IN THE SUPREME COURT OF FLORIDA

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

Petitioners,

v. SC23-1333

RON DESANTIS, in his capacity as Governor of Florida, PAUL RENNER, in his capacity as Speaker of the Florida House of Representatives, and KATHLEEN PASSIDOMO, in her capacity as President of the Senate,

Respondents.
_____/

PETITIONERS' CORRECTED REPLY IN SUPPORT OF PETITION FOR WRIT OF QUO WARRANTO

BUCHANAN INGERSOLL & ROONEY PC
2 S. Biscayne Blvd., Ste 1500
Miami, FL 33131
(305) 347-4080

-and-

401 E. Jackson St., Ste 2400
Tampa, FL 33602
(813) 222-8180

Raquel A. Rodriguez, FBN 511439
raquel.rodriguez@bipc.com
Sammy Epelbaum, FBN 31524
sammy.epelbaum@bipc.com

-and-

Hala Sandridge, FBN 454362
hala.sandridge@bipc.com
Chance Lyman, FBN 107526
chance.lyman@bipc.com

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Constitutions

Rules

Other Authorities

TABLE OF REFERENCES

Petitioner's Petition cited as:	(P:[page number])
Petitioner's Appendix to Petition cited as:	(A:[page number])
Respondents' Response cited as:	(RES:[page number])
Seminole Tribe of Florida's Amicus Brief cited as:	(AB:[page number])

All emphasis in Reply is added unless otherwise indicated.

INTRODUCTION

Under Florida's constitution (the "Constitution"), the People retain ultimate power. In 2018, they exercised that power to enact Article X, Section 30 ("Amendment 3"). "[T]he chief purpose of [Amendment 3] is to make the citizens' initiative process…the **only** means for authorizing casino gambling in Florida." *Advisory Op. to Att'y Gen. re Voter Control of Gambling Florida,* 215 So. 3d 1209, 1216 (Fla. 2017). By its plain meaning, this Amendment expressly limits the power of the elected branches to expand gambling off tribal lands and grants that power exclusively to the People. Respondents attempt in various, unavailing ways, to dodge the plain language of this Amendment to shoehorn statewide gaming into an exception clearly meant only to permit gaming *on tribal lands*. First, they ask the Court to disregard precedent as to the scope of the writ, an invitation the Court should decline. Second, they argue that Amendment 3 does not apply to sports betting. This argument is defeated by Amendment 3's plain language and exceptions that would have been completely unnecessary if Respondents' restrictive interpretation were accepted. It is also belied by arguments of the Amendment 3 proponents before this Court and the Compact's own

definition of sports betting as a Covered Game, along with slots and table games. Compact III.F., (A:7); *infra*, §I.A.3. Third, they assert that the statewide gaming at issue here fits within the Indian gaming exception of Amendment 3 because it allows gaming off tribal lands to be conducted "under an" IGRA compact. That argument is nonsensical, as the clear intent of Amendment 3 was to prevent the expansion of gaming off tribal lands without the citizens' authorization. Art. X, Sec. 30(c), Fla. Const. Moreover, the entire premise of the D.C. Circuit's decision in the federal litigation was that the Compact at issue here could *not* provide such authorization. *W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059, 1069 (D.C. Cir. 2023). If Respondents believed their argument, they would not have resorted to the transparently inadequate "deeming" fiction of the Compact and Implementing Law—language that Respondents attempt to defend only in passing late in their filing. (RES:50).

Lest there is any doubt as to the invalidity of Respondents' arguments, any doubt as to the meaning of Amendment 3 should be construed liberally in favor of the People's right to control gambling by initiative. *See, e.g., Butterworth v. Caggiano*, 605 So. 2d 56, 61 (Fla. 1992); *Lehmann v. Cloniger*, 294 So. 2d 344, 347 (Fla. 1st DCA

1974). Although Respondents invoke legislative deference, the Legislature must defer to the Constitution, especially where, as here, a constitutional provision is a self-executing *textual restriction* on legislative action.[1] *See Florida Dept of Rev. v. City of Gainesville* 918 So. 2d 250, 256-257 (Fla. 2005) ("'[A] reading of section 3(a) of article VII clearly establishes that it is a self-executing provision and therefore does not require statutory implementation.'... Therefore, the statutory definition does not control the construction of the term 'municipal or public purposes' in the constitutional provision.") (citations omitted). The doctrine also does not apply where the text of the constitutional provision is clear and unambiguous or when the Legislature's interpretation would defeat its purpose. *Brock v. Dep't of Management Services*, 98 So. 3d 771, 775 (Fla. 4th DCA 2012).

Moreover, the Legislature's interpretation of what an IGRA compact allows is irrelevant. Respondents' circular argument that the Implementing Law, not the Compact, independently authorizes

---

[1] Relatedly, Amicus Seminole Tribe's ("Amicus") argument for the doctrine of "contemporaneous interpretation" (AB:18-20)—an argument notably not relied upon by Respondents—has no role, where, as here, the Amendment is self-executing, and no legislative action is needed.

off-tribal-lands wagering proves this point. (RES:50). The Implementing Law cannot authorize betting off tribal lands since the Section 30(c)-exemption applies exclusively to an IGRA compact that authorizes gaming "*on tribal lands*." Art. X, §30(c), Fla. Const.

Similarly, as a grant of a right, any doubts as to the meaning of Amendment 3 must be resolved against the exception. "Topics" or "allocations of authority" that are outside the specific IGRA-approved compact for gaming "on tribal lands" cannot be interpreted as falling within Amendment 3's narrow exception.

Respondents also ask this Court to hold that Florida's citizens have lesser rights than elected officials to come directly to this Court. But the Constitution places no restrictions on who may petition for a writ of quo warranto. Art. V, §3(b)(8), Fla. Const. This Court has long recognized the standing of taxpayers to enforce the Constitution, including in original quo warranto proceedings. *Infra*, §II. This right is especially compelling here, where the People's exclusive constitutional right to decide whether and how casino gambling will expand in Florida is the central issue in this case. Art. X, Sec. 30, Fla. Const.

