

No. 23-862

In the
Supreme Court of the United States

WEST FLAGLER ASSOCIATES, LTD., dba MAGIC CITY
CASINO, et al.

Petitioners,

v.

DEB HAALAND, SECRETARY OF THE INTERIOR, et al.

Respondents.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

**BRIEF OF *AMICI CURIAE* FLORIDA GAMBLING
OPPONENTS IN SUPPORT OF PETITIONERS**

EUGENE E. STEARNS
Counsel of Record

GLENN BURHANS, JR.
ROBERT J. WALTERS
STEARNS WEAVER MILLER
WEISSLER ALHADEFF &
SITTERSON PA
Highpoint Center
106 East College Avenue
Suite 700
Tallahassee, FL 32301

JENEA M. REED
GRACE L. MEAD
CORAL DEL MAR LOPEZ
STEARNS WEAVER MILLER
WEISSLER ALHADEFF &
SITTERSON PA
150 West Flagler Street
Suite 2200
Miami, FL 33131
(305) 789-3200

Counsel for Amici Curiae

estearns@stearnsweaver.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

STATEMENT OF INTEREST OF
AMICI CURIAE.....1

SUMMARY OF ARGUMENT3

ARGUMENT5

 I. IGRA CANNOT AUTHORIZE GAMING
 OUTSIDE INDIAN LANDS.....5

 II. THE GAMING AT ISSUE IN THE
 COMPACT, THEN UNLAWFUL IN
 FLORIDA, COULD NOT BE DEEMED
 LAWFUL BY FIAT7

 III. THE COMPACT UNLAWFULLY
 ENRICHES NON-TRIBAL ENTITIES
 FOR SOLICITING AND EXECUTING
 SPORTS BETS STATEWIDE ON
 BEHALF OF THE SEMINOLE TRIBE11

 IV. THE EQUAL PROTECTION
 PROBLEMS EXTEND BEYOND THE
 SPORTS BETTING MONOPOLY13

CONCLUSION13

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Amador County, Cal. v. Salazar</i> , 640 F.3d 373 (D.C. Cir. 2011)	12
<i>AT&T Corp. v. Coeur d’Alene Tribe</i> , 295 F.3d 899 (9th Cir. 2002)	7
<i>KG Urban Enters., LLC v. Patrick</i> , 693 F.3d 1 (1st Cir. 2012)	13
<i>Monterra MF, LLC et al. v. Haaland</i> , No. 21-cv-2513 (D.D.C. filed Sept. 27, 2021)	2
<i>State of California v.</i> <i>Iipay Nation of Santa Ysabel</i> , 898 F.3d 960 (9th Cir. 2018)	7
Statutes and Other Authorities:	
25 U.S.C. § 2701(5)	5
25 U.S.C. § 2702(2)	12
25 U.S.C. § 2710(d)(1)(B)	8, 10
25 U.S.C. § 2710(d)(3)(C)	11
25 U.S.C. § 2710(d)(8)(A)	5
25 U.S.C. § 2710(d)(8)(B)-(C)	8
Fla. Const., art. X, § 30	9
Fla. Const., art. X, § 30(a)	3
Fla. Const., art. X, § 30(c)	10
Fla. Stat. § 849.08	9, 13

Fla. Stat. § 849.14	13
Brief for the United States as Amicus Curiae Supporting Appellee, No. 99-35088, <i>AT&T Corp. v. Coeur d'Alene Tribe</i> , 295 F.3d 899 (9th Cir. 2002), 1999 WL 33622333	7
H.R. 5502, 116th Cong. (2019)	5
Letter from Kevin Washburn, General Counsel, NIGC, to Joseph Speck, Nic-A-Bob Productions, re: WIN Sports Betting Game (Mar. 13, 2001)	7
Mary Ellen Klas & Ana Ceballos, <i>Florida Expands Gambling, Joins Ranks of Sports Betting States. But Hurdles Remain</i> , MIAMI HERALD, (May 19, 2021), https://www.miamiherald.com/news/ politics-government/state-politics/ article251528698.html	6
S.Rep. No. 100–446 (1988), reprinted in 1988 U.S.C.C.A.N. 3071	5
Seminole Tribe of Florida, PRNEWswire, <i>Seminole Tribe of Florida Signs Agreements with Five Pari-Mutuels in Preparation for Hard Rock Sportsbook Mobile App Launch in Florida</i> , (Oct. 28, 2021), https://www.prnewswire.com/news- releases/seminole-tribe-of-florida-signs- agreements-with-five-pari-mutuels-in- preparation-for-hard-rock-sportsbook- mobile-app-launch-in-florida- 301411509.html	12

