.C. §1084.

50. The Wire Act prohibits the Tribe, or any other casino located in a state that prohibits sports betting, from transmitting several types of wagering-related communications by knowingly:

- (1) using the internet for the transmission of bets or wagers on any sporting event or contest;
- (2) using the internet for the transmission of information assisting in the placing of bets or wagers on any sporting event or contest;
- (3) transmitting a bank wire transfer which entitles the recipient to receive money or credit as a result of bets or wagers; and
- (4) transmitting a bank wire transfer which entitles the recipient to receive money or credit for information assisting in the placing of bets or wagers.

See 18 U.S.C. § 1084(a).

51. The Wire Act contains a very narrow exception for interstate transmissions where the transmission is “from a *State* or foreign country where

betting on that sporting event or contest is legal into a *State* or foreign country in which such betting is legal.” 18 U.S.C. § 1084(b) (emphasis supplied).

52. Under the Wire Act, “State” means a “State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.” 18 U.S.C. § 1084(e).

53. The exceptions to the Wire Act do not apply to the 2021 Compact because the Tribe is not a “State” as that term is defined under the Wire Act nor is the Tribe a “foreign country.”

54. Instead, the Tribe is a “federally-recognized tribal government possessing sovereign powers and rights of self-government.” *Ex. A, 2021 Compact*, Part II, Sec. A; *see also* <https://www.semtribe.com/stof/history/introduction> (“We [the Tribe] are a sovereign government with our own schools, police, and courts.”).

55. Except as otherwise specified in law, casino gambling, including sports betting, is illegal in Florida. By constitutional amendment adopted by the voters in 2018 (“Amendment 3”), the legislature cannot authorize casino gambling unless approved by the voters pursuant to a citizen’s initiative. Fla. Const. Art. X, § 30.

56. In an effort to circumvent this clear prohibition in the State constitution, the 2021 Compact and Implementing Law provide that a person sitting on her poolside lounge chair or his couch at home placing a sports bet through the Tribe is “deemed” not to be placing a bet that is otherwise illegal in the state. The 2021

Compact unlawfully deems the bet to be placed on the Tribe's reservation, where the servers will be located. However, this is nothing more than a legal fiction belied by the fact that sports betting is still taking place outside the Tribe's reservations in a state where sports betting remains illegal.

57. The 2021 Compact violates the Wire Act in that it permits the placement of a bet or wager on sports events from outside the Tribe's reservations using an electronic device that is connected to a server on the Tribe's reservations via the Internet, a cellular signal, or a web application.¹⁰

Online Gambling: The Unlawful Internet Gambling Enforcement Act

58. Congress enacted the Unlawful Internet Gambling Enforcement Act ("UIGEA") in 2006 to strengthen the enforcement of existing prohibitions against illegal gambling on the Internet. *See* 31 U.S.C. § 5361(4).

59. The UIGEA prohibits anyone "engaged in the business of betting or wagering" from "knowingly accept[ing]" various kinds of payments "in connection with the participation of another person in unlawful Internet gambling." *Id.*

60. Unlawful Internet gambling occurs when an individual places, receives or transmits a "bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or

¹⁰ Indeed, even where such bets are placed at pari-mutuel locations that contract with the Tribe, the bets still must be placed "electronically," as it appears as though the Tribe will not permit the pari-mutuels to collect cash wagers for sports betting.

State Law in the State or Tribal lands in which the bet or wager is initiated, received or otherwise made.” *See* 31 U.S.C. § 5362(10)(A).

61. Under the UIGEA, for a bet or wager placed over the Internet to be lawful, the bet must be legal **in the State or Tribal lands where** the bet or wager is **placed *and* in the State or Tribal lands where** the bet or wager is **received**. *See* 31 U.S.C. § 5362(10)(A).

62. “Bet or wager” includes the “staking or risking by any person of something of value upon the outcome of a contest of others, *a sporting event*, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.” *See* 31 U.S.C. § 5362(1)(A) (emphasis supplied).

63. A “bet or wager” has at least three components: (1) a decision by a person to risk something of value; (2) an agreement between that person and another person that the bettor will receive something of value in the event of a certain outcome; and (3) the payment or delivery of the thing of value in payment of the bet. *See* Amicus Brief of the United States, 1999 WL 33622333, at *13.

64. The UIGEA excludes from coverage certain bets or wagers that are “initiated and received or otherwise made **exclusively within a single State**” and done so in accordance with the laws of such state, even if the routing of those wire

transmissions was done in a manner that involved interstate commerce. *See* 31 U.S.C. § 5362(10)(B) (emphasis supplied).

65. The term “States” means any “State of the United States, the District of Columbia, or any commonwealth, territory or other possession of the United States.” *See* 31 U.S.C. § 5362(9).

66. The Tribe is not a “State” under the UIGEA.

67. The UIGEA also excludes from coverage certain bets or wagers that are “initiated and received or otherwise made **exclusively *within the Indian lands of a single Indian tribe*** (as such terms are defined under the Indian Gaming Regulatory Act); or between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act.” *See* 31 U.S.C. § 5362(10)(C) (emphasis supplied).

68. Neither the 2021 Compact nor the Implementing Law fits within either of the foregoing exceptions.

69. There is no exception for online bets or wagers placed in a State from outside Indian lands *to* any Indian lands located in a state where the bet or wager is otherwise unlawful. *See California v. Iipay Nation of Santa Ysabel* (“*Desert Rose*”), 898 F.3d 960, 967 (9th Cir. 2018) (holding that gaming that does not occur on Indian lands is not subject to jurisdiction under the IGRA and the IGRA cannot serve as a shield from the application of the UIGEA).

70. Because sports betting is illegal in Florida, a bet or wager that is placed from outside the Tribe's reservations using an electronic device that is connected via the Internet, cell signal or web application to a server on the Tribe's reservations, violates the UIGEA.

Florida Gambling Law

71. Except for a few statutorily approved exceptions, gambling in Florida is largely illegal. *See generally* Ch. 849, Fla. Stat.; The Florida Senate-Bill Analysis and Fiscal Impact Statement, SB 2A Implementation of the 2021 Gaming Compact, Prepared By: The Professional Staff of the Committee on Appropriations <https://www.flsenate.gov/Session/Bill/2021A/2A/Analyses/2021s00002A.pre.ap.PDF> (last visited July 1, 2021).

72. For example, Florida law prohibits keeping a gambling house, running a lottery,¹¹ or the manufacture, sale, lease, play, or possession of slot machines. *See* § 849.01, Fla. Stat.; § 849.09, Fla. Stat.; § 849.15, Fla. Stat.

73. However, the following gaming activities are authorized by law and regulated by the state:

(1) Pari-mutuel wagering at licensed horse tracks and jai alai frontons;¹²

¹¹ The state's voters approved a *state-run* lottery by constitutional amendment in 1986.

¹² § 849.086, Fla. Stat.

(2) Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;¹³ and

(3) Cardrooms at licensed pari-mutuel facilities.¹⁴

74. Under certain specific and limited conditions, the conduct of penny-ante games, bingo, charitable drawings, game promotions (sweepstakes), and bowling tournaments are also permitted. *See* § 849.085, Fla. Stat.; § 849.0937, Fla. Stat.; § 849.0935, Fla. Stat.; § 849.094, Fla. Stat.; § 849.141, Fla. Stat.

75. During the 2018 General Election, the Florida electorate overwhelmingly approved a constitutional amendment, now Article X, Section 30 of the Florida Constitution (“Amendment 3”) seeking to limit the expansion of gambling in the state.

76. Amendment 3 provides that a vote proposed by a citizen initiative to amend the State Constitution pursuant to Article XI, Section 3 of the State Constitution is the *exclusive* method of authorizing “casino gambling” in Florida:

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’

¹³ Art. X, § 23, Fla. Const.

¹⁴ § 849.086, Fla. Stat.

initiatives the exclusive method of authorizing casino gambling.

77. As used in Amendment 3, “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. 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.”¹⁵

78. No voter-initiated petition has amended the state Constitution to legalize sports betting in Florida.

79. Sports betting remains illegal in Florida. *See* § 849.14, Fla. Stat.

FACTUAL BACKGROUND

80. The Tribe is the only tribe in Florida that has, to date, negotiated a gaming compact with the State.

81. The Tribe has seven (7) existing facilities on six (6) reservations statewide: Seminole Indian Casino-Brighton, Seminole Indian Casino-Coconut Creek, Seminole Indian Casino-Immokalee, Seminole Indian Casino-Big Cypress, Seminole Hard Rock Hotel & Casino-Hollywood and Seminole Hard Rock Hotel and Casino-Tampa.

¹⁵ Having imported into the state constitution the definition of casino gambling from the provisions of the IGRA, Florida cannot create its own definition of casino gambling.

82. On November 14, 2007, the Tribe signed a compact with then Florida Governor Charlie Crist (the “2007 Compact”). The 2007 Compact expanded casino gaming, permitting the Tribe to offer within its reservations slots, and card games, such as blackjack and baccarat, that were otherwise prohibited by law. On January 7, 2008, upon publication of the DOI’s Secretary approval, the 2007 Compact went into effect.

83. The Florida Legislature did not authorize Governor Crist to negotiate the 2007 Compact before it was signed and has not ratified it since. Shortly after the 2007 Compact was signed, the Florida House of Representative and its Speaker filed a petition for a writ of quo warranto in the Supreme Court of Florida, disputing then-Governor Crist’s authority to unilaterally bind the state to the 2007 Compact.

84. In *Florida House v. Crist*, 990 So. 2d 1035 (Fla. 2008), the Florida Supreme Court held that then-Governor Crist lacked authority under the Florida Constitution when he executed a compact that changed the state’s express public policy as set forth in criminal statutes and legislation. Because the type of gaming the compact authorized was prohibited under state law, Governor Crist had exceeded his authority and could not bind the state to the 2007 Compact.

85. As the Supreme Court aptly noted, “[n]either the Governor nor anyone else in the executive branch has the authority to execute a contract that violates state criminal law.” *Crist*, 990 So. 2d at 1050.

86. In 2010, following the Florida Supreme Court’s decision in *Florida House v. Crist*, Florida enacted a statute addressing tribal-state gaming compacts and providing that the Governor is 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” to authorize “class III gaming, as defined in [the IGRA], **on Indian lands within the state.**” § 285.712(1), Fla. Stat. (emphasis supplied).

87. As recognized by the state Supreme Court and enshrined in statute, the Florida Legislature must ratify the compact for it to be effective. §§ 285.712(2) - (3), Fla. Stat. The Governor is thereafter directed to file the ratified, executed compact with the Florida Secretary of State, who is to then forward a copy of the executed compact and the ratifying act to the DOI for review and approval by the DOI Secretary, in accordance with 25 U.S.C. § 2710(d)(8). *See* §§ 285.712(3) - (4), Fla. Stat.

88. In accordance with this process, on April 7, 2010, then-Governor Crist and the Tribe executed a new compact (the “2010 Compact”), that was ratified by the Florida Legislature and submitted for approval by the DOI, which approval was announced in the Federal Register on July 6, 2010.

89. The 2010 Compact has a term of 20 years, ending July 31, 2030, unless the 2021 Compact is not otherwise invalidated by court action or change in federal law. *Ex. A, 2021 Compact*, Part II, Sec. F.

90. The 2010 Compact allows the Tribe to operate slot machines, banking or banked card games, including baccarat, chemin de fer and blackjack, and raffles and drawings in exchange for a revenue share payment in the amount of twelve million five hundred thousand dollars (\$12,500,000) per month through the first two years of the 2010 Compact, in addition to the revenue sharing cycle that begins after the initial two-year period.

91. The 2010 Compact contains an “exclusivity” clause providing that if any other entity was authorized to operate Class III gaming or any new forms of Class III gaming or other casino-style gaming that was not in operation as of February 1, 2010, the Tribe is no longer required to pay Florida its share of the revenue until such gaming was no longer operated.

92. In 2011, pari-mutuels began operating their own designated-player games at cardrooms. In 2014, state regulators adopted an official rule allowing designated-player games at cardrooms, thereby allowing the pari-mutuel cardrooms to conduct designated-player games in which players compete only against each other.

93. The Tribe took the position that these designated-player games violated the exclusivity provisions of the 2010 Compact and, thereby, relieved it of the obligation to continue paying revenue sharing to the state under the 2010 Compact.

94. In 2016, the Tribe sued the State in this Court. The Tribe asserted that Florida gambling regulators broke their exclusivity agreement by allowing pari-mutuels to offer “banked” card games. Under the 2010 Compact, if the “State permits any other person, organization or entity, except for any other federally recognized tribe” to conduct banked card games, the Tribe can continue to offer the banked card gaming without sharing any revenue with the state.

95. When the Tribe prevailed in the federal lawsuit, it stopped all revenue sharing to the State.¹⁶

96. In ensuing years, the State had tried and failed, until now, to negotiate a new compact with the Tribe and revive the revenue sharing.

The 2021 Compact and the Implementing Law

97. On April 23, 2021, Gov. DeSantis and the Tribe signed the 2021 Compact.

98. The 2021 Compact is intended to supersede the 2010 Compact.

¹⁶ The State sought to repeal previously adopted designated-player rules that caused the alleged 2010 Compact violation. However, the Florida First District Court of Appeal enjoined the repeal. *Dep’t of Bus. & Pro. Regul. v. Dania Enter. Ctr., LLC*, 229 So. 3d 1259 (Fla. 1st DCA 2017).

99. The 2021 Compact has a thirty (30) year term, terminating July 31, 2051. *Ex. A, 2021 Compact*, Part XVI, Sec. A.

100. Under the 2021 Compact, the Tribe is authorized to offer “Covered Games” on its reservations. *Ex. A, 2021 Compact*, Part IV, Sec. A.

101. Covered Games means: (1) slot machines; (2) raffles and drawings; (3) table games; (4) “Fantasy Sports Contest(s)”; (5) “Sports Betting”; and (6) any new game authorized by Florida law for any person for any purpose. *See Ex. A, 2021 Compact*, Part III, Sec. F.

102. The 2021 Compact is similar to the 2010 Compact in that it continues to allow the Tribe to conduct slot machines, raffles and drawings, and banked card games, including baccarat, chemin de fer, and blackjack.

103. However, the 2021 Compact allows the Tribe to conduct new forms of gaming, including craps, roulette, “Fantasy Sports Contests” and “Sports Betting.”

104. The 2021 Compact defines “Sports Betting” as:

wagering on any past or future professional sport or athletic event, competition or contest, any Olympic or international sports competition event, any collegiate sport or athletic event (but not including proposition bets on such collegiate sport or event), or any motor vehicle race, or any portion of any of the foregoing, including but not limited to the individual performance statistics of an athlete or other individual participant in any event or combination of events, or any other ‘in-play’ wagering with respect to any such sporting event, competition or contest, except ‘Sports Betting’ does not include Fantasy Sports Contests.

Ex. A, 2021 Compact, Part III, Sec. CC.

105. On May 17, 2021, the 2021 Compact was modified such that online off-reservation Sports Betting will not be effective before October 15, 2021. A true and correct copy of the addendum is attached hereto as *Exhibit D*.

106. As originally drafted, Part XVIII, Section A of the 2021 Compact also provided the State and the Tribe “agree to engage in good faith negotiations within thirty-six (36) months after the Effective Date of this Compact to consider 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.”

107. Part XVIII, Section A contemplated the Tribe would be authorized to offer not only Sports Betting, but also slot machines, craps, roulette, raffles and drawings, and any other “Covered Games” online or via mobile devices throughout the entire state of Florida in the near future.

108. During the Florida Legislature’s special session, there was a swift objection by a number of members regarding statewide online casino gambling under Part XVIII, Section A. The political backlash was so severe that the Tribe

released a letter stating that the State was not obligated to negotiate under Part XVIII, Section A and that the provision was not enforceable against the State.

109. On May 17, 2021, the 2021 Compact was amended to delete Part XVIII, Section A in its entirety. The 2021 Compact was also amended to change certain revenue sharing provisions relating to the counties where the reservations are located.

110. The 2021 Compact also includes provisions regarding “Fantasy Sports Contest,” which means a “fantasy or simulation sports game or contest offered by a contest operator or noncommercial contest operator in which a contest participant manages a fantasy or simulation sports team composed of athletes from a professional sports organization” where (1) the prizes and awards are established and known to participants in advance of the contest; (2) winning outcomes reflect the knowledge and skill of the participants; (3) no winning outcome is based on the score, point spread or any performance of any single actual team; and (4) there are no casino graphics displayed. *Ex A, 2021 Compact*, Part III, Sec L.