Finally, years before the United States Supreme Court ruled provisions of the Professional and Amateur Sports Protection Act were unconstitutional, both the proponents and opponents of Amendment 3 argued before this Court that the Amendment contemplated that "casino gambling" would include sports betting. *Infra*, §I.A.3. In other words, even before the possibility that sports betting could be legalized in Florida, the parties anticipated that the Florida voters would authorize sports betting as a form of casino gambling if Amendment 3 was in effect. Consistent with this principle, the Compact itself treats sports betting as casino gambling. *See* Compact III.F., (A:7) (defining sports betting along with slots and table games). Thus, the legal arguments to approve Amendment 3 and the Compact language demonstrate the intent that sports betting is "casino gambling."

I. Amendment 3 Mandates Voter Approval of Sports Betting Occurring Off Tribal Lands.

A. As a matter of law, sports betting is "typically found in casinos."

1. The constitutional language stating that casino gaming includes games "typically found in casinos" includes sports betting.

Respondents insist that sports betting is not listed in Amendment 3's definition of casino gambling, arguing the phrase "any of the types of games typically found in casinos" should be limited by its context in subsection (b) of Amendment 3 to games in which outcomes are determined randomly, and its express exclusions are more akin to sports betting. (RES:42). Under subsection (b), the scope of casino gambling "includes, but is not limited to" a number of listed games. As this Court clarified in *Advisory Op. to Gov. re Implementation of Amend. 4*, 288 So. 3d 1070, 1079 (Fla. 2020), where text provides a list and the language "includes, but is not limited to," the list provides examples and is expansive rather than limited. *Id.* at 1080; (P:43-44) (discussing canons).

Respondents also propose a definition limiting "casino gambling" to "closed-universe games with defined statistical

outcomes," while sports betting involves "competitive, real-world events in which bettors try to predict outcomes." (RES:23). This manufactured and artificial distinction directly conflicts with the Compact. The Compact defines a Covered Game to include "Sports Betting," just like slots and table games. *See* Compact III.F., (A:7). Where subsection (b) lists card games and slot machines as examples of casino gambling, the Compact similarly treats all sports betting as a gaming activity. This interpretation thus contravenes basic canons of construction.

Respondents further argue that sports betting is more akin to the activities excluded from subsection (b) (the "does not include" list), (RES:42-43). To the contrary, Amendment 3's exclusion of horse racing and jai alai from the ambit of the prohibition makes clear that Respondents' interpretation is incorrect, because these exclusions would be entirely superfluous if Respondents' reading of Amendment 3 were correct. Clearly, sports betting is not in that list. Respondents' reliance on New Jersey, Nevada, and Mississippi statutes at the time of Amendment 3's ratification, (RES:43), demonstrates that sports betting was a known activity as of ratification, and could have been included. Amendment 3's language

creating this excluded list omits the phrase "including but not limited to" that is used in the expansive definition of casino gambling. Therefore, this textual exception includes only games actually listed, which clearly does not include sports betting.

Respondents also wrongly rely on the canon of *noscitur a sociis*, (RES:44), which "especially holds that 'words grouped in a list should be given related meanings.'" ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: *THE INTERPRETATION OF LEGAL TEXTS*, 195 (2012) (quoting *Third Nat'l Bank in Nashville v. Impac Ltd.*, 432 U.S. 312, 322 (1977)). Accordingly, the canon may interpret listed words in the second and third sentences of subsection (b), such as understanding the meaning of "any other games not authorized by Article X, section 15" in comparison to the various games listed. But the canon does not interpret the single term "casino gambling," which is not cojoined with any other words. *See, id.* at 195-96. Respondents invert the associated-words canon and, in doing so, inappropriately apply the *ejusdem generis* canon. *See Implementation of Amend. 4*, 288 So. 3d at 1080.

2. Amendment 3's definition of casino gambling includes casino gambling that existed in 2018, as well as any expansion of casino gambling after 2018.

Respondents would freeze the meaning of "any of the types of games typically found in casinos" to the time of ratification of Amendment 3 and only consider the presence of sports betting in casinos in 2018. (RES:44-45). Of course, sports betting existed in casinos in 2018 and has continued to expand. (P:20-21,51,n.17, A:109). But, there is no textual restriction to determine "typically found in casinos" only as of the time of ratification, and thus that analysis should include sports betting in 2018 as well as the understanding that sports betting is even more prevalent as casino gambling today.

Respondents argue that the specific reference to future changes to "Class III gaming" in the second prong of the definition of "casino gambling" must mean that the first prong is limited to the time of ratification. (RES:44-45). This argument fails for two reasons.

First, while the "typically found in casinos" prong does not include "in the future," it also does not include any other temporal limitation such as "upon adoption of this amendment." It thus is no

more helpful in interpreting "typically" based on the absence of the former phrase compared to the absence of the latter.

Second, the "typically" standard should be interpreted according to its own existing text, which, as discussed, contains no temporal directive whatsoever. Thus, "any of the types of games typically found in casinos" is an interpretative analysis for present application.

As drafted, Amendment 3 is forward-looking, to prevent *future* expansions of gambling after its passage. *See* Art. X, §30(a), Fla. Const. ("Florida voters shall have the exclusive right … in order for casino gambling **to be authorized** under Florida law.").

3. Both proponents and opponents of Amendment 3 argued to this Court that "casino gambling" includes sports betting.

Whether this Court interprets the phrase "typically found in casinos" as "characteristically" or "usually" found in casinos, the expressed intent of Amendment 3 was to include sports betting as a type of "casino gambling."

During oral argument on the ballot language, ***both*** proponents and opponents raised sports betting as an example of what "casino gambling" captured. Responding to questioning by then-Chief

Justice Canady on the authority that Amendment 3 grants to the People in lieu of the Legislature, proponent Voters in Charge recognized that sports betting in Florida would be required to be offered through the ballot initiative process, asserting:

> For example, if someone came forward with an amendment [a citizens' initiative under Amendment 3] that proposed to make sports betting legal throughout the State…

Oral Argument at 52:03, *Voter Control of Gambling* (available at https://wfsu.org/gavel2gavel/viewcase.php?eid=2393).

