APPENDIX

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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.

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.

Civil Action No. _____

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-mutuel[2] 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

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(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 classes[8] 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)(l).

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, *Couer 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:

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[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 payments[14] "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

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[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 Grambling 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.

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[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. Pena*, 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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2021 GAMING COMPACT BETWEEN THE SEMINOLE TRIBE OF FLORIDA AND THE STATE OF FLORIDA

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2021 Gaming Compact Between the Seminole Tribe of Florida and the State of Florida

This 2021 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.

Part I. TITLE

This document shall be referred to as the "2021 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, as may be amended from time to time, 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. The Tribe and the State entered into a tribal-state compact pursuant to the Indian Gaming Regulatory Act on April 7, 2010 ("2010 Compact"). The 2010 Compact was subsequently approved by the Secretary of the Interior. 75 Fed. Reg. 38,833 (July 6, 2010). Unless this Compact is not approved by the Florida Legislature and the U.S. Secretary of the Interior or is invalidated by court action or change in federal law, this Compact supersedes the 2010 Compact, and the 2010 Compact shall no longer remain in effect. In the event that this Compact is not approved by the Florida Legislature and the U.S. Secretary of the Interior or is invalidated by court action or change in federal law, the 2010 Compact shall remain in effect.

G. The voters of Florida approved a constitutional amendment at the 2018 General Election (Amendment 3) which created Article X, s. 30 of the Florida Constitution.

H. The Tribe and the State affirm that it is in the best interests of the Tribe and the State for the State to enter into this Compact. The Compact recognizes the

Tribe's right to offer certain forms of Class III Gaming and provides significant, additional substantial exclusivity for such activities in return for a reasonable revenue sharing arrangement between the Tribe and the State that will entitle the State to significant, additional revenue participation.

I. The Tribe and the State affirm that this Compact, and the operation of Covered Games as authorized pursuant to this Compact, comply in all respects with the Florida Constitution.

J. The Tribe and the State affirm their belief that this Compact embodies an unprecedented level of cooperation between a state and a sovereign government, which benefits the long-term economic and social well-being of both the State and the Tribe.

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. "Bingo Game" has the same meaning as in s. 849.0931(1)(a), Florida Statutes, as in effect on January 1, 2021.

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 or any successor 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 2021 Gaming Compact between the Seminole Tribe of Florida and the State of Florida, as the same may be amended or supplemented in accordance with its terms.

F. "Covered Game" or "Covered Gaming Activity" means only the following:

1. Slot Machines.
2. Raffles and Drawings.
3. Table Games.
4. Fantasy Sports Contest(s).
5. Sports Betting.
6. Any new game authorized by Florida law for any person for any purpose.

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 Game 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 this Compact becomes effective pursuant to Part XVI, Section A of this Compact.

J. "Electronic Bingo Card Minder" means a card minding device, which may only be used in connection with a Bingo Game and which is certified in advance by an Independent Testing Laboratory approved by the Division of Pari-Mutuel Wagering, or any successor agency, as a bingo aid device that meets each 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 s. 849.0931(1)(b), Florida Statutes, as of January 1, 2021, 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 Card Minder may contain more than one player position for playing bingo.

9. No Electronic Bingo Card Minder 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 in which the Covered Games authorized by this Compact are conducted.

L. "Fantasy Sports Contest" means a fantasy or simulation sports game or contest offered by a contest operator or a noncommercial contest operator in which a contest participant manages a fantasy or simulation sports team composed of athletes from a professional sports organization and that meets each of the following requirements:

1. All prizes and awards offered to winning contest participants are established and made known to the contest participants in advance of the game or contest.

2. All winning outcomes reflect the relative knowledge and skill of the contest participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events.

3. No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams, solely on any single performance of an individual athlete or player in any single actual event, on a pari-mutuel event, as the term "pari-mutuel" is defined in s. 550.002, Florida Statutes, as of January 1, 2021, on a game of poker or other card game, or on the performances of participants in collegiate, high school or youth sporting events.

4. No casino graphics, themes, or titles, including, but not limited to, depictions of slot machine-style symbols, cards, dice, craps, roulette, or lotto, are displayed or depicted.

