

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

West Flagler Assocs., Ltd., et al.,
Applicant,

v.

Debra Haaland, et al.,
Respondent.

**Application for an Extension of Time to File a Petition for a Writ of
Certiorari to the United States Court of Appeals for the D.C. Circuit**

To the Honorable John G. Roberts, Jr., Chief Justice of the United States:

Pursuant to Rules 13.5 and 22.3 of this Court, Applicants West Flagler Assocs., Ltd., and Bonita-Fort Myers Corporation (collectively, “Applicants”), respectfully request that their time to file a petition for a writ of certiorari in this matter be extended to and including February 9, 2024. On September 11, 2023, the United States Court of Appeals for the D.C. Circuit denied rehearing of the June 30, 2023, order at issue in this litigation.¹ Unless extended, Applicants’ time for filing a petition will expire on December 11, 2023, the first business day after the ninetieth day from the denial of rehearing.

In support of their application, Applicants state as follows:

1. This case concerns the propriety of the approval under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, (“IGRA”) of a tribal-state gaming

¹ A copy of the judgment and decision is being filed with this Application.

compact (“Compact”) in which the State of Florida granted the Seminole Tribe of Florida (the “Tribe”) a statewide monopoly over online sports betting, including at locations off of the Tribe’s reservations throughout the state. *See W. Flagler Assocs. v. Haaland*, 573 F. Supp. 3d 260, 273 (D.D.C. 2021) (concluding that the Compact “attempts to authorize sports betting both on and off Indian lands”). IGRA only authorizes the Secretary of the Interior (the “Secretary”) “to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming *on Indian lands of such Indian tribe.*” 25 U.S.C. § 2710(d)(8)(A) (emphasis added). Here, the Compact provides the Tribe with the right to offer online sports gaming throughout the state of Florida, including all areas that are off the Tribe’s lands. It does so by “deeming” the bets placed from *off* Indian lands to be treated as if they were placed “exclusively” *on* the Indian lands of the Tribe. This fiction was adopted to deem the Compact to be solely dealing with gaming on Indian lands, and thereby to circumvent a Florida constitutional ban on the expansion of casino gaming absent a citizens’ referendum, except for casino gaming covered by a valid IGRA compact for gaming “on tribal lands.” *See* FLA. CONST. Art. X §§ 30(a) & (c). Further, when the Florida Legislature approved this Compact, it increased the criminal penalties on any other business offering online sports gaming in the state from a second-degree misdemeanor to a third-degree felony. FLA. STAT. § 849.14; FLA. STAT. § 775.082 (3)(e). In short, Florida gave the

Tribe a statewide monopoly over the business of online sports gaming, to be offered off Indian lands throughout the state, while making the same conduct a felony when done by anyone else.

2. Applicants, who compete with the Tribe for gaming business, filed this Administrative Procedure Act litigation in the United States District Court for the District of Columbia challenging the Secretary's approval of the Compact as contrary to IGRA, the Unlawful Internet Gambling Enforcement Act ("UIGEA"), and the equal protection guarantees of the Constitution. Complaint, *West Flagler Assocs.*, 573 F. Supp. 3d. 260 (ECF #1). The District Court found that the approval of the Compact was not authorized by IGRA, and therefore granted summary judgment in Applicant's favor on November 22, 2021. *West Flagler Assocs.*, 573 F. Supp. 3d 260 (Friedrich, J.).
3. On June 30, 2023, the D.C. Circuit reversed. *See West Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059 (D.C. Cir. 2023) (the "Circuit Opinion"). With respect to the Compact provision that "deems" all bets placed off the Tribe's lands to be treated as if they were "exclusively" placed "on" the lands, the Circuit Opinion held that the provision "simply allocates jurisdiction between Florida and the Tribe, as permitted by 25 U.S.C. § 2710(d)(3)(C)(i)–(ii)." *Id.* at 1066. It also held that the Compact itself "cannot provide *independent* legal authority for gaming activity that occurs outside of Indian lands, where that activity would otherwise violate state

law.” *Id.* at 1068 (emphasis added). It also summarily rejected Applicants’ equal protection argument, holding that the Compact “would survive rational basis review, which is the applicable level of scrutiny here.” *Id.* at 1070.