111. The Florida Legislature did not take up legislation to regulate and ban others from conducting Fantasy Sports Contests as provided under the 2021 Compact, which described them as “games of skill.” As a result, Fantasy Sports Contests continue to be unregulated in Florida, but the Tribe, while able to conduct Fantasy Sports Contests, will not obtain a monopoly over them (at least for now).

112. On May 19, 2021, the Florida Legislature ratified the 2021 Compact as amended, passing the Implementing Law. *See Ex. B, Implementing Law.*

113. The Implementing Law adopts the definitions in the 2021 Compact and amends § 285.710, Florida Statutes, which was previously enacted to ratify the 2010 Compact, to ratify and approve the “gaming compact between the Seminole Tribe of Florida and The State of Florida, executed by the Governor and the Tribe on April 23, 2021, as amended on May 17, 2021.”

114. On May 25, 2021, the Implementing Law was approved by Gov. DeSantis. The Implementing Law recognizes that the 2021 Compact only supersedes the 2010 Compact upon becoming effective, and if it is not approved by the DOI Secretary or invalidated by court action, then the 2010 Compact remains in effect. § 285.710(3)(b), Fla. Stat.

115. The Implementing Law provides in § 285.710(3), Fla. Stat., that it shall become effective “upon becoming law,” which was immediately upon the Governor’s approval on May 25, 2021. *See also Negron v. State*, 932 So. 2d 1250, 1251 (Fla. 3d DCA 2006).

116. On or about June 21, 2021, the State and the Tribe submitted the 2021 Compact to the DOI Secretary for approval. On August 5, 2021, the 45th day following submission, because DOI Secretary took no action to approve or disapprove, the 2021 Compact was deemed approved by operation of law to the

extent that it complies with the IGRA and existing Federal law. Notice was subsequently published in the Federal Register on August 11, 2021. Indian Gaming; Approval by Operation of Law of Tribal-State Class III Gaming Compact in the State of Florida, 86 Fed. Reg. 44037 (Aug. 11, 2021).

117. Under the IGRA a tribe is an “Indian tribe, band, nation, or otherwise organized group or community of Indians,” recognized because of their status as Indians. 25 U.S.C. § 2703(5). By failing to take any action to disapprove the 2021 Compact, the DOI Secretary unconstitutionally conferred benefits and privileges to engage in conduct (online sports betting throughout Florida) that is otherwise criminal for anyone that does not have the status of “Indian” or is not operating under the management control of the Tribe.

**The 2021 Compact and Implementing Law Contradict
Decades of Federal Legislation and Established Precedent
Defining Where a Bet or Wager is Placed**

118. The Implementing Law purports to legalize sports betting in Florida, but only for purposes of attempting to shoehorn the online Sports Betting provisions of the 2021 Compact into the requirements of the IGRA. § 285.710(13)(b), Fla. Stat. (“for the purpose of satisfying the requirement in 25 U.S.C. s. 2710(d)(1)(B) that the gaming activities authorized under an Indian gaming compact must be permitted in the state for any purpose by any person, organization, or entity,” sports betting is “authorized to be conducted by the Tribe pursuant to the [2021 C]ompact . . . when

such compact has been approved by the United States Secretary of the Interior, has not been invalidated by court action or change in federal law, and is effective”).

119. Under the 2021 Compact, Sports Betting 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 Ex. A, 2021 Compact*, Part III, Sec. CC.2.

120. Further, the 2021 Compact states:

[W]agers on Sports Betting and Fantasy Sports Contests 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.

Ex. A, 2021 Compact, Part IV, Sec. A (emphasis supplied).

121. The Implementing Law, copying the language of the 2021 Compact, similarly states, “[w]agers on sports betting, including wagers made by players physically located within the state using a mobile or other electronic device, 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.” § 285.710(13)(b)(7), Fla. Stat.

122. The 2021 Compact and Implementing Law expand sports betting beyond the Tribe’s Indian lands and permit sports betting all over the state – subject only to the Tribe’s monopoly.

123. Indeed, persons over the age of twenty-one (21), who are physically present in Florida, but not on the Tribe’s Indian lands, may participate in sports betting and “all such wagering **shall be deemed at all times to be exclusively conducted by the Tribe at its Facilities** where the sports book(s), including servers and devices to conduct the same, are located.” *See Ex. A, 2021 Compact*, Part III, Sec. CC.2 (emphasis supplied).

124. For example, under the 2021 Compact and the Implementing Law, an individual over the age of twenty-one (21), who places a wager on a sporting event using his mobile device from his couch in Okaloosa, Florida, is “deemed” to have placed the bet over 600 miles away at the Seminole Hard Rock Hotel & Casino-Hollywood, simply because the Tribe’s servers are located there.

125. The 2021 Compact further allows online off-reservation sports betting to occur at pari-mutuel facilities to be selected by the Tribe.¹⁷ *Ex. A, 2021 Compact*,

¹⁷ The 2021 Compact allows the Tribe to enter into marketing and revenue-sharing agreements with pari-mutuels who are referred to as “Qualified Pari-mutuel Permitholder(s).” The Qualified Pari-mutuel Permitholder is allowed to perform “wagering undertaken through the use of electronic devices that will utilize the digital sports book(s) provided by the Tribe, and that use a brand of the Qualified Pari-mutuel Permitholder(s).” *See Ex. A, 2021 Compact*, Part III, Sec. CC.3(a).

Part III, Sec. CC (d) (“all such wagering is conducted exclusively at one or more of the Tribal Facilities...even if Qualified Pari-mutuel Permitholders market the Tribe’s sports book by providing dedicated areas within *their facilities* wherein Patrons may access or use electronic devices to place wagers via the Internet, web applications, or otherwise to the Tribe’s sports book”). This arrangement has been described as a “hub and spoke”, whereby the Tribe is the hub of the betting operation, and the participating pari-mutuels are the spokes. *See* <https://floridapolitics.com/archives/430065-senate-passes-fantasy-sports-regulations-over-draftkings-and-fanduels-fears/> (Rep. Sam Garrison stating “There’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, triggers Amendment 3”) (last visited July 1, 2021). Upon information and belief, the pari-mutuel locations will not be permitted to accept cash wagers for sports betting, regardless of whether the pari-mutuels accept cash wagers for other forms of gaming.

126. In fact, several legislators and others have questioned the legality and/or constitutionality associated with providing a hub-and-spoke off-reservation online gambling model:

- (1) “It is not legal and permissible to have tribal gambling exceed the boundaries of tribal land.” - John Sowinski, president of No

Casinos, an organization that opposes gambling advocated for the adoption of Amendment 3. Forrest Saunders, *Florida Poised to Approve New Gaming Rules When Lawmakers Return Next Week*, WPTV (May 14, 2021) <https://www.wptv.com/news/state/florida-poised-to-approve-new-gaming-rules-when-lawmakers-return-next-week> (last visited July 1, 2021).

(2) “We’re going to allow the Seminole Tribe to offer sports betting where you can be sitting in your bathtub or sitting on your couch, thinking about a football game and you can make a wager, regardless of where you physically are, on your cellphone.” - Rep. Randy Fine, R-Palm Bay, the House Chair of the Select Committee on Gaming. William P., *House Legislators Approve Deal that Grants Seminole Tribe Expanded Gambling Rights in Florida—Includes Roulette, Craps, and Sports*, Florida Insider (May 19, 2021) <https://floridainsider.com/business/house-legislators-approve-deal-that-grants-seminole-tribe-expanded-gambling-rights-in-florida-includes-roulette-craps-and-sports/> (last visited July 1, 2021).

(3) “There’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. “It’s an open legal

question. Period.” “There is no black and white answer whether the hub and spoke model is going to be permitted or not. As we’ve said from Day One, and as the parties have contemplated, [whether the hub and spoke model is constitutional] is an open question.” - Rep. Sam Garrison. Ryan Nicol, *Dan Gerber, Philip Levine Argue Voters Should Have a Say in New Gaming Deal*, Florida Politics (May 17, 2021) <https://floridapolitics.com/archives/430075-gelber-levine-voters-gaming-deal/> (last visited July 1, 2021); Mary Ellen Klas & Ana Ceballos, *Florida Legalizes Sports Betting, Hard Rock to Add Roulette, Craps*, Tampa Bay Times (May 19, 2021) <https://www.tampabay.com/news/florida-politics/2021/05/19/florida-legalizes-sports-betting-but-hurdles-remain/> (last visited July 1, 2021).

(4) “You’re going to get into a legal question about where the servers are located and where does the bet take place? You’re going to have folks that argue that the bet actually takes place on tribal land, because that’s where the servers are located. But then the other side is going to say, well, you know, the offer takes place...where the bet was placed.” - Sen. Jason Brodeur. Jim Rosica, *High Stakes: Is Florida Ready for Smartphone-Based Online Sports Betting?*, Tallahassee Democrat (May 14, 2021)

<https://www.tallahassee.com/story/news/local/state/2021/05/14/florida-legal-sports-betting-seminole-tribe-compact-desantis-gambling-deal-special-session/4988655001/> (last visited July 1, 2021).

(5) “[T]he Department [of Interior] will have to look at whether the gaming – when a bet is placed outside Indian lands and the server is on Indian land, whether that satisfies the IGRA requirement that it’s gaming on Indian lands. And I think there is language in [the Desert Rose] opinion that indicate that this is going to be a difficult decision for the department . . .” George Skibine, former Deputy Assistant Secretary of Indian Affairs at Department of the Interior. House Select Committee on Gaming, May 18, 2021.

<https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=7311>

127. The Governor’s office itself also acknowledged that the legality of online betting was an open question: **“The main concern is whether online gaming is considered gambling ‘in tribal lands.’”** *See* 2021 Compact, Governor’s Office Materials: FAQ, (last visited July 1, 2021).

<https://www.myfloridahouse.gov/api/document/house?Leaf=HouseContent/Lists/LegislatorUResources/Attachments/66/2021.05.12%20Compact%20FAQs.pdf>

128. Even Jim Allen, Chairman of Hard Rock International (the Tribe’s casino operation) has acknowledged the possibility that the online sports betting

portions of the 2021 Compact will be struck down: “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.” <https://floridapolitics.com/archives/430058-house-panel-approves-gaming-compact-amid-open-legal-question/> (last visited July 1, 2021).

129. Plaintiffs recognize that the State could compact with the Tribe to permit in person sports betting by patrons physically *on its reservations*. However, the State cannot circumvent its own laws, federal law, or the Fourteenth Amendment in an attempt to legalize off-reservation sports betting for the Tribe only.

130. Notably, the 2021 Compact itself contemplates that the courts may in fact invalidate provisions of the compact, and specifically the off-reservation sports betting provisions, by including the following severability provisions:

Each provision, section, and subsection of this Compact shall stand separate and independent of every other provision, section, or subsection, and shall be interpreted to ensure compliance with IGRA. In the event that a federal district court in Florida or other court of competent jurisdiction shall find any provision, sections, and subsections of this Compact to be invalid, the remaining provisions, sections and subsections of this Compact shall remain in full force and effect.

If 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...

Ex. A, 2021 Compact, Part XIV, Sec. A (emphasis supplied).

131. While the 2021 Compact asserts that operation of online off-reservation sports betting will be in “strict compliance” with the provisions of the federal Wire Act, 18 U.S.C. § 1084, and all other applicable federal laws with respect to the conduct of sports betting, as well as the IGRA, that is just not the case. *See Ex. A, 2021 Compact*, Part VII, Sec. A.1(c) and Part XIV, Sec. D.

The 2021 Compact and the Implementing Law, Granting the Tribe Exclusive Operation of Online Sports Betting Throughout the Entire State of Florida, Injures Pari-mutuel Facilities and Unconstitutionally Denies Equal Protection of the Laws

132. Plaintiffs have for several years competed against the Tribe for customers for slot machines and customers for using card rooms offering banked card games. The 2021 Compact will significantly harm Plaintiffs’ businesses by introducing online gaming into Florida and granting the Tribe the exclusive right to engage in it. As a result, anyone physically located in Florida, including Plaintiffs’ customers, will be able to engage in sports betting online with the Tribe from their home or from any Florida location where they have access to an internet connection. This approval will therefore have a significant and potentially devastating competitive impact on Plaintiffs and the brick-and-mortar businesses who depend

for their profits on individuals coming into their businesses to engage in gaming activities.

133. Pari-mutuels such as Plaintiffs depend for their revenue on in-person commerce. The pari-mutuel business model allows pari-mutuels to profit by offering pari-mutuel betting pools to the public and collecting a percentage of the money collected from bettors. Pari-mutuel betting is a gambling framework, utilized primarily in horse racing, jai alai, and any authorized event, where the competitors finish in a ranked order, from first to last. For example, bettors will bet on horses to “Win,” “Place” or “Show”—the first three horses across the finish line. The payout is determined once the betting event (the race or round) commences, which is when the betting pool is closed. The sportsbook or racetrack where the wager is placed collects a percentage from the pool, called the vigor, in exchange for offering the wager. The higher the number of patrons placing wagers in the betting pool, the greater the vigor and; thus, the greater the net revenue to the pari-mutuel. In Miami-Dade County, pari-mutuels like the Magic City Casino can also offer Las Vegas-style slot machines. And all pari-mutuels in Florida can obtain a card room permit. Patrons must visit the pari-mutuels in order to play slots or poker.

134. The 2021 Compact and Implementing Law prohibit pari-mutuels and others from offering sports betting unless they enter into an agreement with the Tribe.

135. While the 2021 Compact provides that “Within three (3) months of the effective date, the Tribe shall negotiate in good faith with any and all willing Qualified Pari-mutuel Permitholders to enter into written contracts as provided in [the] Section,” in reality, the Tribe has complete discretion with respect to these contracts. Aside from certain specific conditions, the Tribe exclusively determines the terms and conditions of the contracts. The only consequence of not entering into at least three (3) contracts with Qualified Pari-Mutuel Permitholders under the 2021 Compact is that the Tribe will pay the state an additional 2% of its “Net Win” from Sports Betting. Once it enters into contracts with the first three pari-mutuels, again, it is up to the Tribe to negotiate in good faith with other willing pari-mutuels. *See Ex. A, 2021 Compact*, Part III, Sec. CC.3-4.

136. Under the 2021 Compact, bettors can either place sports bets directly with the Tribe from their phones, computers and other mobile devices, or they can place such wagers either in-person or online via a licensed pari-mutuel authorized by the Tribe to provide marketing services on its behalf. *See Ex. A, 2021 Compact*, Part III, Sec CC.2-3.

137. As State Representative Sam Garrison explained, the 2021 Compact creates a “hub-and-spoke model.”¹⁸ The Tribe is at the center of the hub and, at its

¹⁸ <https://www.bradenton.com/news/politics-government/state-politics/article251528698.html> (last visited July 1, 2021).

option, one or more pari-mutuels not located on Indian lands are at the spokes of the sports betting wheel. The Tribe has the exclusive power to decide whether it will enter into such arrangements.

138. Indeed, the Tribe has already begun soliciting potential spokes for its off-reservation online sports betting. On June 24, 2021, the Tribe, through Jim Allen, Chairman of Hard Rock International and CEO of Seminole Gaming, reached out to Magic City “to initiate discussions...regarding the proposed sports book offering in the state” pursuant to the 2021 Compact (the “Allen Letter”). A true and correct copy of the Allen Letter is attached hereto as *Exhibit E*. The purpose of the Tribe’s letter is to have Southwest Pari-mutuels, and presumably other pari-mutuel facilities, respond to the Tribe’s request for information regarding their facilities and “proposed framework for branding and marketing the sportsbook.” Following receipt of the pari-mutuels responses to the request for information, the Tribe will schedule meetings with interested pari-mutuels to discuss a proposed marketing agreement and sports betting offering. *Ex. E, Allen Letter*.

139. As the 2021 Compact and the Allen Letter make clear, the only way a pari-mutuel can participate in online off-reservation sports betting is to be one of the spokes on terms and conditions dictated exclusively by the Tribe. In addition to placing bets at kiosks at pari-mutuel facilities throughout Florida, the bettors can also place bets from the comfort of their living room or mobile device. The role of

the pari-mutuel with respect to online betting is limited to solely providing the “skin” for the mobile or web gaming application.¹⁹ As a result of these provisions, pari-mutuels that are unable to, or choose not to, enter into a marketing agreement with the Tribe are completely and unconstitutionally shut out of any opportunity to offer sports betting in the state. Accordingly, the pari-mutuels will not only lose the walk-in traffic on which their business models are based, which will ultimately affect their revenue from slot machines, card rooms, and pari-mutuel wagering, as well as the ancillary entertainment and dining options offered to patrons of their facilities--but they are also being denied the opportunity to compete on a level playing field with the Tribe.