5. For purposes of this definition:

(a) "Contest operator" means a person or entity that offers fantasy or simulation sports game(s) or contest(s) for a cash prize.

(b) "Contest participant" means a person who pays an entry fee for the ability to participate in a fantasy or sports simulation game or contest offered by a contest operator.

(c) "Noncommercial contest operator" means a natural person who organizes and conducts a fantasy or simulation sports game in which contest participants are charged entry fees for the right to participate; entry fees are collected, maintained, and distributed by the same natural person; the total entry fees collected, maintained, and distributed by such natural person do not exceed one thousand five hundred dollars ($1,500) per season or a total of ten thousand dollars ($10,000) per calendar year; and all entry fees are returned to the contest participants in the form of prizes.

M. "Guaranteed Minimum Compact Term Payment" means a minimum total payment for the first five (5) years of this Compact of Two Billion Five Hundred Million Dollars ($2,500,000,000) which shall include all Revenue Share Payments for the first five (5) years of this Compact.

N. "Historic Racing Machine" means 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, or a successor agency, 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, dice, 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. "Independent Testing Laboratory" means an independent laboratory: (1) with demonstrated competence testing gaming machines and equipment; (2) that is licensed by at least ten (10) other states; and (3) that has not had its license suspended or revoked by any other state within the immediately preceding ten (10) years.

P. "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.

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

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, any machine or device linked to the machine, or any online application that facilitates the purchase of a paper lottery ticket, 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 or sports 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, any machine or device linked to the machine, or any online application that facilitates the purchase of a paper lottery ticket, 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 (15^{th}) day of the month following each month of the Revenue Sharing Cycle.

T. "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.

U. "Other Casino-Style Gaming" means the same as "casino gambling" in Article X, s. 30 of the Florida Constitution, but not excluding any games authorized by

Article X, s. 15 of the Florida Constitution if such games involve any slot-like or casino-style game.

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, and includes any person participating in Sports Betting.

X. "Qualified Pari-mutuel Permitholder(s)" means a person or entity that:

1. Held, prior to January 1, 2021, a pari-mutuel wagering permit issued, pursuant to chapter 550, Florida Statutes; and

2. Held, prior to January 1, 2021, a pari-mutuel operating license issued pursuant to s. 550.01215, Florida Statutes; and

3. Holds a slot machine license issued pursuant to chapter 551, Florida Statutes, or a cardroom license issued pursuant to s. 849.086, Florida Statutes.

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

Z. "Revenue Sharing Cycle" means the annual (12-month) period of the Tribe's operation of Covered Games at its Facilities beginning on the first (1st) day of the first month after the Effective Date.

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

BB. "Slot Machines" means 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, 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 slot machines that employ video and/or mechanical displays of roulette, wheels or other table game themes. 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.

CC. "Sports Betting" means 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, pari-mutuel wagering, or betting on any form of poker or other card game; provided that and only when:

1. All such wagering is done exclusively by and through one or more sports books conducted and operated by the Tribe or its approved management contractor, including the servers and devices required to conduct the same, at one or more of the Tribal Facilities identified in Part IV, Sections B and D.

2. 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, 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.

3. At all times that the Tribe offers or is offering such wagering, the Tribe has a written contract with any and all willing Qualified Pari-mutuel Permitholder(s) which:

(a) Expressly authorizes and permits a Qualified Pari-mutuel Permitholder(s) to perform 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 that will utilize

the digital sports book(s) provided by the Tribe, and that use a brand of the Qualified Pari-mutuel Permitholder(s);

(b) The Tribe, as the exclusive operator of sports book(s) on Tribal lands, must consistently provide to Qualified Pari-mutuel Permitholder(s) in standardized format(s) the digital interfaces necessary for Qualified Pari-mutuel Permitholder(s) to market digitally, including through the Qualified Pari-mutuel Permitholder's development or procurement of customizable web or mobile assets for marketing services, the sports book(s) operated on Tribal lands. The interfaces published by the Tribe must facilitate the dynamic and accurate publication of data to Qualified Pari-mutuel Permitholder(s) such that any changes within the source(s) of truth contained within the Tribe's sports book(s) are distributed in real-time to all Qualified-Pari-mutuel Permitholder(s);