U.S. Department of the Interior, *Budget
Justifications and Performance Information
Fiscal Year 2023*, NATIONAL INDIAN GAMING
COMMISSION,
[https://www.doi.gov/sites/doi.gov/files/fy2023
-nigc-greenbook.pdf](https://www.doi.gov/sites/doi.gov/files/fy2023
-nigc-greenbook.pdf).....12

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae Monterra MF, LLC, Armando Codina, James Carr, Norman Braman, 2020 Biscayne Boulevard, LLC, 2060 Biscayne Boulevard, LLC, 2060 NE 2nd Ave., LLC, 246 NE 20th Terrace, LLC, and No Casinos, Inc. (collectively, “Florida Gambling Opponents”) are a coalition of long-time Florida residents, Florida-based businesses, and a Florida nonprofit organization who oppose the unlawful expansion of gambling in the State of Florida.

For decades, the Florida Gambling Opponents have built substantial, diversified businesses in South Florida and have consistently opposed gambling expansion. They separately sued in the district court and participated as *amici* in the circuit court to prevent special interests from violating the Indian Gaming Regulatory Act (IGRA), evading Florida’s constitutional requirement for approval by the voters, and attempting to turn Florida into the Las Vegas strip.²

¹ Counsel of record for all parties received timely notice of *Amici Curiae’s* intent to file a brief. *See* Supreme Court Rule 37.2. No part of this brief was authored by counsel for any party, and no person or entity other than the Florida Gambling Opponents made any monetary contribution to the preparation or submission of the brief. *See* Supreme Court Rule 37.6.

² The district court denied *amici’s* motion for summary judgment as “moot” when the court provided to Petitioners the same relief *amici* sought in their separate action. While the interests of Petitioners and *amici* are in many respects aligned, they are not aligned in all respects, as *amici* seek to prohibit the use of IGRA as an end-run around the Florida Constitution’s clear prohibition on the extension of casino gambling in any form without voter approval.

Several of the Florida Gambling Opponents own property near the gambling at issue here. Their properties are within miles of the Hard Rock Hotel and Casino operated by the Seminole Tribe of Florida (the “Seminole Tribe”) or non-Tribal pari-mutuel facilities that can participate in the expansive sports betting enterprise run by the Seminole Tribe off Indian lands. The Florida Gambling Opponents’ businesses and property interests will be negatively impacted by the unprecedented statewide gambling expansion exclusively and unlawfully bestowed on the Seminole Tribe through the 2021 Gaming Compact Between the Seminole Tribe of Florida and the State of Florida (the “Compact”). *See* J.A. 670.³ The deleterious effects of widespread gambling are well established, including increased criminal activity, increased traffic, increased neighborhood congestion, and reduction in property value in the areas surrounding casinos.⁴

Additionally, *amicus curiae* No Casinos, Inc. is a Florida nonprofit organization that has been involved in gambling policy issues since the 1970s. It was actively involved in the drafting and passage of the Voter Control of Gambling Amendment to Florida’s Constitution that prohibits expansion of gambling in Florida absent a referendum of the people.

³ References to “J.A.” are to the Joint Appendix filed in the case below, D.C. Cir., Case No. 21-5265. References to “Petition” are to the Petition for Writ of Certiorari filed by West Flagler in this case, and references to “App.” are to the accompanying appendix.

⁴ *See Monterra MF, LLC et al. v. Haaland*, No. 21-cv-2513 (D.D.C. filed Sept. 27, 2021).

The Florida Gambling Opponents give voice to the millions of Floridians who oppose the expansion of casino gambling throughout Florida. Florida Gambling Opponents seek to prevent the government from improperly using IGRA to circumvent state and federal gaming restrictions, including Florida's strict constitutional limitation on the growth of casino gambling in Florida.

SUMMARY OF ARGUMENT

Well-funded special interests wrongly seek to override the will of Floridians and bankroll the most significant expansion of illegal gambling in Florida's history through the guise of a Compact. They can only succeed if the D.C. Circuit's opinion goes unchallenged, allowing the U.S. Department of the Interior ("DOI") to flout its statutory duty to ensure that state-tribal compacts comply with the law. Certiorari review is necessary to prevent this mockery of federal law.