Likewise, opponents responded to Justice Pariente's question about the effectiveness of Amendment 3 to authorize casino gambling, by arguing:

> I'll give you a perfect example. Internet gambling and sports betting are the biggest things right now – there is lots of effort in Washington D.C. to try and deal with both of these.

Id., at 1:02:11.

Through these sports betting examples, both sides agreed that Amendment 3 would require a ballot initiative to authorize sports betting, because sports betting is a type of game "typically found in casinos" if and when available. Moreover, nearly six months prior to

Amendment 3's ratification, the asserted legal argument that sports betting is a type of "casino gambling" became reality. (P:20-21,42,n.16). In interpreting "casino gambling" to include sports betting, this Court can rely on the proponents' *and* opponents' understanding, as well as the voters' knowledge at ratification.

B. Respondents patently misconstrue both the Compact and Amendment 3 to squeeze the off-tribal-land casino gambling into the Section 30(c) exception.

1. Mobile sports betting is not "ancillary" to the Compact but is the primary Class III gaming activity it authorizes.

Respondents next attempt to squeeze state-wide sports betting into the exception in Section 30(c) of Amendment 3. That exception allows casino gambling without voter approval where there is federal authorization via a "gaming compact[] pursuant to [IGRA] for the conduct of casino gambling on tribal lands." Art. X., §30(c), Fla. Const.

Respondents do not argue that *the Compact* authorizes off-tribal-lands mobile sports betting, a Class III game under 25 C.F.R. § 502.4. They concede this for good reason, because mobile sports betting is not "on tribal lands," which is the only type of gaming that an IGRA compact authorizes. *Michigan v. Bay Mills Indian Cmty.*,

572 U.S. 782, 795 (2014) ("IGRA . . . regulate[s] gaming on Indian lands, and nowhere else."). Instead, Respondents reference the D.C. Circuit's discussion of the portion of IGRA that provides for "other subjects that are directly related to the operation of gaming activities" under 25 U.S.C. § 2710(d)(3)(C)(vii). Respondents ignore that to fall within the Section 30(c) exception, the IGRA compact must do what the D.C. Circuit decision makes clear it cannot do—authorize the gaming activity in question.[2]

Respondents are thus caught in an inescapable trap. The only way to expand casino gambling under state law is by having that gaming authorized through an IGRA compact, but under the D.C. Circuit's decision, such authorization of off-tribal-lands gaming is not possible under IGRA.

---

[2] As the D.C. Circuit explained, "[t]hus, to be sure, an IGRA gaming compact can legally authorize a tribe to conduct gaming **only on its own lands**. But at the same time, IGRA does not *prohibit* a gaming compact—which is, at bottom, an agreement between a tribe and a state—from discussing other topics, including those governing activities 'outside Indian lands[.]'" *Haaland*, 71 F.4th at 1062 (quoting *Bay Mills*, 572 U.S at 796). In fact, IGRA expressly contemplates that a compact 'may' do so where the activity is 'directly related to [the operation of gaming activities].'" *Id.* (citing 25 U.S.C. § 2710(d)(3)(C)(vii)).

Even if Respondents' subsection-(vii) argument deserved any consideration, their argument is not based on what the Compact ***actually does***. The Compact does not treat online sports betting as an ancillary matter, but as one of the expressly authorized Covered Games. *See* Compact IV.A., (A:23). The definition of "Sports Betting" in turn does not separate out mobile sports betting from in-person sports betting. *See* Compact III.F.5., (A:7). Thus, as a "Class III gaming activity," sports betting, in reality and under the Compact, is not "[an] ***other*** subject[]" nor is it "***related*** to the operation of gaming activities." *Compare* 25 U.S.C. § 2710(d)(3)(A) *to* 25 U.S.C. § 2710(d)(3)(C)(vii). Rather, sports betting ***is itself the gaming authorized by the Compact.***

It subverts the very purpose of IGRA to smuggle mobile sports betting into IGRA's provision for "any other subjects that are directly related to the operation of gaming activities." The U.S. Supreme Court called out this charade, reasoning that 25 U.S.C. § 2710(d)(3)(C) provisions "lose all meaning if…'class III gaming activity' refers equally to the…operation of the games." *Bay Mills*, 572 U.S at 792.

In their one attempt to deal with this problem, Respondents weakly argue that the Compact does not "independently authorize" the activities and state that the legislation does that. That is nonsensical. The Legislature ratified and implemented the Compact, which provides the structure under which the sports betting will operate and without which it could not exist because of Amendment 3. Under Amendment 3, a compact thus must do more than "discuss" Indian gaming. It must give it effect. Under Amendment 3, the Legislature cannot by itself authorize casino gambling. It needs the machinery the IGRA compact provides. The Compact thus survived scrutiny in the D.C. Circuit only because it lacked what it must have to satisfy Section 30(c).

Respondents also argue (without support) that invalidating the sports betting provisions would "interfere" with the negotiation of a Compact for gaming on tribal lands because the off-tribal-lands provisions were a "lucrative" bargaining chip without which the Compact would not have been concluded. This argument ignores the clear language of both the Compact and Amendment 3. First, the Compact precisely spells out what will happen if the sports betting provisions are eliminated, including the financial consequences.

Thus, nothing will prevent the expansion of on-tribal-lands gaming (including sports betting) if the mobile sports betting provisions are invalidated.[3] Second, the clear point of the exception is not to allow off-tribal-lands gaming to be used as a "bargaining chip," but instead simply to ensure that Amendment 3 is not interpreted to prohibit negotiation of compacts. If credited, Respondents' argument would allow for tribal-run physical casinos throughout Florida.

Finally, if Respondents really believed Amendment 3 authorized IGRA compacts that expanded casino gaming statewide, they would not have resorted to the transparently inadequate deeming fiction, which they address only in passing. *See infra*, §I.B.3. Respondents knew they were skating on the thinnest of ice and that knowledge is reflected in both the deeming fiction and the highly specific severability provision, both of which would have been unnecessary but for the clear intent of the voters in enacting Amendment 3.

[3] Nothing prevents a citizens' initiative authorizing mobile sports betting hosted by tribal casinos.

2. Section 30(c)'s exception "for the conduct of casino gambling on tribal lands" is a limitation, not a mere descriptor of IGRA compacts.