(c) Requires the Tribe to compensate the Qualified Pari-mutuel Permitholder(s) for such services by payment of an amount not less than sixty (60) percent of the difference between: (i) the Net Win earned by the Tribe on all such wagering by Patrons who access the Tribe's wagering platform via software that uses a brand of the Qualified Pari-mutuel Permitholder; and (ii) a reasonable and proportionate share of all expenses incurred by the Tribe in operating and conducting such wagering through the marketing

services of a Qualified Pari-Mutuel Permitholder, which shall be specified in advance in the written contract between the Tribe and the Qualified Pari-mutuel Permitholder and reported to the SCA after being incurred. The Tribe shall remain the exclusive operator of the sports book(s), and the Tribe's total payment for all marketing or similar services by Qualified Pari-Mutuel Permitholders shall not exceed forty (40) percent of the Tribe's total Net Win on Sports Betting, in accordance with IGRA;

(d) Expressly states that all such wagering is conducted exclusively at one or more of the Tribal Facilities identified in Part IV, Sections B and D, 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;

(e) Allows the Tribe to suspend the participation of the Qualified Pari-mutuel Permitholder from providing marketing services under the written contract upon a violation by the Qualified Pari-mutuel Permitholder of:

(i) The written contract; or

(ii) The Tribe's exclusivity under this Compact.

Provided the Tribe provides written notice to the Qualified Pari-mutuel Permitholder and the Qualified Pari-mutuel Permitholder

fails to completely halt such violation(s) within thirty (30) days after such notice;

(f) Prohibits the Tribe from using player data obtained from a Qualified Pari-mutuel Permitholder to market Covered Games offered by the Tribe; and

(g) Provides for a duration of the contract that must be no less than five (5) years, unless terminated by mutual agreement or by material breach.

4. 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 this Section. If for any reason the Tribe does not have valid written contracts with at least three (3) or more Qualified Pari-mutuel Permitholders upon or following the commencement of the Tribe's Sports Betting operation, the Payments due to the State pursuant to Part XI, Section C.1(j) of this Compact based on the Net Win received by the Tribe from the operation and play of Sports Betting shall increase by two (2) percent until the Tribe has valid written contracts with at least three (3) Qualified Pari-mutuel Permitholders to perform marketing or similar services for the Tribe's Sports Betting. If the Tribe has written contracts with three (3) or more Qualified Pari-mutuel Permitholders, the Tribe shall make good faith offers to other Qualified Pari-mutuel Permitholders, upon request, with terms similar to those of its executed contracts.

5. With respect to wagers made with a mobile or other electronic device, the Tribe shall implement:

(a) A registration process to validate player identity, including their age;

(b) An AML (anti-money laundering) process to verify the source of funds, track transactions, prevent anonymous deposits and submit official reports to FINCEN as required; and

(c) Geo-fencing to prevent wagers by players not physically located in the State.

6. With respect to all forms of Sports Betting, the Tribe shall comply with the rules and regulations adopted by the Commission pursuant to Part V, Section A, including any requirements for video depictions of wagering outcomes.

7. Any data source and the corresponding data to determine the results of all sports bets must be (i) complete, accurate, reliable, timely and available and (ii) appropriate to settle the types of events and wagers for which it is used.

8. The SCA may utilize the dispute resolution provisions set forth in Part XIII if it believes the Tribe has failed to comply with the requirements for Sports Betting, including the requirements in Section CC.3.

DD. "State" means the State of Florida.

EE. "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.

FF. "Table Game" means banking or banked card games, including baccarat, chemin de fer, blackjack (21), and card games banked by the house, by a bank established by the house, or by a player; craps, including dice games such as sic-bo and any similar variations thereof; and roulette, including big six and any similar variations thereof.

GG. "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. Subject to limitations set forth herein, wagers 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. 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. Except as provided in Part IV, Section D below, the Tribe is authorized to conduct Covered Games under this Compact at only the following seven (7) existing

Facilities, which may be relocated, 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 relocated, expanded or replaced by another Facility on the same Indian Land with advance notice to the State of sixty (60) calendar days. However, the Tribe agrees that it will not build Las Vegas-style casino resorts on its Brighton or Big Cypress Reservations. Any dispute over whether a proposed Facility violates this provision shall be resolved in accordance with the dispute resolution process set forth in Part XIII.