140. The Tribe also has the additional advantage of being able to offer on-site cash wagering. Pari-mutuels permit cash wagering in their gaming, but the Tribe has either not been willing or not been able to identify any way that the pari-mutuels would be able to permit on-site cash wagers for sports betting. The ability to conduct cash wagering is an important feature to many of Southwest Pari-mutuels’ customers

¹⁹ Under the 2021 Compact, the Qualified Pari-mutuel Permitholder(s) will be contractually responsible for performing “marketing or similar services for the Tribe’s sports book(s) related to, for and including such wagering undertaken through the use of electronic devices,” which includes the “development or procurement of customizable web or mobile assets for marketing services.” *Ex. A, 2021 Compact*, Part III, Sec. CC.3. In essence, the pari-mutuels procure, develop, and advertise the web application that patrons will use to place sports betting wagers with the Tribe.

who do not wish to be tracked or to release personal information. Pari-mutuel customers that prefer cash wagers for their gaming thus will have no incentive to use the pari-mutuel's facilities, and those who prefer to do so via credit card will have no need to visit the facility to do so. The inability to offer cash wagering thus would further diminish the advantages of offering on-site sports betting beyond preventing other pari-mutuel facilities from gaining a competitive advantage. At the same time, the Tribe will be able to offer both on-site cash sports betting and the ability to engage in sports betting online from anywhere in the state.

141. While under the IGRA, a state legitimately may grant "exclusivity" to an Indian tribe in exchange for a share to the Tribe's gaming revenue, the IGRA does not authorize any compact that grants tribes the right to conduct gambling outside tribal lands, much less a monopoly on gaming outside tribal lands. Moreover, this expansion to a state-wide monopoly violates the Equal Protection Clause of the Fourteenth Amendment by according disparate treatment of gaming operations on the basis of race, tribal affiliation, and national origin.

142. The 2021 Compact's and Implementing Law's unauthorized and unconstitutional purported legalization of online, off-reservation sports betting, will have an adverse effect on Southwest Pari-mutuels' revenues, due to the expected cannibalization of in-person betting at pari-mutuel facilities once the 2021 Compact

is implemented and online sports betting becomes available through the Tribe's exclusive arrangements.

143. This is not ameliorated by the pre-ordained arrangements in the 2021 Compact that require the Tribe receive 40% of the Net Win of all sports bets placed through the hub-and-spoke arrangement with willing pari-mutuels which the Tribe permits to participate in its monopoly.

144. By enabling the Tribe to offer sports betting via computer or phone from a person's home or any other location in Florida, the Tribe will have a significant competitive advantage and cost Plaintiffs significant amounts of revenue. "Home casinos," as contemplated by the 2021 Compact, will significantly diminish revenue at Southwest Pari-mutuels' brick and mortar locations because individuals in Florida can now gamble from the comfort of their homes, which will significantly, it not completely, impair Southwest Pari-mutuels' ability to compete with the Tribe. Southwest Pari-mutuels also will incur increased costs in advertising and related expenses in an effort to maintain some of their customer bases.

145. The Florida pari-mutuel industry, at large, will also suffer irreparable injury due to a substantial decline in revenues, as the Tribe will be permitted to operate online off-reservation sports betting without having to require patrons be physically present on Indian lands.

146. These harmful effects will be even higher because of the COVID-19 global pandemic that has vastly increased the comparative attractiveness of goods and services that can be obtained through a computer rather than in person.

147. Southwest Pari-mutuels also will be harmed by related provisions of the 2021 Compact that purport to authorize pari-mutuels to offer online sports betting placed with the Tribe via on-site kiosks located at the pari-mutuel facilities.²⁰

148. These contracts will be uneconomical, but Southwest Pari-mutuels will have no choice but to enter them to avoid losing further business to other pari-mutuels in addition to the business that they already will lose to the Tribe's online sports betting operation. Under these contracts, the Tribe may take 40% of the net win on bets placed at kiosks. Further, it may take an as-yet undetermined amount for the Tribe's expenses. By contrast, Plaintiffs will not be able to deduct their expenses before sharing revenue with the Tribe. The "net win" solely refers to the amount won from the bet, not the profit after expenses.

149. Southwest Pari-mutuels, as direct competitors of the Tribe, will lose millions in revenue if the *ultra vires* and unconstitutional online, off-reservation

²⁰ The Compact also permits pari-mutuels to procure, develop, and advertise the web application that patrons will use to place sports betting wagers with the Tribe. **Ex. A, 2021 Compact**, Part III, Sec. CC.3. Unlike the on-site kiosks—which as discussed in the text, are uneconomical but will be necessary to implement to prevent loss of business to other pari-mutuels—the option of developing mobile applications for the Tribe is not a realistic one because the costs to implement it well outweigh both any additional revenue it would generate or lost revenue it would prevent.

sports betting of the 2021 Compact and the Implementing Law are not enjoined from implementation.

150. For this reason, the off-reservation sports betting provisions of the 2021 Gaming Compact and the Implementing Law should be declared unlawful and unconstitutional and the Court should enjoin Gov. DeSantis from implementing the 2021 Compact as written, and the DBPR Secretary from implementing the online provisions of the 2021 Compact as directed in the Implementing Law.

151. All conditions precedent to the bringing of this action, if any, have occurred, have been waived or are excused.

152. Southwest Pari-mutuels have retained the undersigned counsel and have agreed to pay the firm a reasonable fee for its services. Southwest Pari-mutuels have incurred costs in bringing this action.

CLAIMS FOR RELIEF

COUNT I

DECLARATORY AND INJUNCTIVE RELIEF (28 U.S.C. §§ 2201, 2202)

Ultra Vires Under the Indian Gaming Regulatory Act

153. Southwest Pari-mutuels re-allege and incorporate the allegations in paragraphs 1 through 152 as if fully set forth herein.

154. This is an action brought pursuant to 28 U.S.C. §§ 2201 and 2202 and under this Court's inherent equitable powers for declaratory and injunctive relief.

155. This Court has the inherent authority to hear suits in equity where state laws violate or are preempted by federal law.

156. As economic competitors of the Tribe, Southwest Pari-mutuels have standing to bring this claim because there is a controversy over whether or not the IGRA authorizes online Class III gaming, including sports betting, by persons who are not physically present on Indian lands. Implementation of the off-reservation and online sports betting provisions of the 2021 Compact pursuant to the Implementing Law will place Southwest Pari-mutuels at a competitive disadvantage with the Tribe, and therefore, a finding by this Court that such provisions are *ultra vires* will operate to the economic advantage of Southwest Pari-mutuels.

157. Congress designed the IGRA “to facilitate on-reservation gaming.” *See Connecticut v. U.S. DOI*, 344 F. Supp. 3d 279, 302 (D.D.C. 2018). The IGRA does not authorize tribal gaming outside of Indian lands. *See* 25 U.S.C. § 2710(d)(1); *see also Ex. C, NIGC Letters*; Amicus Brief of the United States, 1999 WL 33622333 at 4-5; Brief for Amici Curiae in Support of AT&T Corporation and Affirmance, 1999 WL 33622330 at 4-5 (9th Cir. June 22, 1999, Case No. 99-35088) (filed by the Florida and Minnesota attorneys general).

158. The State of Florida itself has taken the position that off-reservation betting is unauthorized under the IGRA because a bet is placed *both* where the bettor is physically located and where the bet is accepted:

The “on Indian lands” requirement of IGRA clearly mandates that any Indian gaming activity, including a consumer’s play or participation in the game, physically take place on tribal land. 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 [National Indian Lottery] 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.**

Brief of *Amici Curiae* in Support of AT&T Corporation and Affirmance, *Coeur d’Alene Tribe v. AT&T Corporation*, 1999 WL 33622330 at 4 (9th Cir. June 20, 1999, Case No. 99-35088) (emphasis supplied).

159. “Indian lands” means Indian reservations and lands held in trust by the United States for the benefit of any federally-recognized Indian tribe. *See* 25 U.S.C. § 2703(4).

160. The 2021 Compact and the Implementing Law provide that online, off-reservation sports betting “shall be deemed at all times to be exclusively conducted

by the Tribe at its Facilities where the sports book(s), including servers and devices to conduct the same, are located, including any such wagering undertaken by a Patron **physically located in the State but not on Indian Lands** using an electronic device connected via the internet, web application or otherwise, including, without limitation, any Patron connected via the 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 *Ex. A, 2021 Compact*, Part III, Sec. CC.2 (emphasis supplied).

161. The IGRA does not authorize a tribe to offer online gaming to patrons located off Indian lands in jurisdictions where gaming is otherwise illegal despite the servers’ accepting the bets being located on Indian lands. *Desert Rose*, 898 F.3d at 968 (holding the tribe could not operate an online bingo site despite the server being on Indian lands as “the patrons [were] engaging in ‘gaming activity’ by initiating a bet or wager in California and off Indian lands . . . [thus,] some of ‘gaming activity’ associated with [Dessert Rose Bingo] d[id] not occur on Indian lands”).

162. A wager placed off Indian lands cannot be “deemed” to be placed on Indian lands simply because of the location of the server. *Id.* at 968 (“IGRA protects gaming activity conducted on Indian lands. However, the patrons’ act of placing a

bet or wager on a game of DRB while located in California constitutes a gaming activity that is not located on Indian lands.”).

163. Based on the plain language of the IGRA, the 2021 Compact and the Implementing Law do not comply with the IGRA’s “Indian lands” requirement, and contradict the meaning of “Indian lands” under the IGRA.

164. Because the portions of the 2021 Compact and the Implementing Law that purport to authorize any off-reservation sports betting fail to comply with the IGRA’s “on Indian lands” requirement, these portions of the 2021 Compact and the Implementing Law are unauthorized under the IGRA and are thus *ultra vires*. 25 U.S.C. §§ 2703(4); 2710(d).

165. Southwest Pari-mutuels have raised doubts as to the validity of the off-reservation and online sports betting provisions of the 2021 Compact and the Implementing Law as well as the authority of Gov. DeSantis to execute the 2021 Compact, the legislature’s authority to ratify the compact as drafted and the DBPR Secretary’s authority to implement these provisions. Plaintiffs are entitled to have such doubt removed.

166. Effective October 1, 2021, the Implementing Law will make it a third-degree felony (currently, it is a second degree misdemeanor) to engage in any form of sports betting. Senate Bill 8-A, amending § 849.14, Fla. Stat. However, select

pari-mutuels chosen by the Tribe will be able to engage in this otherwise illegal activity only if they contract with the Tribe for the privilege.

167. Under the 2021 Compact and Implementing Law, selected pari-mutuels will serve as the spokes in the “hub-and-spoke model” of off-reservation sports betting, where the Tribe serves as the hub.

168. In addition to placing bets at designated pari-mutuel facilities throughout Florida, bettors can also place bets from the comfort of their living room on a computer or even from a car via a mobile device. With respect to the online sports betting, the expected role of the pari-mutuels is to provide the “skin” for the mobile or web gaming application.

169. Under the Implementing Law, pari-mutuels that are unable to or choose not to enter into a marketing agreement with the Tribe are completely shut out of any opportunity to offer sports betting and thus will be unable to compensate for the loss of revenue from patrons diverted by online sports betting.

170. Specifically, Plaintiffs Southwest Pari-mutuels request that this Court declare the off-reservation sports betting provisions in the 2021 Compact and the Implementing Law are unauthorized under the IGRA because a wager placed off Indian lands cannot be deemed to be placed on Indian lands, notwithstanding the fanciful and contradictory definition purported to be created under the 2021 Compact and Implementing Law.

171. There is a present and ascertainable state of facts of a present case or controversy between the parties within the jurisdiction of this Court that justifies the declaratory relief sought by Southwest Pari-mutuels.

172. There is a bona fide, actual, present, and practical need for this declaration. The harm to Southwest Pari-mutuels as a direct result of the actions and threatened actions of Defendants is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment and prospective injunctive relief.

173. Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of the declaratory relief sought by Southwest Pari-mutuels.

174. The declaration sought is not merely the giving of legal advice to answer questions propounded from curiosity.

WHEREFORE, Plaintiffs West Flagler Associates, Ltd., and Bonita-Fort Myers Corporation respectfully request that this Court, pursuant to 28 U.S.C. §§ 2201 and 2202 and its inherent equitable powers, (1) enter a declaratory judgment declaring that the off-reservation sports betting provisions of the 2021 Compact are unauthorized under the IGRA and are thus *ultra vires*, because they purport to authorize Class III gaming outside of Indian lands; (2) enter a declaratory judgment declaring that the off-reservation sports betting provisions of the Implementing Law are unauthorized under the IGRA and are thus *ultra vires*, because they purport to authorize Class III gaming outside of Indian lands; (3) enjoin Defendant Governor

Ronald Dion DeSantis from implementing the 2021 Compact in its current form as mandated by the Implementing Law; (4) enjoin Defendant Secretary Julie Imanuel Brown from implementing the provisions of Section 285.710, Florida Statutes, with respect to the off-reservation sports betting provisions of the 2021 Compact; and (5) award costs to Plaintiffs together with such other and further relief as the Court deems just and equitable.

COUNT II
DECLARATORY AND INJUNCTIVE RELIEF (28 U.S.C. §§ 2201, 2202)
Ultra Vires Under the Wire Act

175. Southwest Pari-mutuels re-allege and incorporate the allegations in paragraphs 1 through 152 as if fully set forth herein.

176. This is an action brought pursuant to 28 U.S.C. §§ 2201 and 2202 and under this Court's inherent equitable powers for declaratory and injunctive relief.

177. This Court has the inherent authority to hear actions in equity where state laws violate or are preempted by federal law.

178. As economic competitors of the Tribe, Southwest Pari-mutuels have standing to bring this claim because there is a controversy over whether or not the Wire Act prohibits online sports betting by persons who are not physically present on Indian lands when the bet is placed, but are in Florida, where sports betting is illegal. Implementation of the online Sports Betting provisions of the 2021 Compact pursuant to the Implementing Law will place Southwest Florida Pari-mutuels at a

competitive disadvantage to the Tribe, and therefore, a finding by this Court that such provisions are *ultra vires* will operate to the economic advantage of Southwest Pari-mutuels.

179. The Wire Act makes it illegal for:

Whoever being engaged in the business of betting or wagering knowingly **uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the bets or wagers on any sporting event or contest**, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers...

See 18 § U.S.C. 1084(a) (emphasis supplied).

180. The Tribe is engaged in the business of betting or wagering.

181. The 2021 Compact authorizes the Tribe to conduct off-reservation sports betting through the use of an “electronic device connected via the internet, web application or otherwise, including, without limitation, any Patron connected via the 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.**” *Ex. A, 2021 Compact*, Part III, Sec. CC.2 (emphasis supplied). Unless enjoined, the State of Florida has purported to authorize the Tribe and pari-mutuels that contract with the Tribe to knowingly use a “wire communication facility” in

interstate commerce for bets and wagers on sporting events or transmission of information with respect thereto.

182. Usage of the Internet, mobile devices, or web applications for placing sports bets from outside the Tribe’s reservations uses “a wire communication facility in interstate commerce,” notwithstanding the fact that the bettor is located in Florida, where sports betting remains illegal, and the servers are on the Tribe’s reservations.

183. Internet and cellular communications initiating or paying bets placed from anywhere in Florida outside the Tribe’s reservations use the facilities of interstate commerce in order to communicate with the Tribe’s on-reservation servers.

184. The fact that the bettor is in the same state as the server does not render the “wire communication facility” an *intrastate* communication when the server is located on Indian lands but the bettor is not.

185. The Tribe is not a “State” under the Wire Act. 18 U.S.C. §1084(e) (“the term ‘State’ means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States”).

186. The Tribe is not a “foreign country” under the Wire Act.

187. The Tribe is a “federally-recognized tribal government possessing sovereign powers and rights of self-government.” *Ex. A, 2021 Compact*, Part II,

Sec. A; *see also* <https://www.semtribe.com/stof/history/introduction> (“We [the Tribe] are a sovereign government with our own schools, police, and courts.”).

188. The 2021 Compact and the Implementing Law, by authorizing online, off-reservation sports betting, are permitting Internet and mobile gambling that is unlawful under the Wire Act because sports gambling is unlawful under Florida law.

189. Thus, the 2021 Compact and the Implementing Law impermissibly conflict with and thereby violate the Wire Act, 18 U.S.C. § 1084(a), rendering the execution of the 2021 Compact and adoption of the Implementing Law *ultra vires* with respect to the online sports betting provisions.

190. The 2021 Compact contradicts decades of federal law and settled precedent by stating that it is compliant with the Wire Act. *See Ex. A, 2021 Compact*, Part VII, A.1(c).