Respondents argue that, even if mobile sports betting constitutes off-tribal-lands gaming, the mere mention of it in the Compact triggers the Section 30(c) exemption. (RES:48-49). This argument requires interpreting the phrase "for the conduct of casino gambling on tribal lands" to do no more than describe what "gaming compacts pursuant to the Federal Indian Gaming Regulatory Act" do. (RES:49). Respondents argue the phrase "for the conduct of casino gambling on tribal lands" is a descriptor of those IGRA compacts and not a limitation on the reach of the exemption to only gaming "on tribal lands." (RES:48-49).

When considered in full, however, the text of 30(c) warrants a different interpretation:

> nothing therein 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.

Art. X, §30(c), Fla. Const.

Even if the first "on tribal lands" reference arguably could be interpreted to do no more than describe IGRA compacts, the second mention of "on tribal lands" precedes any mention of compacts under IGRA. That second "on tribal lands" does not modify IGRA compacts (as "pursuant to compacts" and "pursuant to IGRA" follow "on tribal lands").

The better reading of the sentence is that "on tribal lands" in both phrases serves the same purpose—to modify "casino gambling" as the specific type of gaming—that is, on-tribal-lands gaming. The presumption of consistent usage favors interpreting "on tribal lands" in both phrases of the same sentence as a modifier to "casino gambling" rather than a descriptor of IGRA compacts in only the first phrase when such descriptive function is clearly lacking in the second phrase. *See* SCALIA & GARNER at 170. Read properly, "gambling on tribal lands"—and not gaming off-tribal-lands—is within the reach of Section 30(c)'s exemption.

Significantly, in considering Amendment 3's ballot language, this Court clearly understood "the actual text and effect" of Section 30(c)'s exception to apply only to gaming on tribal lands. *Voter*

Control of Gambling, 215 So. 3d at 1216. In describing the exception, it stated:

> Subsection (3) of the amendment's text explains the amendment shall not be construed to affect **gambling on tribal lands** pursuant to compacts entered into under federal law.

Id. Thus, "on tribal lands" is not a general description of what IGRA compacts do, as Respondents argue. The phrase limits the exception to gaming that occurs "on tribal lands."

3. The Legislature cannot expand off-tribal-lands casino gambling by "deeming" it to occur "on tribal lands."

As an adjunct to arguing the off-tribal-lands sports betting is an allowed "ancillary topic" of the Compact under 25 U.S.C. § 2710(d)(3)(C), Respondents assert the Compact and Implementing Law can "deem" off-tribal-lands wagers to occur at servers on tribal lands as an allocation of jurisdiction. (RES:51-52). Statewide online sports betting is, quite simply, not an "allocation of jurisdiction."

This Court has specifically noted that Amendment 3 "restricts the ability of the Legislature to authorize casino gambling through general law." *Voter Control of Gambling*, 215 So. 3d at 1215. The sponsors clearly laid out their intent as to the limits to Amendment

3's exception regarding IGRA compacts. *See* Brief for Sponsor at 19, n.1, *Voter Control of Gambling*, 2016 WL 3655206. Respondents conflate the ability to allocate regulation of casino gambling with the "ability of the Legislature to authorize casino gambling". *See* Compact, III.CC.2., (A:17). The deeming provisions here are not regulatory; they are a tool for authorizing sports betting through general law.

A voter reading the ballot summary, title or text of Amendment 3 never would have imagined that the Legislature could approve statewide mobile gambling outside tribal lands under the guise of an IGRA compact.

Respondents' Florida law deeming examples also are inapposite. (RES:51). Unlike the deeming provisions in the three cited Florida statutes, sports betting was and remains illegal in Florida. Prior to the Implementing Law, sports betting was a misdemeanor, and thereafter elevated to a felony. *See* § 849.14, Fla. Stat. There is an intrinsic difference between adopting a legal fiction for conduct that is legal everywhere versus a legal fiction for conduct legal in one place (tribal land) but illegal in another (throughout Florida):

- Section 456.47(5), Fla. Stat., is a venue provision applicable to telehealth services. No criminal laws or constitutional provisions are implicated. Moreover, the legislature clearly has authority to determine venue in civil actions. *See* Chapter 47, Fla. Stat.
- The revenue statutes cited, §§ 212.054(3)(a) and 212.05(1)(e)1.a.(II), also fall within the Legislature's plenary authority to assess and allocate revenue as it deems necessary, subject to specific limitations.

Respondents cite no constitutional provision that is implicated by these three isolated "deeming" provisions.

Amicus also cites wholly irrelevant statutes from gambling jurisdictions in support of its "deeming" argument. (AB:12-16).

In Rhode Island, voters actually *approved* gambling expansion. Amicus conveniently glosses over the narrow holding of the trial court in *Harrop v. Rhode Island Div. of Lotteries* 2020 WL 3033494 *13 (R.I. Super. 2020): Rhode Island voters understood they were authorizing sports betting among the approved casino games – having "expansively" authorized gambling. In contrast, Florida voters "expansively" restricted gambling.

Amicus's Atlantic City example also is misplaced. New Jersey's constitutional provision, unlike Florida's, is non-self-executing. Further, it delegates to the legislature broad power to determine how games at Atlantic City casinos will be conducted: "The type and number of such casinos or gambling houses and of the gambling games which may be conducted in any such establishment *shall be determined by or pursuant to the terms of the law authorizing the establishment and operation thereof*." N.J. Const., art. IV, § 7, ¶ 2(D). Its legislature can determine everything about how the games are conducted, including use of the Internet. No such delegation beyond the "on-tribal-lands" exception exists in Amendment 3.

Similarly, West Virginia's constitution does not prohibit its legislature from enacting legislation permitting sports wagering or determining its operation. W. Va. Const., art. 6, §36; 64 W. Va. Op. Att'y Gen. No. 11, 1991 WL 628000, at *3 (Feb. 14, 1991) (state may regulate, control, own and operate a lottery "in the manner provided by general law"). The legislature may also authorize state-regulated "bingo games and raffles" anywhere, and counties must vote to specifically disapprove the games. W. Va. Const., art. 6, §36. In contrast, Amendment 3 broadly restricts expansion of casino

gambling and exclusively requires citizen-led initiatives for its expansion.