D. The Tribe may add three (3) additional Facilities on the parcel which is part of the Tribe's Hollywood Reservation and which is east of the present location of the Florida Turnpike.

Part V. RULES AND REGULATIONS; MINIMUM REQUIREMENTS FOR OPERATIONS

A.1. At all times during the term of this Compact, the Tribe shall be responsible for all duties that 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 comply 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 proposals and shall notify the SCA of its response or action with respect thereto.

2. The Commission, after consultation with the SCA, shall promulgate specific rules and regulations for Sports Betting that shall:

(a) Limit participation in Sports Betting only to Patrons who are natural persons who are twenty-one (21) years of age or older;

(b) Establish standards, that apply equally to the Tribe and to Qualified Pari-mutuel Permitholders, for promotional credits, incentives, bonuses, complimentaries, or similar benefits designed to induce Patrons to participate in Sports Betting;

(c) Specify the Tribal Facilities at which the servers or other equipment used for Sports Betting will be located;

(d) Establish how the odds at which wagers may be placed on sports events will be determined and displayed;

(e) Require the development and maintenance of a list of individuals ("Restricted Patrons") to be restricted and prohibited from engaging in Sports Betting as a result of such individual being a person who holds a position of authority or influence over the participants in a sports event, or any person with access to certain types of exclusive information on any sports event, including, but not limited to, athletes, coaches, referees, managers, handlers, trainers, agents, a sports governing body and its employees and owners, and a sports team and its employees and owners;

(f) Establish procedures to verify the identity of persons participating in Sports Betting and prevent the following persons from participating in Sports Betting, including:

(i) Any Covered Game Employee of the Tribe's Sports Betting operation;

(ii) Any person whose identity is known to the Tribe and whose name appears on any exclusion or self-exclusion list;

(iii) Any person included on the list of Restricted Patrons;

(iv) Any person who has access to nonpublic confidential information held by the Tribe or a Qualified Pari-mutuel Permitholder; and

(v) Any person who is an agent or proxy for any other person and is wagering for such other person; and

(g) Specify the records which must be maintained and the procedures and processes for maintaining such records;

(h) Establish and require display of the rules for Sports Betting, including permissible minimum and maximum wagers that may be placed on sports events;

(i) Establish procedures to monitor the locations at which online Sports Betting is conducted;

(j) Require that the Tribe and Qualified Pari-mutuel Permitholders report to the Commission and the SCA:

(i) Any abnormal betting activity or patterns that may indicate a concern about the integrity of a sports event or events;

(ii) Any other conduct with the potential to corrupt a betting outcome of a sports event for purposes of financial gain, including but not limited to match fixing; and

(iii) Suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification; and

(k) Comply with all requirements imposed by the National Indian Gaming Commission (NIGC).

3. The SCA may request that the Tribe restrict specific types of Sports Betting which carry an unacceptably high risk of manipulation or corruption.

4. 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 NIGC's Guidance for Class III Minimum Internal Control Standards, maintained at www.nigc.gov. 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 the NIGC's Guidance for Class III Minimum Internal Control Standards, maintained at www.nigc.gov.

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, including any provider from which the State procures services pursuant to s. 551.118, Florida Statutes. 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 Covered Gaming Employee who interacts with Patrons.

2. The Tribe will make printed materials and online 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 and provide hyperlinks to online information available from the Florida Council on Compulsive Gambling and other similar organizations.

3. The Tribe shall establish a list of the Patrons voluntarily excluded from the Tribe's Facilities and from participating in the Tribe's online Sports Betting, pursuant to subsection 5.

4. The Tribe shall employ its best efforts to exclude Patrons on such list from entry into its Facilities and from participating in the Tribe's online Sports Betting; provided that nothing in this Compact shall create for Patrons who are excluded but gain access to the Facilities or participate in the Tribe's online Sports Betting,

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 and from participating in the Tribe's online Sports Betting.