The Compact between the State of Florida and the Seminole Tribe was in derogation of federal and state law. Under the Compact, the Seminole Tribe received exclusive rights to sports betting, craps, and roulette—none of which was previously lawful in Florida. The grant of exclusivity ensures that the gaming is unlawful elsewhere under existing state law. The Compact also unlawfully expanded sports betting *statewide* to the exclusive benefit of the Seminole Tribe by circumventing federal statutory requirements that govern gaming only "on Indian lands" and the Florida Constitution's requirement that "Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida." Art. X, § 30(a), Fla. Const. (the

“Voter Control of Gambling Amendment,” also known as “Amendment 3”). Millions of voters overwhelmingly (by a 71% vote) passed this constitutional amendment in 2018 to ensure that a citizens’ referendum would be required to legalize previously unauthorized forms of gambling in Florida. After the Voter Control of Gambling Amendment, the Florida legislature no longer enjoyed plenary authority to expand casino gambling in Florida.

DOI ignored this seminal shift in Florida gaming law, even though many concerned citizens raised the issue during the agency’s compact review process. Nevertheless, in its August 6, 2021 Compact Approval Letter (“DOI Letter”), DOI openly expressed doubts about a number of the Compact’s provisions, including the statewide sports betting regime that allows the Seminole Tribe to solicit and execute bets outside of Indian lands with the substantial involvement of commercial, non-Tribal gambling entities. J.A. 214. It noted “the Department is concerned with the sole proprietary interest of the gaming operation in relation to these [marketing] agreements,” and therefore “the Department does not endorse the marketing agreement arrangement provided in the Compact.” *Id.*, 224-25.

Absent clarity from this Court, state and federal overreach will continue to run rampant in the gaming context, allowing unwanted and unlawful gambling to proliferate.

ARGUMENT

I. IGRA CANNOT AUTHORIZE GAMING OUTSIDE INDIAN LANDS

The text of the federal Indian Gaming Regulatory Act (“IGRA”) is clear and unambiguous. The governing provisions, by their express terms, apply only to gaming “on Indian lands.” 25 U.S.C. § 2710(d)(8)(A). Moreover, IGRA separately provides 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).

IGRA’s legislative history further confirms that IGRA is “an attempt to formulate a system for regulating gaming on Indian lands.” S.Rep. No. 100–446, at 1, 2 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3072. The Senate report recognized that tribal governments have “significant governmental interests” at stake, but described those interests in the context of benefiting the Tribe “within its jurisdictional borders” and “on tribal lands.” *Id.* at 13. Congress has since refused to amend IGRA to permit online off-reservation sports betting. *See, e.g.*, H.R. 5502, 116th Cong. (2019) (proposed bill not enacted into law). The very fact that Congress recognized that IGRA would need to be amended to allow such betting, confirms that IGRA is limited to activity “on Indian lands.”

The Seminole Tribe’s sports betting regime, without question, extends well beyond Indian lands. The Compact grants the Seminole Tribe a monopoly on

sports bets throughout the State of Florida. Although the Compact purports to limit sports betting to individuals “physically located in the State,” it provides no mechanism for determining the physical location of bettors. As one Florida legislator noted, the Compact “allow[s] 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 cell phone.”⁵ The Compact effectively converted every smart phone, tablet, laptop, or desktop in Florida (and potentially beyond) into a gambling device.⁶

DOI acknowledged the expansive scope of the sports betting outlined in the Compact, noting that the Seminole Tribe “will have statewide exclusivity for sports betting” so that “patrons physically located within the State” can participate, and that the patron and server may not be physically in the same location. J.A. 215, 219. In approving the unprecedented statewide sports betting regime, DOI asserted that this “novel” “model of internet gaming under IGRA [was] a matter of first impression.” *Id.*

⁵ Mary Ellen Klas & Ana Ceballos, *Florida Expands Gambling, Joins Ranks of Sports Betting States. But Hurdles Remain*, MIAMI HERALD, (May 19, 2021), <https://www.miamiherald.com/news/politics-government/state-politics/article251528698.html>.

⁶ The Compact specifies that 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” regardless of the bettor’s physical location. J.A. 687.

219.⁷ But as West Flagler has explained, DOI's approval under IGRA of gambling off Indian lands contravenes federal law. *See* Petition at 22-23 (collecting cases). DOI cannot override IGRA by accepting the Compact's attempt to self-define the location of the gambling activity. It is imperative for this Court to reject blatant overreach by Florida's Governor and Legislature in entering and implementing the Compact, and by the federal government in approving it.