New York's constitution similarly lacks anything resembling Amendment 3 and further authorizes "casino gambling at no more than seven facilities *as authorized and prescribed by the legislature*." N.Y. Const., art. I, §9(1).

Nor is Michigan's Lawful Internet Gaming Act, adopted a year after Amendment 3, relevant. Michigan's law, consistent with Petitioners' position, *excludes* Indian tribes operating casinos under IGRA compacts from accepting wagers from patrons not physically located on tribal lands *unless* the tribe obtains a state internet gaming operator license like other commercial providers. Mich. Comp. Laws Ann. § 432.306(1)(b). The normal casino license is not the same as the Indian gaming compact and thus irrelevant here.

II. Quo Warranto is Appropriate.

A. Respondents have presented no basis for this Court to consider receding from precedent on citizen standing to challenge improper exercise of authority.

Relying on this Court's precedent, Petitioners demonstrated why they have standing and why quo warranto relief from this Court is appropriate. (P:5-13). This Court has repeatedly acknowledged

the propriety of exercising original quo warranto jurisdiction when anyone with standing, including citizens and taxpayers, challenges state officials' exercise of power in excess of their constitutional authority.[4]

Respondents urge this Court to recede from its established precedent on the proper use of judicial power in considering a writ of quo warranto.[5] This Court recently rejected a similar request to recede from citizen-standing precedent. *Thompson*, 301 So. 3d at 184 (must be clearly convinced that a precedent conflicts with the law "we are sworn to uphold") (*citing State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020)). Likewise, Respondents fail to meet their significant burden of showing precedent is "clearly erroneous," so this Court need not consider the invitation. *Poole*, 297 So. 3d at 507.

---

[4] *Boan v. Florida Fifth Dist. Court of Appeal Judicial Nominating Comm'n*, 352 So. 3d 1249, 1252 (Fla. 2022); *Thompson v. DeSantis*, 301 So. 3d 180, 184 (Fla. 2020); *Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011); *Florida House of Representatives v. Crist*, 999 So. 2d 601, 607 (Fla. 2008); *Chiles v. Phelps*, 714 So. 2d 453, 456-57 (Fla. 1998); *Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989); *cf Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009) (mandamus).

[5] Respondents target *State ex rel. Pooser v. Wester*, 170 So. 736, 737 (Fla. 1936), which itself cited earlier cases where "quo warranto had been extended and employed for purposes other than for which it was originally conceived." 170 So. at 737- 738.

Respondents merely assert a difference of opinion with Court precedents on its power to hear quo warranto petitions. Precedent is presumed correct. *Id.* This means more than a "possibility of reasonable differences of opinion." *Id.* at 506; *see CCM Condo. Ass'n, Inc. v. Petri Positive Pest Control, Inc.*, 330 So. 3d 1, 5 (Fla. 2021) (declining to recede because court not left with "definite and firm conviction" precedent was "clearly erroneous").

The Constitution—the source of this Court's quo warranto jurisdiction—says only that this Court "[m]ay issue writs of . . . quo warranto to state officers and state agencies." Art. V, §3(b)(8), Fla. Const.; *accord* Fla. R. App. P. 9.030(a)(3). Besides the fact that the writ must issue to state officers and state agencies, the Constitution imposes no limits on the People's use of quo warranto, or any requirement to consult the Attorney General. *See* Anstead *et. al.*, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431, 543 (2005) (observing that "[t]his limitation is the only express restriction contained in the constitution").[6] Because of its

[6] This constitutional limitation was imposed as part of the 1972 Amendment to the Constitution. *See* Art. V, §3, Fla. Const. (West, Editors' Notes – Commentary to 1972 Adoption, Subsection (b)); *see also* Anstead, 29 Nova L. Rev. at 544, n.708. That's another reason

use to vindicate a public right, as here, "[s]tanding to seek quo warranto has been held to be broad and inclusive." *Id.*

This Court's opinions in *Thompson* and *Boan,* in which it exercised quo warranto jurisdiction where citizen-taxpayers challenged unlawful exercises of authority, underscore the enduring propriety of the Court's exercise of judicial power in these instances. *Boan*, 352 So. 3d at 1252 (citing *Thompson*); *Thompson*, 301 So. 3d at 184 (citing *Whiley,* 79 So. 3d at 707). Far from simply relying on what Respondents describe as a "minority opinion," (RES:28), *Whiley* relied on the Constitution. Respondents, however, ask this Court to "read into the constitution a provision that is not there," which this Court "may not do." *Martinez*, 545 So. 2d at 1340.

Respondents identify no statutory support either. In fact, Respondents rightly observe that statutory authority discussing quo warranto is "not relevant here." (RES:27) (citing § 80.01, Fla. Stat.).

State ex rel. Wurn v. Kasserman, 179 So. 410, 411 (Fla. 1938), and other cases predating the modern constitutional writ cited by Respondents, are inapposite. To the extent this Court remarked in *Orange County v. City of Orlando*, 327 So. 2d 7, 8 (Fla. 1976) that quo warranto might be unavailable if the Attorney General refused to allow it to proceed, that is *dicta* and unsupported by any language in the Constitution or Florida Statutes.

Section 80.01 governs a narrow use of quo warranto, inapplicable here, where one claims title to an office exercised by another. *See* Anstead, 29 Nova L. Rev. at 544 (observing that quo warranto actions "of this variety" are governed in part by statute but "[t]here are other uses of quo warranto"); *cf. State v. Fernandez*, 143 So. 638, 639 (Fla. 1932) (quo warranto historically applied in cases challenging one who obtained any office and "also" in cases of "misuser or abuse of [a franchise of the crown]").[7]

B. This Court should accept its original jurisdiction.

Respondents rely on *Detzner v. Anstead*, 256 So. 3d 820, 833 (Fla. 2018) to suggest that the writ cannot be used because Petitioners seek a *declaration* that the Governor and Legislature exceeded their powers. (RES:26). But in *Detzner*, the petitioners conceded the official's authority; they just disagreed with his action.