4. The D.C. Circuit denied a petition for rehearing en banc on September 11, 2023, and denied a motion to stay the mandate on September 28, 2023.
5. On October 6, 2023, Applicants asked the Honorable John G. Roberts, Jr., Chief Justice of the United States, for a stay of the D.C. Circuit’s mandate pending Applicants’ petition for a writ of certiorari, which Applicants committed to file by November 20, 2023 (a commitment that was premised on their being a stay in place, so as to minimize any burden caused by the stay).
6. Chief Justice Roberts granted a temporary stay of the D.C. Circuit’s mandate on October 12, 2023, pending the filing of an opposition by Respondents. After Respondents filed their opposition, the Court denied Applicants’ motion to stay on October 25, 2023. That denial included a statement from Justice Kavanaugh stating that there are “serious equal protection issues” if “the Seminole Tribe—and only the Seminole Tribe— [can] conduct certain off-reservation gaming operations in Florida.” *See West Flagler Assocs., Ltd. v. Haaland*, 2023 WL 7011331, at *1 (U.S. 2023) (Statement of Kavanaugh, J.) (citing *Students for Fair Admissions, Inc. v.*

President and Fellows of Harvard College, 600 U.S. 181, 206 (2023);
Adarand Contractors, Inc. v. Pena, 515 U.S. 200, 221–22 (1995)).

7. On September 25, 2023, after the D.C. Circuit denied rehearing en banc, Applicants filed a petition with the Florida Supreme Court requesting a writ of quo warranto to Governor Ron DeSantis and other Florida officials declaring that those officials had exceeded their constitutional authority by entering into and ratifying the Compact where no constitutionally required voter referendum had authorized online sports betting in Florida (the “State Petition”). The Respondents to the State Petition must file their response by December 1, 2023.
8. The Tribe launched a mobile sports betting application on November 7, 2023. On the same day, Applicants filed a motion to expedite consideration of their request for relief. On November 17, 2023, the Florida Supreme Court denied that motion to expedite.
9. If the Florida Supreme Court rules in Applicant’s favor in connection with the State Petition, such ruling will impact the scope of Applicants’ petition for a writ of certiorari. But if the Florida Supreme Court denies or fails to rule in Applicant’s favor, the important statutory and constitutional issues raised by the Circuit Opinion would certainly remain, including the “serious equal protection issues” observed by Justice Kavanaugh.
10. Further, the manner in which the Florida Supreme Court rules on the State Petition may potentially inform whether or how the questions raised

by the Circuit Opinion are presented to this Court. Applicants continue to maintain that IGRA did not authorize the federal approval of the Compact because the Compact unambiguously provides for gaming off Indian lands (and also maintain that the approval of the Compact violated the Equal Protection Clause and UIGEA). But the Circuit Opinion held that the Compact should somehow be read as not authorizing gaming off Indian lands, and that its approval under IGRA did not authorize any such gaming, which it viewed to be a question of state law. The Florida Supreme Court's resolution of the State Petition may be relevant to whether the reasoning of the Circuit Opinion is accepted, or whether instead the Applicants are caught in an absurd trap between two judicial systems saying inconsistent things about the nature of this Compact.

11. Accordingly, since there is a possibility that Applicants' petition for certiorari could be significantly informed by the decision of the Florida Supreme Court on the State Petition, Applicants respectfully ask this Court to extend the time for Applicants to file such a petition until February 9, 2024, the maximum permitted by Supreme Court Rule 13.5.

Conclusion

For the reasons set forth above, Applicants request an extension of time to file a petition for a writ of certiorari to February 9, 2024.

Respectfully submitted,

/s/ Hamish P.M. Hume

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