II. THE GAMING AT ISSUE IN THE COMPACT, THEN UNLAWFUL IN FLORIDA, COULD NOT BE DEEMED LAWFUL BY FIAT

IGRA requires that tribes only engage in gaming activities that are lawful within the State. It speci-

⁷ Yet in prior interpretations of IGRA, the federal government has consistently said that IGRA does not authorize gambling off Indian lands, and more specifically, that bets transmitted off Indian lands constitute off-reservation gaming. *See, e.g.*, J.A. 229 (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."); *State of California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960, 967 (9th Cir. 2018) (United States and California successfully sued a tribe for taking wagers that originated off Indian lands in violation of federal law); Brief for the United States as Amicus Curiae Supporting Appellee, No. 99-35088, *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899 (9th Cir. 2002), 1999 WL 33622333 at *12-14 (arguing 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.").

fies, “Class III gaming activities shall be lawful on Indian lands only if such activities are,” among other things, “located in a state that permits such gaming for any purpose by any person, organization, or entity.” 25 U.S.C. § 2710(d)(1)(B). DOI cannot approve a compact that authorizes unlawful gaming activities. *See* 25 U.S.C. § 2710(d)(8)(B)-(C).

Prior to entering into the 2021 Compact, the Seminole Tribe engaged in very limited Class III casino games in South Florida, including slot machines and blackjack. The Compact significantly expanded the Seminole Tribe’s Class III gaming operations, and for the first time, the Seminole Tribe could exclusively offer craps, roulette, and statewide sports betting—all of which were illegal in Florida. The Compact also allowed the Seminole Tribe to add three additional gambling facilities at its current location in Hollywood, Florida. This combination of rights under the Compact effectively creates a so-called “Casino Strip” that substantially expands and transforms the Seminole Tribe’s gambling footprint in South Florida with reach throughout the state.

A brief history of gambling in Florida provides important context to the issues here. Florida has a long history of opposition to the expansion of gambling in the State. Florida voters have repeatedly rejected casino gambling initiatives—first, in 1978 (70% of voters rejected casinos in Miami-Dade and Broward counties), then in 1986 (68% of voters rejected casino gambling in large hotels), and again in 1994 (62% of voters). A fundamental premise of Florida gaming law is that all gambling is illegal unless made legal. Fearing further expansion of gambling, Florida voters in 2018 overwhelmingly approved a citizens’

initiative that amended Florida's Constitution to give voters final and exclusive authority over whether to approve casino gambling in Florida. *See* Fla. Const. Art. X, § 30; Fla. Stat. § 849.08. Sports betting, craps, and roulette have never been authorized by citizens' initiative and were illegal before the State and the Tribe entered the Compact in 2021.

The 2018 amendment, which was approved by 71 percent of Florida voters, provides:

SECTION 30. Voter control of gambling in Florida.—

(a) 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.

....

(c) Nothing herein shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. 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.

Now facing public accountability and voter resistance to efforts to expanded gambling, the State of Florida tried to shield sweeping gambling expansion from public review by burying it in a new Compact with the Seminole Tribe. The Amendment recognizes the ability of Tribes and the State to negotiate future compacts under IGRA, but it does not and cannot dispense with IGRA's mandatory requirement that any form of gaming offered by the Tribe must first be lawful elsewhere in the State. *See* 25 U.S.C. § 2710(d)(1)(B). Moreover, the Amendment specifies, "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* . . ." Fla. Const., art. X, § 30(c). By its terms, the Voter Control of Gambling Amendment applied to off-reservation sports betting, which could not become legal without a citizens' initiative.

III. THE COMPACT UNLAWFULLY ENRICHES NON-TRIBAL ENTITIES FOR SOLICITING AND EXECUTING SPORTS BETS STATEWIDE ON BEHALF OF THE SEMINOLE TRIBE

West Flagler correctly points out that section 2710(d)(3)(C), which governs permissible compact provisions, “cannot be used to crowbar into an IGRA compact provisions or subjects that clearly exceed the sole focus of IGRA—i.e., to provide a regime for authorizing gambling *on* Indian lands.” Petition at 26. The Compact clearly violates IGRA by authorizing the Seminole Tribe to accept sports bets from players off Indian lands. *See* pp. 5-7, *supra*; Petition at 10-11, 20-24. Even worse, the Compact requires *non-tribal gambling entities* to solicit and execute sports bets outside of Indian lands.⁸

Under the Compact, select pari-mutuel facilities will “perform marketing or similar services” in connection with sports betting and have “dedicated areas within their facilities where Patrons may access or use electronic devices to place wagers.” J.A. 687, 689.⁹ These non-tribal entities stand to make at

⁸ West Flagler does not raise this argument because it owns and operates a pari-mutuel facility in Miami, Florida that is a potential partner with the Seminole Tribe if the Compact survives legal scrutiny. Indeed, West Flagler notes it will suffer “competitive injury from this state-sponsored monopoly.” Petition at 2.