191. Southwest Pari-mutuels have raised doubts as to the validity of the sports betting portions of the 2021 Compact and the Implementing Law and the authority of Gov. DeSantis to execute the 2021 Compact under these circumstances and of the State to implement these provisions.

192. Pari-mutuels are the spokes in the “hub-and-spoke model” of online, off-reservation sports betting where the Tribe is at the hub. In addition to placing bets at kiosks at pari-mutuel facilities throughout Florida, bettors can also place bets from the comfort of their living room, from their computer or mobile device, or from

anywhere with a mobile phone. In such instances, the only role of the pari-mutuels who contract with the Tribe is to provide the “skin” for the mobile or web gaming application.

193. As a result of these provisions, pari-mutuels that are unable to, or choose not to, enter into a marketing agreement with the Tribe as mandated by the state will be unable to compensate for the loss of revenue from patrons diverted by online sports betting.

194. Plaintiffs are entitled to have doubts about the *ultra vires* nature of the online sports betting provisions of the 2021 Compact and Implementing Law removed.

195. Specifically, Southwest Pari-mutuels request that this Court declare that the online, off-reservation sports betting provisions in the 2021 Compact and the Implementing Law violate the Wire Act because they permit an individual to place an off-reservation sports bet or wager by a means which involve wire communications in interstate commerce through the Internet, mobile devices or otherwise, where such bet is otherwise unlawful under the laws of the State of Florida.

196. There is a present and ascertainable state of facts of a present case or controversy between the parties within the jurisdiction of this Court that justifies the declaratory relief sought by Southwest Pari-mutuels. The harm to Southwest Pari-

mutuels as a direct result of the actions and threatened actions of Defendants is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment and prospective injunctive relief.

197. There is a bona fide, actual, present, and practical need for this declaration.

198. Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of the declaratory relief sought by Southwest Pari-mutuels.

199. The declaration sought is not merely the giving of legal advice to answer questions propounded from curiosity.

WHEREFORE, Plaintiffs West Flagler Associates, Ltd., and Bonita-Fort Myers Corporation respectfully request that this Court, pursuant to 28 U.S.C. §§ 2201 and 2202 and its inherent equitable powers, (1) enter a declaratory judgment declaring the online, off-reservation sports betting provisions of the 2021 Compact violate the Wire Act and are thus *ultra vires*, because they permit an individual in Florida located outside the Tribe's reservation to place a sports bet or wager by a means of a wire communication facility for transmission in interstate commerce; (2) enter a declaratory judgment declaring the online, off-reservation sports betting provisions of the Implementing Law violate the Wire Act and are thus *ultra vires*, because they permit an individual in Florida located outside the Tribe's reservation to place a sports bet or wager by a means of a wire

communication facility for transmission in interstate commerce; (3) enjoin Governor Ronald Dion DeSantis from implementing the 2021 Compact in its current form as mandated by the Implementing Law; (4) enjoin the Defendant Secretary Julie Imanuel Brown from implementing the provisions of Section 285.710, Florida Statutes, with respect to online sports betting or use of any communications facility for transmission in interstate commerce from anywhere outside the Tribe's reservations; and (5) award costs to Plaintiffs together with such other and further relief as the Court deems just and equitable.

COUNT III
DECLARATORY AND INJUNCTIVE RELIEF (28 U.S.C. §§ 2201, 2202)
Ultra Vires under the Unlawful Internet Gambling Enforcement Act

200. Southwest Pari-mutuels re-allege and incorporate the allegations in paragraphs 1 through 152 as if fully set forth herein.

201. This is an action brought pursuant to 28 U.S.C. §§ 2201 and 2202 for declaratory and injunctive relief under this Court's inherent equitable powers.

202. This Court has the inherent authority to hear suits in equity where state laws violate or are preempted by federal law.

203. As economic competitors of the Tribe, Southwest Pari-mutuels have standing to bring this claim because there is a controversy over whether or not the UIGEA prohibits financial transactions associated with the placing or receiving of a sports bet through the Internet where online gambling is illegal in Florida, where the

bet is placed. Implementation of the online sports betting provisions of the 2021 Compact pursuant to the Implementing Law will place Southwest Florida Pari-mutuels at a competitive disadvantage to the Tribe, and therefore, a finding by this Court that such provisions are *ultra vires* will operate to the economic advantage of Southwest Pari-mutuels.

204. Unlawful Internet gambling occurs when an individual places or receives a “bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.” 31 U.S.C. § 5362(10).

205. The 2021 Compact and the Implementing Law provide that online, off-reservation sports betting “shall be deemed at all times to be exclusively conducted by the Tribe at its Facilities where the sports book(s), including servers and devices to conduct the same, are located, including any such wagering undertaken by a Patron **physically located in the State but not on Indian Lands** using an electronic device connected via the internet, web application or otherwise, including, without limitation, any Patron connected via the 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.**” *Ex. A, 2021 Compact*, Part III, Sec. CC.2 (emphasis supplied); § 285.710(13)(b)(7), Fla. Stat.

206. The 2021 Compact further provides in part: “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.” *Ex. A, 2021 Compact*, Part IV, Sec. A (emphasis supplied).

207. The UIGEA makes illegal certain financial transactions associated with gaming on Indian lands facilitated by the Internet when the wager is being placed outside the reservation in a state whether the wager is otherwise illegal. *Desert Rose*, 898 F.3d at 968.

208. In *Desert Rose*, the Ninth Circuit Court of Appeals found that “a patrons’ act of placing a bet or wager over the internet while located in a jurisdiction where those bets or wagers is illegal” makes a tribe’s decision to accept financial payments associated with those bets or wagers a violation of the UIGEA despite the fact that the tribe’s servers were located on Indian lands. 898 F.3d at 968-69. A wager placed off Indian lands cannot be considered made on Indian lands simply because of the location of the server. *Id.* at 968.

209. The provisions of the 2021 Compact and Implementing Law purporting to redefine where the bet is placed, by deeming the bet “to be exclusively conducted by the Tribe at its Facilities where the sports book(s), including servers and devices

to conduct the same, are located” contradict decades of well-established law that holds a bet or wager is made *both* at the location where the bettor is located when the bet is made and where the bet is accepted. *See* Amicus Brief of the United States, 1999 WL 33622333 at *4 (“Gaming activity necessarily includes the player’s placing of the wager or other participation in the game . . . persons physically present in any of the *amici* states, not on the Coeur d’Alene reservation does not change the uncontested fact that person making the wager is located outside of Idaho, and clearly not on the Coeur d’Alene reservation.”); Brief of *Amici Curiae*, 1999 WL 33622330 at 4 (“[t]he 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”); *see also Ex. C, NIGC Letters*.

210. It is undisputed the 2021 Compact and Implementing Law are authorizing bets to be made from outside Indian lands in Florida, notwithstanding the fact that sports betting is and will remain illegal otherwise unless the State’s voters approve an amendment to the state constitution authorizing sports betting.

211. Online gambling, as well as sports betting, is illegal in Florida and will remain illegal unless the State’s voters approve an amendment to the state constitution authorizing online gambling.

212. Only gambling and wagering expressly authorized by law is legal in the State of Florida. *See* § 849.01, Fla. Stat., § 849.08, Fla. Stat., § 849.26, Fla. Stat.

213. Because Florida has not legalized sports betting or online gambling generally throughout the state, it cannot authorize a person to place a sports bet remotely with the Tribe under the auspices of the 2021 Compact, because a bet or wager has to be legal both where the bet is initiated and where it is received.

214. The 2021 Compact and the Implementing Law violate the UIGEA in at least three ways:

(a) A “[p]atron physically located in the State but not on Indian Lands using an electronic device connected via the internet, web application or otherwise” would be initiating a bet where such bet is unlawful under Florida law;

(b) The 2021 Compact and Implementing Law purport to authorize the Tribe and all those in the financial chain of the transaction to knowingly accept financial payments from unlawful online gambling by accepting bets from individuals in Florida who are not physically present on Indian lands when the bet is placed; and

(c) A wager made by a patron outside the Tribe’s reservation via the Internet to a server located on the Tribe’s reservation is not “made exclusively

within the Indian lands of a single Indian tribe” or “made exclusively within a single State.”

215. Because online sports betting is illegal under the Wire Act and Florida gambling law, it is also unlawful under the UIGEA.

216. According to their express terms, the online sports betting provisions of the 2021 Compact and the Implementing Law authorize unlawful online gambling, violate the UIGEA and are thus *ultra vires*. See 31 U.S.C. §§ 5363; 5362.

217. Southwest Pari-mutuels have raised doubts as to the legality of these provisions of the 2021 Compact and the Implementing Law. Pari-mutuels are the spokes in the “hub-and-spoke model” of online off-reservation sports betting where the Tribe is at the hub. In addition to placing bets at kiosks at pari-mutuel facilities throughout Florida that communicate online to the Tribe’s servers, bettors can also place bets via the Internet from a computer in the comfort of their living room or from their mobile device anywhere in the state without ever entering the Tribe’s reservation. The role of the pari-mutuels with respect to online sports betting is to provide the “skin” for the mobile or web gaming application.

218. As a result of these provisions, pari-mutuels that are unable to or choose not to enter into a state-mandated marketing agreement with the Tribe will be unable to compensate for the loss of revenue from in person patrons diverted by online sports betting.

219. Plaintiffs are entitled to have doubts about the *ultra vires* nature of the sports betting provisions of the 2021 Compact and Implementing Law removed.

220. Specifically, Southwest Pari-mutuels request this Court declare that the online, off-reservation sports betting provisions in the 2021 Compact and the Implementing law violate the UIGEA and are thus *ultra vires* because they permit an individual to place a sports bet or wager by a means which involves the use of the Internet where such bet is otherwise unlawful under the laws of the State of Florida.

221. There is a present and ascertainable state of facts of a present case or controversy between the parties within the jurisdiction of this Court that justifies the declaratory relief sought by Southwest Pari-mutuels. The harm to Southwest Pari-mutuels as a direct result of the actions and threatened actions of Defendants is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment and prospective injunctive relief.

222. There is a bona fide, actual, present, and practical need for this declaration.

223. Defendants have an actual, present, adverse, and antagonistic interest in the subject matter of the declaratory relief sought by Southwest Pari-mutuels.

224. The declaration sought is not merely the giving of legal advice to answer questions propounded from curiosity.

WHEREFORE, Plaintiffs West Flagler Associates, Ltd., and Bonita-Fort Myers Corporation respectfully request this Court, pursuant to 28 U.S.C. §§ 2201 and 2202 and its inherent equitable powers, (1) enter a declaratory judgment, declaring that the online off-reservation sports betting provisions of the 2021 Compact violate the UIGEA and are thus *ultra vires*, because any online sports betting wager and related financial transactions initiated in Florida and off Indian lands are unlawful online gambling and is prohibited by the UIGEA; (2) enter a declaratory judgment, declaring that the online off-reservation sports betting provisions of the Implementing Law violate the UIGEA and are thus *ultra vires*, because any online sports betting wager and related financial transactions initiated in Florida and off Indian lands are unlawful online gambling and is prohibited by the UIGEA; (3) enjoin Defendant Governor Ronald Dion DeSantis from implementing the 2021 Compact in its current form as mandated by the Implementing Law; (4) enjoin the Defendant Secretary Julie Imanuel Brown from implementing the provisions of Section 285.710, Florida Statutes, with respect to online sports betting from anywhere outside the Tribe's reservations; and (5) award costs to Plaintiffs together with such other and further relief as this Court deems just and equitable.

COUNT IV

DECLARATORY AND INJUNCTIVE RELIEF (42 U.S.C. § 1983)
Unconstitutional under the Equal Protection Clause of the Fourteenth
Amendment of the United States Constitution

225. Southwest Pari-mutuels re-allege and incorporate the allegations in paragraphs 1 through 152 as if fully set forth herein.

226. Southwest Pari-mutuels state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief, and challenge the online sports betting provisions of the 2021 Compact and the Implementing Law both facially and as applied to them.

227. Southwest Pari-mutuels will be directly impacted by the 2021 Compact and the Implementing Law. They will immediately suffer harm under the 2021 Compact and Implementing Law in that they will not be able to compete on a level playing field with the Tribe. Through Southwest Florida enterprises, the Magic City Casino and the Bonita Springs Poker Room is owned by individuals who are not members of the Tribe, and who are not Native American.

228. The Fourteenth Amendment to the United States Constitution, enforceable on state officials pursuant to 42 U.S.C. § 1983, provides that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

229. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on race, tribal affiliation, and national origin is presumptively unconstitutional and subject to strict scrutiny. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985).

230. The online sports betting provisions of the 2021 Compact and the Implementing Law discriminate against non-tribal persons on the basis of race and national origin.

231. The online sports betting provisions of the 2021 Compact and the Implementing Law treat non-tribal persons differently than tribal persons who are similarly situated.

232. The online sports betting provisions of the 2021 Compact establish different treatment for gaming facilities on the basis of the race, tribal affiliation, and national origin of their owners.

233. Under the 2021 Compact and the Implementing Law the Tribe is able to offer online sports betting throughout the State of Florida, but non-tribal persons are banned from providing the same service and are subject to criminal prosecution for doing so.

234. Southwest Pari-mutuels are owned by individuals who are not members of the Tribe, and who are not Native American.

235. Southwest Pari-mutuels have invested years and millions of dollars into the pari-mutuel facilities, including offering cardroom and slot machine facilities to patrons as those options were made available to them under Florida law. Plaintiffs compete with the Tribe for walk-in patrons who, until the 2021 Compact's terms go

into effect, were required to be on-premises to engage in any other gaming offered by each of them.

236. Under the terms of the 2021 Compact and the Implementing Law, Southwest Pari-mutuels will be denied an equal opportunity to offer sports betting to patrons throughout the state, whether in person or online, because of race or tribal status.

237. The 2021 Compact provides that Florida will permit *only the Tribe* to offer online sports betting *throughout the State of Florida*, without limitation. In granting a state-wide, race-based monopoly to the Tribe, the 2021 Compact precludes Southwest Pari-mutuels from competing with the Tribe even within their own pari-mutuel facilities in offering online sports or any sports betting at all unless they subject themselves to an agreement on terms dictated by the Tribe.

238. There is no compelling, legitimate, or rational government interest that could justify this race-based and tribe-based disparate treatment of gaming operations. Moreover, the 2021 Compact's race-based benefit is not narrowly or reasonably tailored to advancing a proper government interest. By granting the state-wide monopoly to offer off-reservation and online sports betting, the 2021 Compact strays well beyond the purpose of the IGRA in supporting tribal self-governance on tribal lands. Far from identifying a basis sufficient to justify such discrimination, the off-reservation and online sports betting provisions of the 2021

Compact are based on the transparent legal fiction that conduct is “deemed” to take place somewhere it does not.

239. As such, the off-reservation and online betting provisions of the 2021 Compact and Implementing Law violate the Equal Protection Clause of the Fourteenth Amendment.

WHEREFORE, Plaintiffs West Flagler Associates, Ltd., and Bonita-Fort Myers Corporation respectfully request this Court, pursuant to 42 U.S.C. § 1983 and its inherent equitable powers, (1) enter a declaratory judgment, declaring that the online off-reservation sports betting provisions of the 2021 Compact violate the Fourteenth Amendment of the United States Constitution and are thus unconstitutional, because by granting a state-wide monopoly of online sports betting the State is according disparate treatment on the basis of race, tribal affiliation, and national origin that is prohibited by the Equal Protection Clause of the United States Constitution; (2) enjoin Defendant Governor Ronald Dion DeSantis from implementing the 2021 Compact with respect to sports betting outside the Tribe’s reservations as mandated by the Implementing Law; (3) enjoin the Defendant Secretary Julie Imanuel Brown from implementing the provisions of Section 285.710, Florida Statutes, with respect to online sports betting from anywhere outside the Tribe’s reservations; and (4) award legal fees and costs to Plaintiffs together with such other and further relief as this Court deems just and equitable.

Dated: August 17, 2021.

Respectfully Submitted,

BUCHANAN INGERSOLL & ROONEY PC

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*Attorneys for Plaintiffs West Flagler
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Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WEST FLAGLER ASSOCIATES, LTD., a
Florida Limited Partnership d/b/a MAGIC CITY
CASINO,

540 N.W. 37th Ave
Miami, FL 33125,

BONITA-FORT MYERS CORPORATION, a
Florida Corporation d/b/a BONITA SPRINGS
POKER ROOM,

401 N.W. 38th Court
Miami, FL 33126,

Plaintiffs,

vs.

Civil Action No. _____

DEB HAALAND, in her official capacity as
SECRETARY OF THE UNITED STATES
DEPARTMENT OF THE INTERIOR,

1849 C Street, NW
Washington, DC 20249,

UNITED STATES DEPARTMENT OF THE
INTERIOR,

1849 C Street, NW
Washington, DC 20249,

Defendants.