[7] Respondents incorrectly cite *Fernandez*, implying this Court held ***all*** quo warranto petitions must be filed with the consent of the Attorney General. (RES:27). *Fernandez* makes no such pronouncement. *Fernandez* supports Petitioners, because it distinguished another quo warranto case as being limited to the statute under which it was brought, while also acknowledging that the writ had been, and should continue to be, expanded consistent with the maxim that "equity will not suffer a right to be without a remedy." 143 So. at 639, 641.

Id. at 823. Quo warranto, properly sought, is a vehicle to determine "by what authority of law" the public official actions were taken. *Fernandez*, 143 So. at 639. Petitioners seek quo warranto because the Governor and Legislature have no authority to approve off-tribal-lands gambling without a ballot initiative.

As in *Crist*, the "importance and immediacy" of the Tribe's commencement of statewide mobile sports betting—because the Governor and Legislature exceeded their constitutional authority—justifies this Court's taking jurisdiction rather than transferring it to circuit court. *See Crist*, 999 So. 2d at 608. The Court has accepted quo warranto jurisdiction in cases of importance and immediacy despite arguments suggesting declaratory judgment actions in circuit court were adequate.[8] And it should do so here.

First, Respondent's argument is fatally inconsistent with their point that the Tribe is an indispensable party. (RES:24). As explained *infra* § IV, the Tribe is not indispensable here because, *inter alia*, the Florida Rules of Civil Procedure—Respondents sole authority—do not apply to this original proceeding. Because those

[8] *Whiley*, 79 So. 3d at 707; *Chiles*, 714 So. 2d at 457; *cf. Pleus*, 14 So. 3d at 946.

rules ***would*** apply to a declaratory judgment action in circuit court, Respondents arguably could assert their indispensable-party argument to preclude relief. Respondents cannot claim that the Tribe is an indispensable party while also arguing Petitioners have an adequate remedy for declaratory relief.

Second, Respondents wrongly argue there is no immediacy here. (RES:34). Each passing moment that the unlawful exercise of power remains unchecked is a constitutional deprivation that this Court can and should correct. *Crist* again is dispositive of this question.

Moreover, just as this Court did in *Whiley*, *Crist*, and *Chiles*, it should accept original jurisdiction here because (1) the issue raised in the Petition "creates uncertainty for those required to enforce these laws, as well as for those who may be subject to their reach," (2) no material facts are in controversy, and (3) judicial economy favors immediate resolution because the constitutional question would in all likelihood ultimately be decided by this Court in any event. *Chiles*, 714 So. 2d at 457, n.6; *see also Whiley*, 79 So. 3d at 707 (collecting cases where this Court accepted original quo warranto jurisdiction without requiring proceedings in circuit court and accepting

jurisdiction due to serious constitutional questions and lack of factual disputes).

In furtherance of their argument that quo warranto is not available to Petitioners because they are not state officials (RES:33-34), Respondents mischaracterize the nature of relief sought in the Petition as a "writ of erasure." (RES:26,33). Petitioners do seek the writ as "the Governor and Legislature exceeded their power in authorizing off-reservation sports betting." (P:60); *see* (RES:35). Respondents, however, argue that "it was the statute – nothing less – that did that [authorization]" – "the sole question here is whether the Legislature properly authorized gaming in § 285.710(13)(b)7[, Fla. Stat.]" (RES:35-36). But "authorization" of off-tribal-lands mobile sports betting was accomplished in the Compact itself, not just by subsection (13)(b)7. Indeed, (13)(b) says so.

Subsection (13)(b)1-7 satisfies the IGRA condition in 25 U.S.C. 2710(d)(1)(B) for "the gaming activities authorized under an Indian gaming compact." §285.710(13)(b), Fla. Stat. Petitioners challenge that Compact authorization. *See* Compact III.F.5. & IV.A., (A:7,23) (authorizing "Sports Betting," including in person and mobile gaming, as a Covered Game). The Compact authorizes the Tribe to

operate Covered Games, and in that same Section IV.A., the Compact seeks to "deem" the location of mobile sports betting to be on tribal lands. But this "deeming" feature fails to allow authorization of mobile sports betting in the Compact. *See Haaland*, 71 F. 4th at 1065 ("it did not 'authorize' it"). Lacking authorization under IGRA, the question for this Court is whether mobile sports betting, placed in the Compact, can be authorized under state law as a provision of the Compact.

Petitioners challenge the Governor's action in the Compact and the Legislature's ratification of it in Section 285.710(3)(b) as violative of Amendment 3, where "Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida." The Governor did not have the authority to negotiate the Compact authorizing mobile sports betting, nor did the Legislature have authority to ratify that provision.

Finally, Respondents contend that quo warranto is "unavailable to challenge the authority of an official who was unquestionably authorized to act in the manner that he did." (RES:35). But Respondents misapply *Detzner,* because petitioners there never asserted the official improperly exercised or exceeded his authority.

256 So. 3d at 823. The Petition here asserts just that, as Respondents inconsistently acknowledge elsewhere. (RES:26).[9] Instead, the Petition is in line with *Thompson*, which held the Governor exceeded his authority. 301 So. 3d at 180.

III. The Petition is Timely.

The Petition explains the path to this Court is timely. (P:10-13). Petitioners pursued available federal remedies first. "It is one of the fundamentals of procedure in quo warranto that the writ will not be issued where there is another ample and sufficient remedy provided by law for the relief sought." *State v. Duval Cnty.*, 141 So. 173, 176 (Fla. 1932); *see also Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1037 (Fla. 2001) (exhaustion of administrative remedies).

By their terms, neither the Compact nor the Implementing Law (including the off-tribal-lands sports betting provisions) could take effect until the Compact was "ratified and approved" by the U.S. Secretary of the Interior (the "Secretary") through her inaction. 25 U.S.C. § 2710(d)(8)(C); § 285.710(1)(a), Fla. Stat.; Compact XVI.A.,

[9] Respondents' point that "[c]ourts cannot erase statutes from the law books," (RES:33), is a red herring. The Petition contains no such request.