⁹ Before the district court vacated the Compact, the Seminole Tribe entered into multiple contracts with non-Tribal pari-mutuel facilities to market the statewide sports betting operation. Florida’s Governor noted that the Compact “brings together Florida pari-mutuel businesses from across the state in a creative partnership with the Seminole Tribe providing

least 60% of the net profit they generate through off-reservation sports betting, not to mention the additional profit they will likely receive from the foot traffic to their facilities generated by potential sports bettors. J.A. 689.

Congress intended IGRA “to ensure that the Indian tribe is the primary beneficiary of the gaming operation.” 25 U.S.C. § 2702(2). DOI itself describes IGRA as “a legal framework structured to safeguard tribes as the primary beneficiaries of their gaming operations,” among other things.¹⁰ Congress did not intend IGRA to be used as a vehicle for the enrichment of non-Tribal gambling interests who seek a sizeable piece of the pie created through the expansion of gaming outside of tribal lands.

DOI expressed “concerns” about the marketing arrangement and noted that it “does not endorse the marketing agreement provided in the Compact.” J.A. 225. A compact that enriches non-Tribal entities for activities off Indian lands violates IGRA and cannot stand. *See Amador County, Cal. v. Salazar*, 640 F.3d 373, 381 (D.C. Cir. 2011).

increased access to safe and transparent sports betting in Florida.” Seminole Tribe of Florida, PRNEWSWIRE, *Seminole Tribe of Florida Signs Agreements with Five Pari-Mutuels in Preparation for Hard Rock Sportsbook Mobile App Launch in Florida*, (Oct. 28, 2021), <https://www.prnewswire.com/news-releases/seminole-tribe-of-florida-signs-agreements-with-five-pari-mutuels-in-preparation-for-hard-rock-sportsbook-mobile-app-launch-in-florida-301411509.html>.

¹⁰ U.S. Department of the Interior, *Budget Justifications and Performance Information Fiscal Year 2023*, NATIONAL INDIAN GAMING COMMISSION, <https://www.doi.gov/sites/doi.gov/files/fy2023-nigc-greenbook.pdf>.

IV. THE EQUAL PROTECTION PROBLEMS EXTEND BEYOND THE SPORTS BETTING MONOPOLY

Exclusivity was the linchpin of the entire Compact and the state law implementing legislation.¹¹ Justice Kavanaugh has raised “serious equal protection” concerns if Florida authorized “the Seminole Tribe—and only the Seminole Tribe—to conduct certain off-reservation gaming operations in Florida.” App. 65. In addition to the statewide sports betting monopoly, Florida also specifically granted the Seminole Tribe exclusive rights to engage in craps and roulette on Indian lands, neither of which is lawful for any other person, organization, or entity in Florida. J.A. 676, 692, 726. No one in Florida could lawfully engage in sports betting, craps, or roulette, absent the Compact. *See, e.g.*, Fla. Stat. §§ 849.08, 849.14. Such exclusivity raises further concerns under the Equal Protection Clause, which this Court should address. *See KG Urban Enters., LLC v. Patrick*, 693 F.3d 1, 19 (1st Cir. 2012).

CONCLUSION

For the foregoing reasons, *Amici Curiae* Florida Gambling Opponents request that the Court grant West Flagler’s Petition for Writ of Certiorari.

¹¹ As DOI explicitly recognized, “[Florida] is offering the Tribe *state-wide exclusivity* for sports betting, *exclusivity* for new table game[s], and fantasy sports contests (if authorized by future legislation). J.A. 221. (emphasis added). It further noted, “the State’s concession of class III gaming exclusivity to the Tribe is considered a meaningful concession.” *Id.*, 222.

14

Respectfully submitted,

EUGENE E. STEARNS
Counsel of Record

GLENN BURHANS, JR.
ROBERT J. WALTERS
STEARNS WEAVER MILLER
WEISSLER ALHADEFF &
SITTERSON PA
Highpoint Center
106 East College Avenue
Suite 700
Tallahassee, FL 32301

Counsel for Amici Curiae

JENEA M. REED
GRACE L. MEAD
CORAL DEL MAR LOPEZ
STEARNS WEAVER MILLER
WEISSLER ALHADEFF &
SITTERSON PA
150 West Flagler Street
Suite 2200
Miami, FL 33131
(305) 789-3200
estearns@stearnsweaver.com