COMPLAINT

Plaintiffs West Flagler Associates, Ltd, d/b/a Magic City Casino (“West Flagler”) and Bonita-Fort Myers Corporation, d/b/a Bonita Springs Poker Room (“Bonita”) bring this Complaint against Defendants Deb Haaland, in her official capacity as Secretary of the United States Department of the Interior (“Secretary Haaland”), and the United States Department of the Interior (“DOI”), to challenge Secretary Haaland’s approval of a 2021 Gaming Compact Between the Seminole Tribe of Florida (the “Tribe”) and the State of Florida (the “Compact,” attached as Exhibit A). Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.* (“APA”) and the equal protection guarantee provided through the Due Process Clause of the Fifth Amendment. It challenges the lawfulness of Secretary Haaland’s August 5, 2021 approval by operation of law pursuant to the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2701 *et seq.*, of a 2021 tribal-state gaming compact entered into between the Tribe and Florida that, among other things, purports to authorize the Tribe to operate online sports betting for persons physically located anywhere in Florida. This authorization of online betting from all locations in Florida, not just from the Tribe’s reservations, must be set aside for three reasons:

2. *First*, the Compact unlawfully permits the Tribe to operate gaming outside of its own reservations, which is not permitted by IGRA. IGRA authorizes tribal-state gaming compacts—and permits Secretary Haaland to approve such compacts—only to the extent that they concern “gaming *on Indian lands*.” 25 U.S.C. § 2710(d)(8)(A) (emphasis added); *see also* 25 U.S.C. § 2710(d)(1) (“Class III gaming activities shall be lawful *on Indian lands only* if” certain conditions are met, including that those activities are “conducted in conformance with a Tribal-

State compact”) (emphasis added). IGRA strictly defines “Indian lands” as “all lands within the limits of any Indian reservation,” as well as certain other lands “over which an Indian tribe exercises governmental power.” 25 U.S.C. § 2703(4). The definition does not encompass Class III gaming in geographic areas governed by a State rather than a tribe. Because the Compact is not confined to gambling on Indian lands but rather authorizes Internet gambling throughout the state of Florida, approval of the Compact was contrary to IGRA and *ultra vires*.

3. *Second*, the Compact violates other federal laws by unlawfully permitting internet and bank wire transmission of transactions and payments relating to sports betting between the Tribe’s reservations and the rest of Florida, where sports betting is otherwise illegal. *See* Fla. Const. Art. X, § 30 (prohibiting the expansion of gambling in Florida without approval through a citizens’ initiative); *see also* ¶¶ 75–95 below. Such transactions and payments between a jurisdiction in which sports gambling could be authorized under the Compact (the Tribe’s reservations) and a jurisdiction in which sports gambling is prohibited (the rest of Florida) will violate both the Wire Act of 1961, 18 U.S.C. § 1081, *et seq.*, and the Unlawful Internet Gambling Enforcement Act (“UIGEA”), 31 U.S.C. § 5361, *et seq.*

4. *Third*, the unlawful and *ultra vires* approval of the Compact additionally violates the Fifth Amendment’s guarantee of equal protection by granting the Tribe a statewide monopoly over internet sports gambling throughout Florida even as it remains a serious criminal offense for anyone else to offer it anywhere in Florida. This express preference for tribal versus non-tribal conduct off of tribal lands lacks the government justification required by the Fifth Amendment.

5. The Compact unsuccessfully attempts to circumvent the limitations of IGRA, UIGEA, the Wire Act, and the Florida Constitution by including provisions in both the Compact and the Florida legislation ratifying the Compact (the “Implementing Law,” attached as Exhibit B)

declaring that bets placed from outside of the Tribe’s reservations will be “deemed” to take place on the reservations so long as the bets are received on “servers” and “devices” located on those reservations. This fiction does not render the Compact lawful, but rather contradicts the federal government’s prior position and longstanding precedent interpreting applicable federal law and recognizing that betting or wagering occur where the bettor is located, and where the wager is received. *See* Brief for the United States of America as *Amicus Curiae* Supporting Appellee, *AT&T Corp. v. Couer d’Alene Tribe*, 295 F.3d 899 (9th Cir. 2002) (No. 99-35088), 1999 WL 33622333, at *12-14 (attached as Exhibit C) (citing cases);¹ *see also id.* at *13-14 (“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.”); *California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 967 (9th Cir. 2018) (holding that “patrons are engaging in ‘gaming activity’ by initiating a bet or a wager in California and off Indian lands,” and “thus not subject to Iipay’s jurisdiction under IGRA”). Declaring that betting took place somewhere it did not does not change the meaning of federal law or the unlawfulness of the Secretary’s approval of a Compact that provides for gambling outside of Indian lands.

6. The Compact also violates state law and thus improperly approves of gambling that would be unlawful under UIGEA and the Wire Act. Only very limited forms of “casino gambling” are permitted under Florida law, and the type of “sports betting” at issue in the Compact is not among those exceptions. Florida’s Constitution prohibits any further expansion of casino gambling except through a citizens’ initiative, Fla. Const., Art. X, § 30(a), and no citizens’ initiative (or other constitutional amendment) has authorized sports betting in Florida. The lone

¹ The Ninth Circuit Court of Appeals did not reach the merits of the case, as it held the appellant, AT&T, lacked standing to challenge the compact. *AT&T Corp. v. Coeur d’Alene Tribe*, 295 F.3d 899, 901, 909-10 (9th Cir. 2002).

exception in Article X, Section 30(c) of the Florida Constitution is for casino gambling pursuant to Tribal-State compacts adopted and approved under IGRA—which again applies only to gaming on Indian lands. The Compact and Implementing Law may not expand beyond those bounds; a sports bet placed by a person elsewhere in the State and received by the Tribe’s server does not occur on “Indian lands” despite the definitions sections saying it is “deemed” to do so, Exhibit A, Part III, Sec. CC.2, Part IV, Sec. A; Exhibit B, at 5.

7. Moreover, the Florida Constitution defines its exception for casino gambling under tribal-state compacts by specific reference to federal law, providing that “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*.” Fla. Const. Art. X, § 30(c) (emphasis added). By incorporating the terms of IGRA within its own constitution, Florida effectively proscribed its ability to impose state law interpretations on the scope of tribal-state compacts. Florida is bound by the *federal* restrictions of IGRA and cannot “deem” that sports betting occurs on Indian lands when it does not.

8. In short, despite the efforts of Florida officials and the Tribe, the Compact unlawfully authorizes gaming that occurs off Indian land. As such, it violates IGRA, the Wire Act, UIGEA, and the Constitution. It thus was arbitrary and capricious, unlawful, and *ultra vires* under IGRA and the Constitution for Secretary Haaland to approve the Compact.

9. Additionally, it was arbitrary and capricious, unconstitutional and otherwise unlawful for Secretary Haaland to approve a Compact giving the Seminole Tribe a monopoly on online sports betting throughout Florida. Under IGRA, a tribe is an “Indian tribe, band, nation, or

otherwise organized group or community of Indians,” recognized because of their status as Indians. 25 U.S.C. § 2703(5). In approving the Compact, the Secretary thus unconstitutionally conferred benefits and privileges to engage in conduct that is criminal for anyone who lacks the requisite status as Indians.

PARTIES

A. Plaintiffs

10. Plaintiff West Flagler Associates Ltd. is a limited partnership registered in the State of Florida, with its principal place of business located at 401 N.W. 38th Court, Miami, Florida 33126, and is a citizen of Florida. Since 2009, West Flagler has owned and operated the casino known as Magic City Casino located at 540 N.W. 37th Ave, Miami, Florida 33125. Magic City Casino is a licensed pari-mutuel² facility authorized to operate a jai alai fronton, simulcast betting on dog racing slots and a card room.³ Under the name Magic City Racing, West Flagler also sponsors thoroughbred racehorses that compete at local tracks.

11. Plaintiff Bonita-Fort Myers Corporation is a corporation registered in the State of Florida, with its principal place of business located at 401 N.W. 38th Court, Miami, FL 33126, and is a citizen of Florida. Bonita operates Bonita Springs Poker Room, which is an affiliate of Magic City Casino. Bonita Springs Poker Room opened its card room in Bonita Springs, FL in October 2020. It operates a 37-table live casino-style poker room, a state-of-the-art sports room

² “‘Pari-mutuel’ means a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes.” Fla. Stat. § 550.002(22).

³ Live greyhound racing was banned in Florida as of January 1, 2021. However, broadcasting greyhound racing for wagering from other locations is still permitted at Florida pari-mutuels.

where patrons can wager on simulcast horse racing and jai-alai, and the Brass Tap restaurant and craft beer bar.

12. Both West Flagler and Bonita are owned by a Florida corporation called Southwest Florida Enterprises, Inc.

B. Defendants

13. Defendant Deb Haaland is the Secretary of the United States Department of the Interior, and is responsible for approval of gaming compacts under IGRA. Secretary Haaland maintains an office at 1849 C Street, NW, Washington, DC 20249. She is sued in her official capacity.

14. Defendant Department of the Interior is an executive department of the United States, headquartered at 1849 C Street, NW, Washington, DC 20249, and is responsible for implementation of IGRA.

JURISDICTION AND VENUE

15. Jurisdiction in this Court is grounded upon and proper under: (1) 28 U.S.C. § 1331, because this action arises under the laws of the United States; (2) 28 U.S.C. § 1346, because this action involves claims against the federal government; and (3) 28 U.S.C. § 1361, because this is an action to compel officers of the United States to perform their duties.

16. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (e) because this is a civil action in which Defendants are agencies of the federal government and/or officers of the United States acting in their official capacities, and at least one Defendant maintains its office and conducts business in this judicial district. Moreover, a substantial part of the events giving rise to the claims occurred within this judicial district.

FACTUAL BACKGROUND

A. Plaintiffs Have Been Engaged in the Florida Gaming Business for Several Decades, Are Competitors of the Tribe, and Have Made Substantial Investments in Their Businesses.

17. The Havenick family has owned and operated West Flagler for over 65 years when the patriarch of the family, Isadore Hecht, bought Flagler Greyhound Park in the early 1950s.

18. For over 50 years, West Flagler held a pari-mutuel permit to conduct greyhound racing at what is now known as Magic City Casino.

19. In 1996, when Florida legalized both cardrooms and “simulcasting,” West Flagler expanded Magic City to permit customers physically present at its location to bet on other jai alai, horse and dog racing taking place around the nation. It also began operating poker rooms, and currently operates a poker room open seven days a week, with nineteen tables offering the most popular games such as “limit” Texas hold’em, “no limit” Texas hold’em, Omaha, and 7-card stud.

20. In 2009, after Florida allowed slot machines to be legalized by local referendum and such referenda passed in Miami-Dade and Broward Counties, Magic City became the first casino in Miami to offer Las Vegas-style slot machines. Today, Magic City Casino offers over 800 slot machines, electronic table games, such as blackjack, roulette, craps and baccarat, poker tables and tournaments, off-track betting and other live entertainment that draws in both in-state and out-of-state visitors.

21. In 2018, following a successful declaratory judgment confirming that a jai alai permit holder is an “eligible facility” under the state’s slot machine law, Magic City Casino added live-action jai alai and a state-of-the-art glass-walled jai alai fronton.

22. Also in 2018, live greyhound and other dog racing were banned in Florida, but slots and poker were allowed to continue as “grandfathered” businesses. *See* Fla. Const. Art. X, § 32.

23. As a result of the ban on greyhound racing, Magic City Casino closed its greyhound track in May 2020, and undertook extensive renovations to build out its casino facilities. To date, West Flagler has spent over \$55,000,000 on capital improvements, and continues to make additional capital improvements to the casino each year.

24. Magic City Casino has its own jai-alai roster and, prior to COVID-19, was drawing over 1,000 fans per week. Simulcast betting is open 7 days a week, year-round, and the performances are simulcast to fifteen additional pari-mutuel sites, with a daily viewing audience of over 5,000 people. In 2020, Magic City Casino also launched the Jai Alai Channel on YouTube.

25. Magic City Casino has approximately 425 employees, is located less than thirty miles from the Tribe's Hard Rock Hollywood Casino, and competes with the Tribe for gaming patrons.

26. In addition to the Magic City Casino offerings in Miami, the Havenick family also has owned and operated the Naples-Fort Myers Greyhound Racing & Poker in Bonita Springs for over 50 years. After closing the greyhound racing portion of the facility in May 2020, Bonita constructed a new 32,000-square foot facility to house what is now the Bonita Springs Poker Room, at a cost of approximately \$10,000,000. Similar to its sister property, Magic City Casino, the Bonita Springs Poker Room offers simulcast of horse racing and jai-alai where patrons can place bets and wagers on the events.

27. The Bonita Springs Poker Room features such games such as ultimate Texas hold'em, three-card poker, high-card flush, jackpot hold'em and DJ wild, year round. It is located approximately twenty-one miles from the Tribe's Immokalee Casino, and one hundred and fifty miles from the Tribe's Tampa Hard Rock Casino.

28. The Bonita Springs Poker Room has approximately 150 employees, and also competes with the Tribe for gaming patrons.

B. The Tribe and the History of Gaming Compacts with the State of Florida.

29. The Tribe is the only tribe in Florida that has negotiated a gaming compact with the State.

30. The Tribe has seven gaming facilities on its six reservations: Seminole Indian Casino-Brighton, Seminole Indian Casino-Coconut Creek, Seminole Indian Casino-Hollywood, Seminole Indian Casino-Immokalee, Seminole Indian Casino-Big Cypress, Seminole Hard Rock Hotel & Casino-Hollywood and Seminole Hard Rock Hotel & Casino-Tampa.

1. The 2007 Compact Was Ruled Illegal by the Florida Supreme Court.

31. On November 14, 2007, the Tribe signed its first compact with then-Florida Governor Charlie Crist (the “2007 Compact”). The 2007 Compact expanded casino gaming, permitting the Tribe to offer within its reservations slots, and card games, such as blackjack and baccarat, that were otherwise prohibited by law. The 2007 Compact went into effect on January 7, 2008, upon publication of the DOI’s Secretary’s approval.

32. The Florida Legislature, however, had not authorized Governor Crist to negotiate the 2007 Compact, and did not ratify it afterwards. Accordingly, shortly after the 2007 Compact was signed, the Florida House of Representatives and its Speaker filed a petition for a writ of quo warranto in the Supreme Court of Florida, disputing the Governor’s authority to unilaterally bind the state to the 2007 Compact.

33. In *Florida House v. Crist*, 999 So. 2d 601 (Fla. 2008), the Florida Supreme Court held that, because the 2007 Compact authorized gaming that otherwise was prohibited under state law, Governor Crist had exceeded his authority and could not bind the state to the 2007 Compact. As the Florida Supreme Court aptly noted, “[n]either the Governor nor anyone else in the executive

branch has the authority to execute a contract that violates state criminal law.” *Crist*, 999 So. 2d at 616.

2. Florida Breached its Exclusivity Obligations Under the 2010 Compact, and the Tribe Stopped Revenue Sharing.

34. In 2010, Florida enacted a statute addressing tribal-state gaming compacts and designating the Governor as the “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” to authorize “class III gaming, as defined in [IGRA], *on Indian lands within the state*.” Fla. Stat. § 285.712(1) (emphasis added). The statute provides, however, that the Florida Legislature must ratify any compact negotiated by the Governor. Fla. Stat. §§ 285.712(2)-(3). Thereafter, the Governor must file the ratified, executed compact with the Florida Secretary of State to forward, along with the ratifying act, to the DOI for review and approval by the DOI Secretary. *See* Fla. Stat. §§ 285.712(3)-(4).

35. In accordance with this process, on April 7, 2010, then-Governor Crist and the Tribe executed a new compact (the “2010 Compact,” attached as Exhibit D). The Florida Legislature ratified it, and the then-Secretary of the DOI approved it, announcing its approval in the Federal Register on July 6, 2010. 75 Fed. Reg. 38833 (July 6, 2010).

36. The 2010 Compact had a term of 20 years, ending July 31, 2030, and remained in effect until publication of Secretary Haaland’s approval of the Compact in the Federal Register. *See* Exhibit D, Part XVI, Sec. B.

37. The 2010 Compact allowed the Tribe to operate slot machines, raffles and drawings, and banking or banked card games (such as baccarat, chemin de fer, and blackjack), in exchange for a revenue-share payment in the amount of \$12,500,000.00 per month during the first two years of the compact, and in accordance with a sharing cycle after the initial two-year period.