(A:72). Unable to prevent submission of the Compact for Secretarial approval in their first federal action asserting *federal* claims, once the Secretary allowed the Compact to take effect, Petitioners' sole remedy under the federal Administrative Procedures Act ("APA") was to challenge that approval in federal court. *See* 5 U.S.C. §§ 702-04; *Amador Cnty., Cal. v. Salazar*, 640 F.3d 373, 383 (D.C. Cir. 2011). They did so within days of publication in the Federal Register.

In expedited proceedings, Petitioners obtained summary judgment on November 22, 2021. As a result, the Compact was no longer valid under its own terms and the Implementing Law, and hence no "immediate" quo warranto "remedy" was required from this Court. *W. Flagler Associates, Ltd. et al. v. Haaland*, 573 F. Supp. 3d 260, 276 (D.D.C. 2021) ("*Haaland I*") ("the practical effect of this remedy is to reinstate the Tribe's prior gaming compact, which took effect in 2010"); § 285.710(a), Fla. Stat.

Then, on June 30, 2023, a D.C. Circuit Court panel reversed the District Court, *Haaland*, 71 F.4th 1059 ("*Haaland II*"), but the

reversal was stayed pending a motion for rehearing *en banc*.[10] On September 11, 2023, that court denied the motion. *W. Flagler Assocs., Ltd. v. Haaland*, No. 21-5265, 2023 WL 5985186, at *1 (D.C. Cir. Sept. 11, 2023). Under the D.C. Circuit Court's rules, the District Court's judgment in *Haaland I* was reversed and the Secretary's ratification and approval of the Compact was reinstated on September 18, 2023. *See* D.C. Cir. Crt. Rule 41(a)(1). On September 25th, Petitioners filed this Petition.[11]

Just seven days passed between the D.C. Circuit Court's reinstatement of the Compact approval and the Petition. This Court has exercised its quo warranto jurisdiction where petitioners waited much longer to seek relief. *See*, *e.g.*, *Whiley*, 79 So. 3d 702 (two

[10] Importantly, the D.C. Circuit Court's ruling was limited to whether the Secretary's approval of the Compact violated IGRA. It did not address Amendment 3. *Haaland II*, 71 F.4th at 1068.

[11] Chief Justice John Roberts thereafter recalled and stayed the D.C. Circuit Court's mandate on October 12, 2023. But, on October 25, 2023, the U.S. Supreme Court lifted its stay. *W. Flagler Assocs., Ltd. v. Haaland*, No. 23A315, 2023 WL 7011331, at *1 (Oct. 25, 2023) ("[T]he state law's constitutionality is not squarely presented in this application, and the Florida Supreme Court is in any event currently considering state-law issues related to the Tribe's potential off-reservation gaming operations.") (Kavanaugh, J., statement).

months); *Chiles*, 714 So. 2d 453 (about six months). Respondents' reliance on *Warren v. DeSantis*, 365 So. 3d 1137 (Fla. 2023), (RES:19-23), is unavailing. Warren unsuccessfully sought federal quo warranto relief *under Florida law*, then waited almost 5 months to petition this Court. *Id.* at 1142.

Unlike in *Warren*, Petitioners did not "invoke[] this Court as a backup plan," *id.* at 1143, to challenge the state issues involved in this proceeding. Rather, Petitioners challenged (and initially obtained the invalidation of) the Secretary's approval of the Compact *in federal court, under federal law,* pursuant to long-standing precedent requiring parties to pursue other "ample and sufficient remed[ies]." *See Duval Cnty.,* 141 So. at 176; *State v. Tampa Waterworks Co.*, 48 So. 639, 641 (Fla. 1908); 43 Fla. Jur 2d Quo Warranto § 10; *see also Flo-Sun, Inc.*, 783 So. 2d at 1037. Immediately after the D.C. Circuit Court's opinion in *Haaland II* took effect, Petitioners filed their Petition, *under state law*, with this Court.

The posture of this case also differs from *Thompson*, where it appears petitioner gave no reason for her six-month delay in challenging the JNC's "immediately apparent" defective nomination. 301 So. 3d at 183. Although not addressed by the majority,

expiration of the deadline for appointment from the list of nominees and the Governor's subsequent appointment from that list rendered moot any challenge to the JNC's nominations. *Id.* at 184 (Polston, J., concurring in result only).

Nor is the reasoning in this Court's 1936 decision in *State ex rel. Pooser v. Wester* applicable. In *Wester*, the Court found that the filing of the challenge to the primary election was so close to the general election that "nothing that could result but confusion and disorder." 170 So. At 739 (*cited in Thomspon*, 301 So. 3d at 182).

Petitioners acted expeditiously.[12]

IV. The Tribe is Not an Indispensable Party.

Respondents' assertion that the Court should decline to exercise its quo warranto jurisdiction because the Tribe is not a named party, (RES:24-25), fails for several reasons.

---

[12] Further, the "time for review" has not passed. While an individual's constitutional claim arguably might be waived by delay (*Warren*), where the collective rights of the citizens are involved, a laches defense ought not be so strictly applied unless actual prejudice results (as the basis for the laches finding in *Wester* as described *supra*).

First, the Florida Rules of Civil Procedure do not apply to original proceedings before this Court. *See* Fla. R. App. P. 9.010.[13]

Second, Petitioners challenge Respondents' power to alter the state's public policy to authorize off-tribal-lands sports betting in Florida. (P:60). While a writ of quo warranto declaring Respondents exceeded their authority in expanding casino gambling will invalidate the offending portions of the Implementing Law and thereafter trigger the severance provisions embedded in the Compact, (P:60-61), the Compact itself is not directly at issue here, as opposed to the Governor and Legislature's *authority*. It is Respondents' usurping the People's constitutional power to approve casino gambling that is challenged. (*Id*).