38. The 2010 Compact contained an “exclusivity” clause providing that if any other entity was authorized to operate Class III gaming or any new forms of Class III gaming or other casino-style gaming not in operation as of February 1, 2010, the Tribe could stop revenue sharing. Exhibit D, Part XII.

39. In 2011, pari-mutuels, including Plaintiffs, began operating their own designated-player games at cardrooms. In 2014, state regulators adopted an official rule allowing designated-player games at cardrooms, thereby allowing the pari-mutuel cardrooms to conduct designated-player games in which players compete only against each other.

40. The Tribe took the position that these designated-player games violated the exclusivity provisions of the 2010 Compact and, thereby relieved the Tribe of the obligation to continue revenue sharing under the 2010 Compact.

41. In 2016, the Tribe sued Florida to establish its right to cease revenue sharing in light of Florida’s decision to permit pari-mutuels to offer “banked” card games. The Tribe prevailed in that lawsuit, and stopped all revenue sharing.

3. The 2021 Compact at Issue Here Unlawfully Attempts to Expand Sports Betting Outside of Indian Lands to Individuals Throughout Florida.

42. On April 23, 2021, Governor DeSantis and the Tribe signed the Compact at issue here.

43. Like the 2010 Compact, the new Compact allows the Tribe to conduct slot machines, raffles and drawings, and banked card games. However, the new Compact also allows the Tribe to conduct new forms of gaming, including craps, roulette, “Fantasy Sports Contests”⁴

⁴ The Compact defines “Fantasy Sports Contest,” as a “fantasy or simulation sports game or contest offered by a contest operator or noncommercial contest operator in which a contest participant manages a fantasy or simulation sports team composed of athletes from a professional sports organization” where (1) the prizes and awards are established and known to participants in advance of the contest; (2) winning outcomes reflect the knowledge and skill of the participants;

and “Sports Betting.”⁵ Exhibit A, Part III, Sec. F. Critical to this litigation, the Compact permits sports betting to be conducted via online gaming and permits persons not physically present on the Tribe’s reservations to engage in such gaming. Exhibit A, Part III, Sec. CC.1. The Compact also gives the Tribe a monopoly on such online sports betting on the basis of the race of the Tribe’s members, and the Implementing Law gives that race-based monopoly the formal imprimatur of state legislation.

44. The Compact also allows online sports betting to occur off Indian lands at pari-mutuel facilities willing to contract with the Tribe (“Qualified Pari-mutuel Permitholders”).⁶ Exhibit A, Part III, Sec. CC.3. This arrangement has been described as a “hub and spoke,” whereby the Tribe is the hub of the betting operation, and the participating pari-mutuels are the offsite

(3) no winning outcome is based on the score, point spread or any performance of any single actual team; and (4) there are no casino graphics displayed. Exhibit A, Part III, Sec. L.

The Compact requires the Florida Legislature to regulate and ban others from conducting Fantasy Sports Contests, but the Florida Legislature has not done so. As a result, Fantasy Sports Contests continue to be unregulated in Florida, but the Tribe, while able to conduct Fantasy Sports Contests, will not currently obtain a monopoly over them.

⁵ The Compact defines “Sports Betting” as:

wagering on any past or future professional sport or athletic event, competition or contest, any Olympic or international sports competition event, any collegiate sport or athletic event (but not including proposition bets on such collegiate sport or event), or any motor vehicle race, or any portion of any of the foregoing, including but not limited to the individual performance statistics of an athlete or other individual participant in any event or combination of events, or any other ‘in-play’ wagering with respect to any such sporting event, competition or contest, except ‘Sports Betting’ does not include Fantasy Sports Contests.

Exhibit A, Part III, Sec. CC.

⁶ The Qualified Pari-mutuel Permitholder is allowed to perform “wagering undertaken through the use of electronic devices that will utilize the digital sports book(s) provided by the Tribe, and that use a brand of the Qualified Pari-mutuel Permitholder(s).” *See* Exhibit A, Part III, Sec. CC.3(a).

spokes. *See* <https://floridapolitics.com/archives/430065-senate-passes-fantasy-sports-regulations-over-draftkings-and-fanduels-fears/> (Rep. Sam Garrison stating “There’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, triggers Amendment 3”) (last visited Aug. 6, 2021). Upon information and belief, the pari-mutuel locations will not be permitted to accept cash wagers for sports betting, regardless of whether the pari-mutuels accept cash wagers for other forms of gaming.

45. The Compact purports to convert all sports betting wagers placed by persons located off Indian Lands—whether from the bettor’s couch or from a pari-mutuel facility—into wagers made within Indian Lands by declaring:

[W]agers on Sports Betting and Fantasy Sports contests 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.

Exhibit A, Part IV, Sec. A (emphasis added).

46. As originally drafted, the Compact also provided that Florida and the Tribe “agree to engage in good faith negotiations” to authorize the Tribe to offer all types of Covered Games online or via mobile devices to players physically located in Florida. Exhibit A, Part XVIII, Sec. A. It further contemplated the Tribe could offer not only Sports Betting, but also slot machines, craps, roulette, raffles and drawings, and any other “Covered Games” online or via mobile devices in the near future. *Id.*

47. During the Florida Legislature’s special session, a number of legislators strenuously objected to any statewide online casino gambling. As a result of the political backlash,

the Tribe released a letter stating that Florida was not obligated engage in those negotiations and that the provision was not enforceable.

48. Thereafter, on May 17, 2021, the Compact was amended to delete Part XVIII, Section A in its entirety (attached as Exhibit E). At the same time, Florida and the Tribe modified the Compact to provide that online sports betting will not be implemented before October 15, 2021. *Id.*

49. On May 19, 2021, the Florida Legislature ratified the Compact as amended, by passing the Implementing Law. *See* Exhibit B.

50. The Implementing Law adopts the definitions in the Compact and amends Florida Statutes § 285.710 (previously enacted to ratify the 2010 Compact), to ratify and approve the Compact, as amended. Exhibit B, at 4-5 (amending Fla. Stat. § 285.710(13)(b)). It further recognizes that, had Secretary Haaland not approved the Compact or if the Compact is invalidated by court action, the 2010 Compact will remain in effect. *Id.* at 2.

51. On May 25, 2021, Governor DeSantis approved the Implementing Law.

52. On or about June 21, 2021, the State and/or the Tribe submitted the 2021 Compact to the Secretary Haaland for approval.

53. Despite the unlawfulness and unconstitutionality of the Compact and Implementing Law, and despite Secretary Haaland's lack of jurisdiction over gaming off Indian lands, DOI took no action prior to the expiration of the forty-fifth (45th) day to disallow the Compact. The Compact thus was deemed approved under IGRA and became effective on August 11, 2021, when the notice of approval was published in the Federal Register. 86 Fed. Reg. 44037.

54. On August 6, 2021, DOI sent a letter to the Chairman of the Seminole Tribe and Governor DeSantis (attached as Exhibit F) stating, "After thorough review under IGRA, we have

taken no action to approve or disapprove the Compact before August 5, 2021, the 45th day. As a result, the Compact is considered to have been approved by operation of law to the extent that it complies with IGRA and existing Federal law. The Compact will become effective upon the publication of notice in the Federal Register.” Notice was subsequently published in the Federal Register on August 11, 2021. 86 Fed. Reg. 44037.

55. The Compact was intended to supersede the 2010 Compact, and if it remains in place, will have a thirty (30) year term, terminating July 31, 2051. Exhibit A, Part XVI, Sec. B.

THE COMPACT VIOLATES FEDERAL LAW

A. The Compact Both Violates IGRA and Falls Outside Secretary Haaland’s Authority to Approve Because It Purports to Authorize Class III Gaming That Takes Place Outside “Indian Lands.”

1. Overview of IGRA.

56. There are two types of casino gaming in the United States: (i) “tribal” gaming operated by Indian tribes (or private parties who are permitted to manage tribal casinos, which remain the sole proprietary interest of the tribe) on Indian lands pursuant to IGRA; and (ii) “commercial” gaming operated by private entities on non-Indian lands, which is governed by state law, such as casino gaming conducted in Las Vegas, Atlantic City or the slots approved by voters in Miami-Dade and Broward Counties, Florida. Both types of casino gaming must comply with applicable federal law, with tribal gaming subject to the additional statutory regulation of IGRA.

57. When it enacted IGRA in 1988, Congress created a comprehensive framework for regulation of tribal gaming on tribal lands. Congress found that “Indian tribes have the exclusive right to regulate gaming activity *on Indian lands* if the gaming activity is not specifically prohibited by Federal law and *is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.*” 25 U.S.C. § 2701(5) (emphasis added).

58. Importantly, IGRA only authorizes “Indian tribes” to conduct gaming “on Indian lands,” which are Indian reservations or lands held in trust by the United States for the benefit of a federally recognized Indian tribe. *See* 25 U.S.C. § 2703(4). With few exceptions not relevant here,⁷ IGRA does not authorize tribal gaming outside of Indian lands. *See* 25 U.S.C. §§ 2701(5); 2702(3); 2710(a), (b)(1), (d)(l). Indeed, binding precedent dictates that “IGRA affords tools . . . to regulate gaming on Indian lands, *and nowhere else.*” *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 795 (2014) (emphasis added).

59. IGRA categorizes gaming into three classes⁸ and allocates authority to regulate such gaming on Indian lands. Class III gaming, at issue here, includes, but is not limited to, slot machines, any house banking game, sports betting, and lotteries. 25 C.F.R. § 502.4; 25 U.S.C. § 2703(8).

60. IGRA provides that “Class III gaming activities *shall be lawful on Indian lands only if*” such gaming is:

- authorized by tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission (“NIGC”), an independent federal agency within DOI that was created by IGRA;

⁷ The exceptions are for lands acquired for Indians in trust by the DOI Secretary after October 17, 1988, if the land is acquired: (1) after the DOI Secretary determines acquisition to be in the best interest of the tribe and not detrimental to the local community and the governor of the state concurs; (2) for tribes that had no reservation on the date of enactment of IGRA; (3) as part of a land claim settlement; (4) as part of an initial reservation for a newly recognized tribe; or (5) as part of the restoration of lands for a tribe restored to federal recognition. 25 U.S.C. § 2719(a)-(b). None is applicable here.

⁸ Class I gaming includes “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.” 25 U.S.C. § 2703(6). Class II gaming includes bingo and non-banking card games. Class II gaming expressly excludes electronic games of chance, slot machines, and banking card games, such as blackjack, baccarat and chemin de fer. 25 U.S.C. § 2703(7). Class III gaming is defined as “all forms of gaming that are not class I or class II gaming.” 25 U.S.C. § 2703(8).

- located in a state that permits such gaming; and
- conducted in conformance with a Tribal-State compact.

See 25 U.S.C. § 2710(d)(1).

61. If a state legalizes Class III gaming, IGRA grants a tribe the right to demand that the state engage in good faith negotiations with the tribe to enter into a compact authorizing such gaming on tribal lands. 25 U.S.C. § 2710(d)(3)(A) (a state “shall negotiate with the Indian tribe in good faith to enter into such a compact”). If the parties successfully negotiate a compact it becomes effective “*only*” after the DOI Secretary approves it and the notice of that approval is published in the Federal Register. *Id.* §§ 2710(d)(3)(B), (d)(8)(D); *see also* 25 C.F.R. § 293.15.

62. Under § 2710 of IGRA, the DOI Secretary can approve or disapprove of the compact, or, in the event no affirmative action disapproving the compact is taken after forty-five (45) days, the compact is “considered to have been approved,” although it must still comply with all applicable federal law. 25 U.S.C. § 2710(d)(8); 25 C.F.R. § 293.12.

63. Importantly, however, IGRA provides the DOI Secretary with authority to approve a Tribal-State compact only to the extent the compact “govern[s] gaming *on Indian lands*.” 25 U.S.C. § 2710(d)(8)(A). In addition, pursuant to IGRA and related regulations, the DOI Secretary has a legal obligation to disapprove a tribal-state compact purporting to authorize gaming if the compact violates: (1) any provision of IGRA; (2) “any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands;” or (3) “the trust obligations of the United States to Indians.” 25 U.S.C. § 2710(d)(8)(B); 25 C.F.R. § 293.14.

64. The DOI’s Secretary’s obligation is both mandatory and judicially enforceable. *Amador County v. Salazar*, 640 F.3d 373, 379-83 (D.C. Cir. 2011). The obligation to disapprove illegal compacts, and judicially enforceable nature of that obligation, applies whether a compact

is affirmatively approved or “deemed approved” through inaction. *Id.* at 381 (“And just as the Secretary has no authority to affirmatively approve a compact that violates any of subsection (d)(8)(B)’s criteria for disapproval, he may not allow a compact that violates subsection (d)(8)(C)’s caveat to go into effect by operation of law.”).

2. Because the Compact Purports to Authorize Gaming Outside of Indian Lands, It Both Violates IGRA and Falls Outside of Secretary Haaland’s Legal Authority to Authorize.

65. The Compact here violates IGRA by purporting to authorize gaming activity occurring outside Indian Lands. Under the Compact, sports betting will occur through the use of any “electronic device connected via the internet, web application or otherwise, including, without limitation, any Patron connected via the 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* Exhibit A, Part III, Sec. CC.2.

66. In an effort to get around the limitations of IGRA’s limitation of lawful gambling to Indian lands, the Compact adds:

[W]agers on Sports Betting and Fantasy Sports Contests 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.

Id., Part IV, Sec. A (emphasis added).

67. The Compact similarly provides that online, off-reservation sports betting “shall be deemed at all times to be exclusively conducted by the Tribe at its Facilities where the sports book(s), including servers and devices to conduct the same, are located, including any such wagering undertaken by a Patron *physically located in the State but not on Indian Lands* using an electronic device connected via the internet, web application or otherwise, including, without

limitation, any Patron connected via the 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 Exhibit A, Part III, Sec. CC.2 (emphasis added).

68. The Implementing Law similarly states: “[w]agers on sports betting, including wagers made by players physically located within the state using a mobile or other electronic device, *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.” Exhibit B, at 5 (amending Fla. Stat. § 285.710(13)(b)) (emphasis added).

69. Through this fiction, the Compact and Implementing Law seek to expand sports betting outside of Indian lands to individuals located anywhere in Florida so long as they have a computer and internet connection—subject only to the Tribe’s monopoly. Indeed, it purports to change Florida law to permit “a Patron physically located in the State, but not on Indian Lands” to engage in sports betting if done online, so long as the “sports book(s), including servers and devices” are located at one of the Tribe’s casinos. Exhibit A, Part III, Sec. CC.2.

70. For example, under the Compact and Implementing Law, an individual over the age of twenty-one (21), who places a wager on a sporting event using his mobile device from his couch in Okaloosa, Florida, is “deemed” to have placed the bet over 600 miles away at the Seminole Hard Rock Hotel & Casino—Hollywood, simply because the Tribe’s servers are located there. Indeed, the text of the Compact itself acknowledges that the patron does not need to be on Indian Lands—in direct conflict with the requirements of IGRA and Florida law.

71. Contrary to the legal fiction contained in the Compact and its Implementing Law, IGRA does not authorize a tribe to offer online gaming to patrons located off Indian lands in jurisdictions where gaming is otherwise illegal despite the servers accepting the bets being located

on Indian lands. *California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 967 (9th Cir. 2018) (holding that tribe could not operate an online bingo site despite the server being on Indian lands as “the patrons are engaging in ‘gaming activity’ by initiating a bet or wager in California and off Indian lands As a result, it seems clear that at least some of the ‘gaming activity’ associated with [the online bingo site] does not occur on Indian lands”). This is because a bet or wager encompasses two distinct legal acts and is placed both where the bettor and the casino are located, as recognized by decades of precedent interpreting applicable federal law. *See* Brief for the United States of America as *Amicus Curiae* Supporting Appellee, *AT&T Corp. v. Couer d’Alene Tribe*, 295 F.3d 899 (9th Cir. 2002) (No. 99-35088), 1999 WL 33622333, at *12-14 (Exhibit C);⁹ *see also id.* at *13-14 (“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.”); *Iipay Nation of Santa Ysabel*, 898 F.3d at 967.

72. Consistent with this law, the NIGC itself has repeatedly stated that IGRA does not provide for gaming off Indian lands via the internet regardless of where the servers are located. *See* Letter from Kevin Washburn, General Counsel, NIGC, to Joseph Speck, Nic-A-Bob Productions, re: WIN Sports Betting Game (Mar. 13, 2001) (“The use of the Internet, *even though the computer server may be located on Indian lands, would constitute off-reservation gaming* to the extent any of the players were located off of Indian lands.” (emphasis added)); Letter from Kevin Washburn, General Counsel, NIGC, to Robert Rossette, Monteau, Peebles & Crowell, re: Lac Vieux Desert Internet Bingo Operation (Oct. 26, 2000) (as the [Indian operated internet bingo] “seeks to draw any player who can log on to the internet site from any location and who is willing

⁹ The Ninth Circuit Court of Appeals did not reach the merits of the case, as it held the appellant, AT&T, lacked standing to challenge the compact. *AT&T Corp. v. Coeur d’Alene Tribe*, 295 F.3d 899, 901, 909-10 (9th Cir. 2002).

to pay the fee. *The game itself does not depend on the player being located in a tribal bingo facility or even on Indian lands” and is not authorized by IGRA* (emphasis added)); Letter from Penny J. Coleman, Deputy General Counsel, NIGC, to Terry Barnes, Director of Gaming, Bingo Networks (June 9, 2000) (concluding game described as a center located on tribal lands but allowing players to open an account with the gaming center through the Internet was off-reservation gaming not authorized by IGRA); Letter from Montie Deer, Chairman, NIGC, to Ernest L. Stensgar, Chairman, Coeur d’Alene Tribe, re: National Indian Lottery (June 22, 1999) (concluding an Indian internet lottery gambling enterprise, involving off reservation gaming, was not authorized by IGRA) (collectively, the “NIGC Letters,” attached as Exhibit G); *see also* Amicus Brief of the United States, *Coeur d’Alene Tribe*, 1999 WL 33622333 at *2-3, *9-10 (arguing for affirmance of district court decision holding that IGRA did not authorize interstate National Indian Lottery through telephonic communications connecting tribal reservations in several states).

73. And indeed Florida itself has in the past taken the position that off-reservation betting is unauthorized under the IGRA because a bet is placed both where the bettor is physically located and where the bet is accepted:

The “on Indian lands” requirement of IGRA clearly mandates that any Indian gaming activity, including a consumer’s play or participation in the game, physically take place on tribal land. 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 [National Indian Lottery] 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.

Brief of Amici Curiae in Support of AT&T Corporation and Affirmance, *AT&T Corp. v. Couer d’Alene Tribe*, 295 F.3d 899 (9th Cir. 2002) (No. 99-35088), 1999 WL 33622330 at *4 (emphasis added) (footnote omitted).

74. Although Secretary Haaland could have approved a compact between Florida and the Tribe to permit either in-person or online sports betting by patrons *physically on the Tribe’s reservations*, the plain language of IGRA prevents her from approving the Compact here because it does not comply with IGRA’s “Indian lands” requirement. The Compact therefore both violates IGRA and falls outside the scope of compacts she is authorized to approve in the first instance.

B. The Compact Violates the Wire Act by Purporting to Allow the Tribe and Bettors to Use Wire Communication Facilities to Place, Receive, and Facilitate Bets Between the Tribe’s Florida Reservations and Other Locations in Florida, Where Sports Betting Is Illegal.

75. The Compact not only violates IGRA, but also condones behavior that is contrary to another “provision of Federal law that does not relate to jurisdiction over gaming on Indian Lands,” 25 U.S.C. § 2710(d)(8)(B)(ii)—the Wire Act of 1961.

1. Overview of the Wire Act.

76. The Wire Act of 1961, 18 U.S.C. §§ 1081, *et seq.*, applies to transmissions in interstate or foreign commerce and prohibits interstate online sports betting. Specifically, the Wire Act makes it illegal for anyone “engaged in the business of betting or wagering” to knowingly use “a *wire communication facility* for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers *on any sporting event or contest*, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers” 18 U.S.C. § 1084(a) (emphasis added).

77. A “wire communication facility” is “any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.” 18 U.S.C. § 1081. Telephone or cellular communications, debit or credit card transactions, and bank wire or credit card transfers are common examples of wire communication facilities.

78. Wagering via the internet or by mobile phone involves interstate commerce when the wire and cellular transmissions that make data transmission possible are sent and received cross state lines, a routine occurrence even with intrastate transactions. In fact, although a player may be located in one state, his or her internet transaction often is transmitted to a satellite, then transmitted down to a ground station before being routed to receiving servers.

79. In addition, credit or debit card transactions are transmitted through a network and involve acquiring, processing and issuing credits and debits to or from banks or card processors at multiple locations throughout the United States.

80. The Wire Act thus prohibits the Tribe from knowingly transmitting or receiving several types of wagering-related communications:

- a. Internet-transmitted bets or wagers on any sporting event or contest;
- b. Internet-transmitted information to assist in the placing of bets or wagers on any sporting event or contest;
- c. Bank wire transfers that entitle the recipients to receive money or credit as a result of bets or wagers; or
- d. Bank wire transfers that entitle the recipients to receive money or credit for information assisting in the placing of bets or wagers.

See 18 U.S.C. § 1084(a).

81. To permit the use of wire communication facilities to further gambling wagers in locations where the gambling in question is legal, the Wire Act contains a safe harbor for “the transmission of information assisting in the placing of bets or wagers on a sporting event or contest *from a State or foreign country* where betting on that sporting event or contest is legal *into a State or foreign country* in which such betting is legal.” 18 U.S.C. § 1084(b) (emphasis added).

2. The Plain Language of the Statute Makes Clear That the Wire Act’s Safe Harbor Does Not Apply to the Compact.

82. The Wire Act’s safe harbor does not apply to the Compact because the Tribe is neither a “State,” nor a “foreign country,” but a “federally-recognized tribal government possessing sovereign powers and rights of self-government.” Exhibit A, Part II, Sec. A; *see also* <https://www.semtribe.com/stof/history/introduction> (“We [the Tribe] are a sovereign government with our own schools, police, and courts.”).

83. The safe harbor exception also does not exempt from liability the interstate transmission of bets themselves, but only for information “assisting” in the placing of bets. *United States v. Lyons*, 740 F.3d 702, 713 (1st Cir. 2014) (citing *United States v. McDonough*, 835 F.2d 1103, 1104-05 (5th Cir. 1988); *United States v. Bala*, 489 F.3d 334, 342 (8th Cir. 2007)).

3. The Safe Harbor Also Does Not Apply Because Sports Betting Is Illegal in Florida.

84. The safe harbor in the Wire Act also does not apply to the online sports gambling authorized in the Compact because sports betting is illegal in Florida.

85. Except for a few statutorily approved exceptions, gambling in Florida is largely illegal. *See generally* Fla. Stat. Ch. 849; Florida Senate Bill Analysis and Fiscal Impact Statement for SB 2A, Implementation of the 2021 Gaming Compact, prepared by The Professional Staff of the Committee on Appropriations, 4 <https://www.flsenate.gov/Session/Bill/2021A/2A/Analyses/2021s00002A.pre.ap.PDF> (last visited August 6, 2021). For example, Florida law

prohibits keeping a gambling house, running a lottery,¹⁰ and the manufacture, sale, lease, play, or possession of slot machines. *See* Fla. Stat. § 849.01; Fla. Stat. § 849.09; Fla. Stat. § 849.15.

86. The following limited gaming activities are authorized by law and regulated by the state:

- a. Pari-mutuel wagering at licensed horse tracks and jai alai frontons, Fla. Stat. Ch. 550;
- b. Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County, Fla. Const. Art. X, § 23; and
- c. Cardrooms at licensed pari-mutuel facilities.

Fla. Stat. § 849.086.¹¹

87. During the 2018 General Election, the Florida electorate overwhelmingly approved a constitutional amendment, now Article X, Section 30 of the Florida Constitution, seeking to limit the expansion of gambling in Florida. That amendment provides that a vote proposed by a citizen initiative to amend the State Constitution pursuant to Article XI, Section 3 of the State Constitution is (barring some other constitutional amendment) the *exclusive* method of authorizing “casino gambling”¹² in Florida:

¹⁰ Florida’s voters approved a state-run lottery by constitutional amendment in 1986.

¹¹ Under certain specific and limited conditions, the conduct of penny-ante games, bingo, charitable drawings, game promotions (sweepstakes), and bowling tournaments are also permitted. *See* Fla. Stat. § 849.085; Fla. Stat. § 849.0931; Fla. Stat. § 849.0935; Fla. Stat. § 849.094; Fla. Stat. § 849.141.

¹² “Casino gambling” under the Florida Constitution is defined in terms of Class III gaming under IGRA:

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. 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. 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

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.*

Fla. Const. Art. X, § 30(a) (emphasis added.)

88. No voter-initiated petition has amended the Florida Constitution to legalize sports betting in Florida, and no other constitutional amendment has been ratified that would alter the effect of Article X, Section 30. Accordingly, other than horse racing and jai alai, sports betting remains illegal in Florida.

4. Sports Betting Remains Illegal in Florida, Despite the Compact.

89. The Florida Constitution prohibits expanding casino gambling without a constitutional amendment, notwithstanding definitional attempts to circumvent the prohibition. *First*, both the Compact and the Implementing Law state that a sports bet placed by a person anywhere in the State and received by the Tribe's server is "deemed" to occur on Indian lands:

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. s. 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.

Fla. Const. Art. X, § 30(b).

All [online sports betting] shall be deemed at all times to be exclusively conducted by the Tribe at its Facilities where the sports book(s), including servers and devices to conduct the same, are located, including any such wagering undertaken by a Patron physically located in the State but not on Indian Lands using an electronic device connected via the internet, web application or otherwise, including, without limitation, any Patron connected via the 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.

Exhibit A, Part III, Sec. CC.2, Part IV, Sec. A; *see also* Exhibit B, at 5.

90. Second, the Implementing Law expands gambling in Florida to include sports betting, but only to the extent authorized by the Compact itself:

For the purpose of satisfying the requirement in 25 U.S.C. s 2710(d)(1)(B) that the gaming activities authorized under an Indian gaming compact must be permitted in the state for any purpose by any person, organization, or entity, the following class III games or other games specified in this section are hereby authorized to be conducted by the Tribe pursuant to the compact described in subsection (3)(b), when such compact has been approved by the United States Secretary of the Interior, has not been invalidated by court action or change in federal law, and is effective: (7) Sports betting....

Exhibit B, at 4-5 (amending Fla. Stat. § 285.710(13)(b)).

91. Neither of these provisions can circumvent provisions of the Florida Constitution, which is the supreme law in Florida.

92. Moreover, the relevant exception in the Florida Constitution specifically *invokes IGRA* to define its scope:

... 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.*

Fla. Const. Art. X, § 30(c) (emphasis added).

93. That is, Florida’s constitution invokes *federal law* to define the geographic areas in which gambling may be expanded without a citizens’ initiative. Because a State cannot legislate around the plain meaning of a federal statute, the Florida legislature cannot legislate around IGRA.

94. No federal statute exists that would alter the scope of the term “Indian lands” in IGRA for the purpose of online gaming.

95. The Compact thus violates the Wire Act because it permits the placement of sports betting by persons located in areas of Florida in which such betting is illegal while using electronic devices connected to a server on the Tribe’s reservations via the Internet, cellular signals, or web applications.¹³ Secretary Haaland therefore was obligated to disapprove the Compact as contrary to federal law.

C. The Compact Violates UIGEA Because It Purports to Allow Bettors and the Tribe to Transfer Payments Relating to Bets or Wagers Between the Tribe’s Reservations and Other Locations in Florida, Where Such Bets Are Illegal.

96. In addition to IGRA and the Wire Act, the Compact purports to authorize conduct that is contrary to the Unlawful Internet Gambling Enforcement Act (“UIGEA”), by permitting the transfer of payments for bets or wagers between the Tribe’s reservations in Florida, and other locations in Florida, where sports betting remains illegal.

1. Overview of UIGEA.

97. In 2006, Congress enacted UIGEA to strengthen the enforcement of existing prohibitions against illegal gambling on the Internet. *See* 31 U.S.C. § 5361(4).

¹³ Indeed, even where such bets are placed at pari-mutuel locations that contract with the Tribe, the bets still must be placed “electronically,” as it appears as though the Tribe will not permit the pari-mutuels to collect cash wagers for sports betting.

98. UIGEA prohibits anyone “engaged in the business of betting or wagering” from “knowingly accept[ing],” various types of payments¹⁴ “in connection with the participation of another person in unlawful Internet gambling.” *See* 31 U.S.C. § 5363.

99. “Unlawful Internet gambling” occurs when an individual knowingly places, receives or transmits a “bet or wager by any means which involves the use, at least in part, of the Internet *where such bet or wager is unlawful* under any applicable Federal or State law *in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.*” 31 U.S.C. § 5362(10)(A) (emphasis added). That is, for a bet or wager placed over the internet to be lawful, the bet must be legal in both the State or Tribal lands in which the bet or wager is placed and where it is received. *See id.*

100. Betting or wagering on “sporting event[s]” is explicitly covered by UIGEA. 31 U.S.C. § 5362(1)(A).

101. UIGEA includes a safe harbor for certain bets or wagers “initiated and received or otherwise made *exclusively within a single State,*” and both “the bet or wager and the method by

¹⁴ The types of payments covered by UIGEA are:

- (1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);
- (2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;
- (3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or
- (4) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

31 U.S.C. § 5363.

which the bet or wager *is initiated and received* or otherwise made is *expressly authorized by and placed in accordance with* the laws of such State” *See* 31 U.S.C. § 5362(10)(B) (emphasis added).¹⁵

2. The Plain Language of the Statute Makes Clear That the Safe Harbor in UIGEA Does Not Apply to the Compact.

102. This safe harbor does not apply to the Compact here because the Tribe is not a “State” under UIGEA. *See* 31 U.S.C. § 5362(9) (defining “State” as “any State of the United States, the District of Columbia, or any commonwealth, territory or other possession of the United States.”). Accordingly, bets placed between the Tribe’s lands and other locations in Florida do not qualify as bets made “exclusively within a single State.”

3. The Safe Harbor in UIGEA Also Does Not Apply Because Sports Betting is Illegal in Florida.

103. In addition, the safe harbor makes clear that the bets or wagers must be legal not only where received, but also where “initiated.” *See* 31 U.S.C. § 5362(10)(B). As discussed in Section B.4 above, sports gambling is illegal in Florida and cannot be expanded without a citizens’ initiative—*except* for gambling “on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA.” Fla. Const. Art. X, § 30(c). And, as discussed in Section B.4 above, Florida’s attempt to contract and legislate around that illegality fails.

¹⁵ UIGEA also excludes from coverage certain bets or wagers that are “initiated and received or otherwise made *exclusively within the Indian lands of a single Indian tribe* (as such terms are defined under the Indian Gaming Regulatory Act,” as well as certain bets or wagers between two or more Indian tribes. *See* 31 U.S.C. § 5362(10)(C) (emphasis added). But the Compact does not fit within either exception, as neither applies to online bets or wagers placed from outside Indian lands to Indian lands located in a state where the bet or wager otherwise is unlawful. *See Iipay Nation of Santa Ysabel*, 898 F.3d at 967 (holding that gaming that does not occur on Indian lands is not subject to jurisdiction under IGRA and IGRA cannot serve as a shield from the application of the UIGEA).

104. Florida officials and others have publicly acknowledged the legal concerns with the Compact:

- a. Florida State Representative Randy Fine, the House Chair of the Select Committee on Gaming stated: “We’re going to allow the Seminole Tribe to offer sports betting where you can be sitting in your bathtub or sitting on your couch, thinking about a football game, and you can make a wager, regardless of where you physically are, on your cellphone.” William P., *House Legislators Approve Deal That Grants Seminole Tribe Expanded Gambling Rights in Florida—Includes Roulette, Craps, and Sports*, Florida Insider (May 19, 2021), <https://floridainsider.com/business/house-legislators-approve-deal-that-grants-seminole-tribe-expanded-gambling-rights-in-florida-includes-roulette-craps-and-sports/> (last visited Aug. 6, 2021).
- b. Florida State Senator Jason Brodeur acknowledged: “You’re going to get into a legal question about where the servers are located and where does the bet take place? You’re going to have folks that argue that the bet actually takes place on tribal land, because that’s where the servers are located. But then the other side is going to say, well, you know, the offer takes place...where the bet was placed.” Jim Rosica, *High Stakes: Is Florida Ready for Smartphone-Based Online Sports Betting?*, Tallahassee Democrat (May 14, 2021), <https://www.tallahassee.com/story/news/local/state/2021/05/14/florida-legal-sports-betting-seminole-tribe-compact-desantis-gambling-deal-special-session/4988655001/> (last visited Aug. 6, 2021).
- c. George Skibine, former Deputy Assistant Secretary of Indian Affairs at Department of the Interior told the Florida House Select Committee on Gaming: “[T]he Department [of Interior] will have to look at whether the gaming – when a bet is placed outside Indian lands and the server is on Indian land, whether that satisfies the IGRA requirement that it’s gaming on Indian lands. And I think there is language in [the Desert Rose] opinion that indicate that this is going to be a difficult decision for the department” See Testimony before the Florida House Select Committee on Gaming, May 18, 2021, <https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=7311> (last visited July 24, 2021).
- d. John Sowinski, president of No Casinos, an organization that opposes gambling and advocated for the adoption of Amendment 3, has stated: “It is not legal and permissible to have tribal gambling exceed the boundaries of tribal land.” Forrest Saunders, *Florida Poised to Approve New Gaming Rules When Lawmakers Return Next Week*, WPTV (May

14, 2021) <https://www.wptv.com/news/state/florida-poised-to-approve-new-gaming-rules-when-lawmakers-return-next-week> (last visited Aug. 6, 2021).