The only necessary parties before the Court are, therefore, the Legislature, which enacted the Implementing Law, the Governor, who signed the Compact and Implementing Law, and the People (through Petitioners), whose constitutional power was usurped. The Tribe's contractual interest in the Compact is a separate matter unrelated to

---

[13] *Fla. Dep't of Rev. v. Cummings*, 930 So. 2d 604, 605 (Fla. 2006), (RES:24), is unavailing, since *Cummings* involved the question of whether a "legal father" is an indispensable party to *a paternity proceeding in trial court*.

the constitutional issue here. *Cf. State v. Osceola Cnty.*, 752 So. 2d 530, 540 (Fla. 1999) (citing *Broward County v. State,* 515 So. 2d 1273, 1273-74 (Fla. 1987) (reversing trial court's finding that bondholders who purchased bonds were indispensable parties to a bond validation proceeding because the bondholders' interest in the bonds is collateral to the validity of the bonds)).[14]

Third, if the Tribe were deemed a necessary party (which it is not) and Fla. R. Civ. P. 1.140(b)(7) somehow applied (which it does not), then the Respondents could trample over the People's power without restraint any time a Native American tribe benefited from constitutional overreach. Such a result is obviously inequitable. "A 'court ought not dismiss an action on the grounds of failure to join an indispensable party if dismissal would foreclose the claim of the present plaintiffs and the only adverse result of failure to dismiss is a possible subsequent action against the defendant by the missing party.'" *State, Dep't of Health & Rehab. Servs. v. Southpointe Pharm.*,

---

[14] *Spierer v. City of N. Miami Beach*, 560 So. 2d 1198 (Fla. 3d DCA 1990) and *Loxahatchee River Env't Control Dist. v. Martin Cnty. Little Club, Inc.*, 409 So. 2d 135 (Fla. 4th DCA 1982), (RES:25), are not relevant, because they involved contract actions for monetary damages, not constitutional challenges to exercise of authority.

636 So. 2d 1377, 1381 (Fla. 1st DCA 1994) (quoting *Phillips v. Choate*, 456 So. 2d 556, 557 (Fla. 4th DCA 1984)). This is especially true when a constitutional principle is at stake.

Fourth, the Tribe filed, without objection, its amicus brief.[15] Any argument that equitable principles require denial of the Petition because the Tribe's interests are not adequately represented is moot.

CONCLUSION

This Court has quo warranto jurisdiction. It should exercise it to vindicate the People's exclusive right to control the expansion of casino gambling in Florida.

[15] Other than a perfunctory one-sentence footnote in its 24-page brief "support[ing] Respondent's argument," (AB:1,n.1), the Tribe does not actually assert that this action must be dismissed for failure to join an indispensable party. Instead, it raises additional arguments. *See, e.g.*, *id.* at 15. Clearly, the Tribe's interests have been fully addressed in this proceeding. *Cf. Crist*, 999 So. 2d at 601 (Tribe granted leave to join as a respondent).

Respectfully submitted,

Buchanan Ingersoll & Rooney PC
2 S. Biscayne Blvd., Ste 1500
Miami, FL 33131
(305) 347-4080

-and-

401 E. Jackson St., Ste 2400
Tampa, FL 33602
(813) 222-8180

By: */s/ Raquel A. Rodriguez*
Raquel A. Rodriguez, FBN 511439
raquel.rodriguez@bipc.com
Sammy Epelbaum, FBN 31524
sammy.epelbaum@bipc.com
Hala Sandridge, FBN 454362
hala.sandridge@bipc.com
Chance Lyman, FBN 107526
chance.lyman@bipc.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2023, a true and accurate copy of the foregoing has been furnished via the E-Portal to: Ryan Newman, General Counsel, Executive Office of the Governor, 400 S. Monroe St., Tallahassee, FL 32399, ryan.newman@eog.myflorida.com, *counsel for Respondent Ron DeSantis, in his capacity as Governor of Florida*; David Axelman,

General Counsel, Office of the General Counsel, Florida House of Representatives, 317 The Capitol, #402, Tallahassee, FL 32399, david.axelman@myfloridahouse.gov, *counsel for the Respondent Paul Renner, in his capacity as Speaker of the Florida House of Representatives*; Carols Rey, General Counsel, Florida Senate, 302 The Capitol, 404 S. Monroe St., Tallahassee, FL 32399, rey.carlos@flsenate.gov, *counsel for Kathleen Passimodo, in her capacity as President of the Senate*; Ashley Moody, Attorney General, Office of the Attorney General, PL-01 The Capitol, Tallahassee, FL 32399, oag.civil.eserve@myfloridalegal.com; Henry C. Whitaker, Solicitor General, Jeffrey Paul DeSousa, Chief Deputy Solicitor General, Daniel Bell, Chief Deputy Solicitor General, Christopher J. Baum, Senior Deputy Solicitor General, Myles Lynch, Assistant Solicitor General, Office of the Attorney General, The Capitol, PL-01 Tallahassee, Florida 32399 (850) 414-3300 christopher.baum@myfloridalegal.com, *counsel for Respondents*; and Todd K. Norman and Olivia R. Share, Nelson Mullins, 390 N. Orange Ave., Suite 1400, Orlando, Florida 32801, (407) 839-4200, todd.norman@nelsonmullins.com, olivia.share@nelsonmullins.com, *counsel for Amicus Curiae, No Casinos, Inc.*; Beverly A. Pohl, Nelson

Mullins, 1905 N.W. Corporate Blvd., Ste. 310, Boca Raton, Florida 33431, (954-745-5249), beverly.pohl@nelsonmullins.com, *counsel for Amicus Curiae, No Casinos, Inc.*; Joseph H. Webster, Hobbs, Strause, Dean & Walker, LLP, 1899 L Street NW, Ste 1200, Washington, DC, 20036, (202) 822-8282, jwebster@hobbsstraus.com, *counsel for Amicus Curiae, Seminole Tribe of Florida*, Barry Richard, Barry Richard Law Firm, 101 East College Ave., Ste 400, Tallahassee, FL 32301, (850) 521-9678, barryrichard@barryricahrd.com, *counsel for Amicus Curiae, Seminole Tribe of Florida.*

By: */s/ Raquel A. Rodriguez*
Raquel A. Rodriguez, FBN 511439
raquel.rodriguez@bipc.com

RULE 9.045(e) CERTIFICATE OF COMPLIANCE

I HERBY CERTIFY that this petition complies with the font requirements and word limitations of Florida Rules of Appellate Procedure 9.045(b) and 9.100(g), as it utilizes double-spaced Bookman Old Style 14-point font, and is 7,488 words.

By: */s/ Raquel A. Rodriguez*
Raquel A. Rodriguez, FBN 511439
raquel.rodriguez@bipc.com