- e. Florida State Representative Sam Garrison has stated: “There’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. “It’s an open legal question. Period.” Ryan Nicol, *Dan Gerber, Philip Levine Argue Voters Should Have a Say in New Gaming Deal, Florida Politics*, FloridaPolitics.com (May 17, 2021) <https://floridapolitics.com/archives/430075-gelber-levine-voters-gaming-deal/> (last visited Aug. 6, 2021)
- f. Representative Garrison also has stated: “There is no black and white answer whether the hub and spoke model is going to be permitted or not. As we’ve said from Day One, and as the parties have contemplated, [whether the hub and spoke model is constitutional] is an open question.” Mary Ellen Klas & Ana Ceballos, *Florida Legalizes Sports Betting, Hard Rock to Add Roulette, Craps*, Tampa Bay Times (May 19, 2021) <https://www.tampabay.com/news/florida-politics/2021/05/19/florida-legalizes-sports-betting-but-hurdles-remain/> (last visited Aug. 6, 2021).

105. The Florida Governor’s office itself has acknowledged that the legality of online betting is, at a minimum, an open question: “The main concern is whether online gaming is considered gambling ‘in tribal lands.’” *See* Frequently Asked Questions – 2021 Compact, Governor’s Office Materials, <https://www.myfloridahouse.gov/api/document/house?Leaf=HouseContent/Lists/LegislatorUResources/Attachments/66/2021.05.12%20Compact%20FAQs.pdf> (last visited Aug. 6, 2021).

106. Even Jim Allen, Chairman of Hard Rock International (the Tribe’s casino operation) has acknowledged the possibility that the online sports betting portions of the 2021 Compact will be struck down: “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.” Haley Brown, *House Panel Approves Gaming Compact amid ‘Open Legal Question,’* FloridaPolitics.com (May 17, 2021),

<https://floridapolitics.com/archives/430058-house-panel-approves-gaming-compact-amid-open-legal-question/> (last visited Aug. 6, 2021).

107. Because of this recognized uncertainty, the Compact itself contemplates that part of the Compact (and in particular the off-reservation sports-betting provisions), may be invalidated, and includes the following severability provisions:

Each provision, section, and subsection of this Compact shall stand separate and independent of every other provision, section, or subsection, and shall be interpreted to ensure compliance with IGRA. In the event that a federal district court in Florida or other court of competent jurisdiction shall find any provision, section, and subsection of this Compact to be invalid, the remaining provisions, sections and subsections of this Compact shall remain in full force and effect *If 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

Exhibit A, Part XIV, Sec. A (emphasis added).

D. Approval and Implementation of the Compact Will Significantly Harm Plaintiffs.

108. Plaintiffs have for several years competed against the Tribe for customers for slot machines and customers for using card rooms offering banked card games. The Compact will significantly harm Plaintiffs' business by introducing online gaming into Florida and granting the Tribe the exclusive right to engage in it. As a result, anyone physically located in Florida, including Plaintiffs' customers, will be able to engage in sports betting online with the Tribe from their home or from any Florida location where they have access to an internet connection. This approval will therefore have a significant and potentially devastating competitive impact on Plaintiffs and the brick-and-mortar businesses who depend for their profits on individuals coming into their businesses to engage in gaming activities.

109. Pari-mutuels such as Plaintiffs depend for their revenue on in-person commerce. The pari-mutuel business model allows pari-mutuels to profit by offering pari-mutuel betting pools to the public and collecting a percentage of the money collected from bettors. Pari-mutuel betting is a gambling framework, utilized primarily in horse racing, jai alai, and any authorized event, where the competitors finish in a ranked order, from first to last. For example, bettors will bet on horses to “Win,” “Place” or “Show”—the first three horses across the finish line. The payout is determined once the betting event (the race or round) commences, which is when the betting pool is closed. The sportsbook or racetrack where the wager is placed collects a percentage from the pool, called the vigor, in exchange for offering the wager. *The higher the amount of wagers placed in the betting pool, the greater the vigor and, thus, the greater the net revenue to the pari-mutuel.* In Miami-Dade County, pari-mutuels like the Magic City Casino can also offer Las Vegas-style slot machines. And all pari-mutuels in Florida can obtain a card room permit. Unlike the online sports gaming that the Tribe will now be able to offer, patrons must visit the pari-mutuels in order to play slots or poker or engage in pari-mutuel betting.

110. By enabling the Tribe to offer sports betting via computer or phone from a person’s home or any other location in Florida, the Tribe will have a significant competitive advantage and cost Plaintiffs significant amounts of revenue. “Home casinos,” as contemplated by the Compact, will significantly diminish revenue at Plaintiffs’ pari-mutuels’ brick and mortar locations to the advantage of their competitor because individuals in Florida will be able to gamble from the comfort of their homes or from any location in Florida, but only with the Tribe. Plaintiffs also will incur increased costs in advertising and related expenses in an effort to maintain some of their customer bases.

111. These harmful effects will be even higher because of the COVID-19 global pandemic that has vastly increased the comparative attractiveness of goods and services that can be obtained through a computer rather than in person.

112. Plaintiffs also will be harmed by related provisions of the Compact that purport to authorize pari-mutuels to offer online sports betting placed with the Tribe via on-site kiosks located at the pari-mutuel facilities.¹⁶

113. As State Representative Sam Garrison explained, the Compact creates a “hub-and-spoke model.”¹⁷ The Tribe is at the center of the hub and, at its option, one or more pari-mutuels not located on Indian lands are at spokes of the sports betting wheel.

114. These contracts will be uneconomical, but Plaintiffs will have no choice but to enter them to avoid losing further business to other pari-mutuels in addition to the business that they already will lose to the Tribe’s online sports betting operation. Under these contracts, the Tribe may take 40% of the net win on bets placed at kiosks. Further, it may take an as-yet undetermined amount for the Tribe’s expenses. By contrast, Plaintiffs will not be able to deduct their expenses before sharing revenue with the Tribe. The “net win” solely refers to the amount won from the bet, not the profit after expenses.

¹⁶ The Compact also permits pari-mutuels to procure, develop, and advertise the web application that patrons will use to place sports betting wagers with the Tribe. Exhibit A, Part III, Sec. CC.3. Unlike the on-site kiosks—which as discussed in the text, are uneconomical but will be necessary to implement to prevent loss of business to other pari-mutuels—the option of developing mobile applications for the Tribe is not a realistic one because the costs to implement it well outweigh both any additional revenue it would generate or lost revenue it would prevent.

¹⁷ Mary Ellen Klas & Ana Ceballos, *Florida Expands Gambling, Joins Ranks of Sports Betting States. But Hurdles Remain*, Bradenton Herald (May 19, 2021), <https://www.bradenton.com/news/politics-government/state-politics/article251528698.html> (last visited Aug. 6, 2021).

115. The Tribe also will largely be able to dictate the remaining terms of the contract. The Compact provides that “Within three (3) months of the Effective Date of this Compact, the Tribe shall negotiate in good faith with any and all willing Qualified Pari-mutuel Permitholders to enter into written contracts as provided in [the] Section.” Aside from certain specific conditions, the Tribe exclusively determines the terms and conditions of the contracts. The only consequence of not entering into at least three (3) contracts with Qualified Pari-Mutuel Permitholders under the Compact is that the Tribe will pay the state an additional 2% of its “Net Win” from Sports Betting. Once the Tribe enters into contracts with the first three pari-mutuels, it is up to the Tribe to negotiate in good faith with other willing pari-mutuels. *See* Exhibit A, Part III, Sec. CC.4.

116. The Tribe has already begun soliciting potential spokes for its off-reservation online sports betting. On June 24, 2021, the Tribe, through Jim Allen, Chairman of Hard Rock International and CEO of Seminole Gaming, reached out to Magic City “to initiate discussions ... regarding the proposed sports book offering in the state” pursuant to the Compact (the “Allen Letter”, attached as Exhibit H). The purpose of the Allen Letter is to have Plaintiffs’ pari-mutuels, and presumably other pari-mutuel facilities, respond to the Tribe’s request for information regarding their facilities and “proposed framework for branding and marketing the sportsbook.” Following receipt of the pari-mutuels responses to the request for information, the Tribe will schedule meetings with interested pari-mutuels to discuss a proposed marketing agreement and sports betting offering. *Id.*

117. As the Compact and the Allen Letter make clear, the only way a pari-mutuel can participate in online off-reservation sports betting is to be one of the spokes on terms and conditions dictated exclusively by the Tribe.

118. These provisions thus further harm Plaintiffs by requiring them to invest significant resources in, among other things, negotiating new contracts, installing kiosks and other new equipment, increasing marketing expenditures, and strategies and planning for entering the new business. Further, they will be forced to offer a product (the sports-betting kiosks) that will take business away from other on-site gaming options that are far higher margin. Yet despite the highly uneconomical nature of the terms, Plaintiffs will have no choice but to offer the option to avoid losing customers to the Tribe and other pari-mutuels who will offer on-site sports betting. If that occurred, Plaintiffs would lose both the walk-in traffic from those who will not choose to gamble online through the Tribe *and* additional walk-in traffic to pari-mutuels on which their business models are based. The lost walk-in revenue affects their revenue from slot machines, card rooms, and pari-mutuel wagering, as well as the ancillary entertainment and dining options offered to patrons of their facilities.

119. The Tribe also has the additional advantage of being able to offer on-site cash wagering. Plaintiff pari-mutuels permit cash wagering in their gaming, but the Tribe has either not been willing or not been able to identify any way that the pari-mutuels would be able to permit on-site cash wagers for sports betting. The ability to conduct cash wagering is an important feature to many of Plaintiffs' customers who do not wish to be tracked or to release personal information. Pari-mutuel customers that prefer cash wagers for their gaming thus will have no incentive to use the pari-mutuel's facilities, and those who prefer to do so via credit card will have no need to visit the facility to do so. The inability to offer cash wagering thus would further diminish the advantages of offering on-site sports betting beyond preventing other pari-mutuel facilities from gaining a competitive advantage. At the same time, the Tribe will be able to offer both on-site cash sports betting and the ability to engage in sports betting online from anywhere in the state.

120. In sum, Secretary Haaland's approval of the Compact's unauthorized purported legalization of online, off-reservation sports betting will significantly reduce Plaintiffs' revenues while imposing significant new costs and burdens to prevent even further revenue losses.

121. All conditions precedent to the bringing of this action, if any, have occurred, have been waived or are excused.

122. Plaintiffs have retained the undersigned counsel and have incurred costs in bringing this action.

COUNT I

(Administrative Procedure Act, 5 U.S.C. §§ 700, et seq.) (Against All Defendants)

123. Plaintiffs reallege and incorporate by reference the allegations in the foregoing numbered paragraphs.

124. Pursuant to IGRA and related regulations, Secretary Haaland has a legal obligation to disapprove the Compact if it violates: (1) any provision of IGRA; (2) "any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands;" or (3) "the trust obligations of the United States to Indians." 25 U.S.C. § 2710(d)(8)(B); 25 C.F.R. § 293.14.

125. The Secretary's approval of the Compact is contrary to IGRA and exceeds the Secretary's authority under IGRA, which authorizes the Secretary to approve Compacts only where they relate to "gaming *on Indian Lands*." 25 U.S.C. § 2710(d)(8)(A) (emphasis added). The Compact here purports to permit gaming by persons located anywhere in the State of Florida, without requiring their presence on Indian Lands.

126. The Secretary's approval of the Compact also is unlawful because the Compact authorizes transactions that are illegal under the Wire Act. Specifically, the Compact unlawfully allows bettors located outside the Tribe's reservations to place online bets on sporting events and

to receive payments for such bets using wire communications facilities, even though such sports betting is illegal in Florida. *See* 18 U.S.C. § 1084(a).

127. The Secretary's approval of the Compact also is unlawful because the Compact authorizes transactions that are illegal under UIGEA. Specifically, the Compact unlawfully permits the Tribe to receive payments from persons who are physically located outside the Tribe's reservations and are making the payments in connection with sports betting that is illegal in Florida. *See* 31 U.S.C. § 5361(4).

128. The Secretary's approval of the Compact is also unlawful because the Compact violates the equal protection guarantee provided by the Due Process Clause of the Fifth Amendment of the United States Constitution. The Compact discriminates by affording different treatment for gaming facilities on the basis of race, tribal affiliation, and national origin. There is no compelling, legitimate, or even rational government interest that could justify this race-based and tribe-based disparate treatment of gaming operations, and the Compact is not narrowly or reasonably tailored to advancing a proper government interest.

129. The Secretary's approval of the Compact, whether by action or inaction, is arbitrary, capricious, an abuse of discretion and not in accordance with law.

130. The Secretary's approval of the Compact, whether by action or inaction, constitutes final agency action for which Plaintiffs have no other adequate remedy at law. No other administrative review is available to plaintiffs.

131. The Secretary's action with respect to the Compact is not entitled to deference pursuant to *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *Connecticut v. U.S. Dep't of the Interior*, 344 F. Supp. 3d 279, 307-08 (D.D.C. 2018).

132. Plaintiffs have both constitutional and prudential standing to assert this claim.

133. Plaintiffs and the public would be irreparably harmed if the Compact is implemented.

134. The intent of Congress and the public interest will be served by an Order vacating the Secretary's approval of the Compact.

COUNT II

(Violation of the Fifth Amendment Guarantee of Equal Protection) **(Against All Defendants)**

135. Plaintiffs reallege and incorporate by reference the allegations paragraphs 1 through 121 above.

136. The Fourteenth Amendment to the United States Constitution provides that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court has held that the Fifth Amendment binds the federal government to the same standard to which the Fourteenth Amendment binds the states. *See Bolling v. Sharpe*, 347 U.S. 497, 500 (1954); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 224 (1995).

137. Plaintiffs have invested years and millions of dollars into the pari-mutuel facilities, including offering cardroom and slot machine facilities to patrons as those options were made available to them under Florida law. Plaintiffs compete with the Tribe for walk-in patrons who, until the Compact's terms go into effect, were required to be on the premises of facilities to engage any gaming offered by each of them.

138. Under the terms of the Compact and the Implementing Law passed to enter the terms of the Compact into Florida law, Plaintiffs will no longer be able to compete on a level playing field with the Tribe.

139. The Compact establishes different treatment for gaming facilities on the basis of race, tribal affiliation, and national origin.

140. The Compact provides that Florida will permit *only the Tribe* to offer internet-based gaming *throughout the State of Florida*, rather than limited to the Tribe's gaming facilities and or even its tribal land more generally. In granting a state-wide, race-based monopoly to the Tribe, the Compact precludes Plaintiffs from competing with the Tribe even within their own pari-mutuel facilities in offering sports wagering and online sports wagering.

141. Plaintiffs are owned by individuals who are not members of the Tribe, and who are not Native American.

142. Secretary Haaland's application of IGRA in approving the Compact therefore violates the Equal Protection guarantee of the Fifth Amendment, by giving federal imprimatur to a compact that establishes different treatment for gaming facilities on the basis of race, tribal affiliation, and national origin.

143. There is no compelling, legitimate, or rational government interest that could justify this race-based and tribe-based disparate treatment of gaming operations. Moreover, the race-based benefit approved by Secretary Haaland is not narrowly or reasonably tailored to advancing a proper government interest. By granting the state-wide monopoly to offer gaming via the internet, the approved Compact strays well beyond the purpose of IGRA in supporting self-governance. Far from identifying a basis sufficient to justify such discrimination, the Compact is based on the transparent legal fiction that conduct is "deemed" to take place somewhere it does not.

144. As such, the approval by Secretary Haaland of the Compact violates the equal protection guarantee of the Fifth Amendment and Secretary Haaland's approval of the Compact should be vacated.

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiffs pray for the following relief:

- A. An order vacating and setting aside the Secretary's approval of the Compact as unlawful;
- B. An order awarding Plaintiffs costs, expenses, and attorneys' fees incurred in these proceedings pursuant to 28 U.S.C. § 2412; and
- C. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished via the e-Filing Portal on this **first** day of December 2023, to the following:

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