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 Game 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 or

accessing for play or playing any application or website employed for online Sports Betting.

9. The Tribe shall assure that advertising and marketing of the Covered Games at the Facilities and of all web applications and websites employed for online Sports Betting 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 and shall be visibly displayed and available on all web applications and websites employed for online Sports Betting. Complete sets of rules shall be available in the Facilities upon request and shall be visibly displayed and available on all web applications and websites employed for online Sports Betting. Copies of all such rules shall be provided to the SCA annually.

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 a "Safe Ride Home Program," free of charge to the Patron. 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 any 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 NIGC's Guidance for Class III Minimum Internal Control Standards, maintained at www.nigc.gov; 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. Such materials shall be available on all web applications and websites employed for online Sports Betting, including those associated with the marketing services provided to the Tribe by Qualified Pari-mutuel Permitholders.

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. If the Patron is not satisfied after exhaustion of the procedures established in the Seminole Tribal Gaming Code, the Patron may submit an appeal of the dispute to the SCA. The SCA shall work with the Tribe to establish a process for the SCA to review appeals of such disputes, including submission of evidence and arguments by the Patron and the Tribe to the SCA. The decision of the SCA on such disputes shall be binding on the Tribe and Patron, provided the Tribe shall not be required to pay a Patron due to a game malfunction and

no payment shall exceed the actual amount of the prize available from the game that is the subject of the dispute.

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'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 Tribe's 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 while physically at one of the Tribe's Facilities listed in Part IV is required to provide written notice in the form of the Notice of Gaming Patron Tort Form to the Tribe's Risk Management Department, 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, or the claim shall be forever barred. A Patron may obtain the Notice of Gaming Patron Tort Form from the Facility's website or upon written request made to the Tribe's Risk Management Department.

2. The Tribe, or its Insurer, shall have thirty (30) days from the date the Tribe's Risk Management Department receives the Notice of Gaming Patron Tort Form to respond to a claim made by a Patron. If the Tribe, or its Insurer, 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 Notice of Gaming Patron Tort Form to the Patron. The Notice of Gaming Patron Tort 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 Notice of Gaming Patron Tort 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 the Notice of Gaming Patron Tort Form, 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 Notice of Gaming Patron Tort Form was submitted by or on behalf of the Patron and received by the Tribe's Risk Management Department, 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 ss. 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 s. 768.28(5), Florida Statutes. Section 768.28(8), Florida Statutes, as such provision may be amended from time to time by the Florida Legislature, applies to all tort claims of Patrons made pursuant to Section D of this Part. 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 Facility'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 Notice of Gaming Patron Tort 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 s. 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;

(c) The provisions of the federal Wire Act, 18 U.S.C. s. 1084, as such provision may be amended from time-to-time, and all other applicable federal laws with respect to the conduct of Sports Betting; and

(d) The provisions of this Compact, including, but not limited to, the Tribe's standards and the Tribe's Rules and Regulations; and

2. Reasonable measures are taken to:

(a) Assure the physical safety of Patrons, employees, and any other person while physically present in the Tribe's Facilities listed in Part IV;

(b) Prevent illegal activity at the Tribe's 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) Prevent illegal activity associated with or involving all web applications and websites employed for Sports Betting;

(d) Ensure prompt notification is given to appropriate law enforcement authorities of persons who may be involved in illegal acts in accordance with applicable law;

(e) Ensure that the construction and maintenance of the Tribe's 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

(f) 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 the existing memorandum of understanding between the Commission and the SCA which shall be amended as soon as practicable after the Effective Date of this Compact to incorporate all Covered Games, and which may be amended by the Commission and the SCA from time to time. Any such violations shall be reported immediately to the Commission by Facility management or by a Covered Game Employee, and the Commission shall notify the SCA as provided in the amended memorandum of understanding between the Commission and 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 Commission and the SCA, prior to or during such meetings, shall disclose to each other any concerns, suspected activities, or pending matters reasonably believed to possibly constitute violations of this Compact or, if related to the terms of this Compact,

of chapters 546, 550, 551, Florida Statutes, or chapter 849, Florida Statutes, by any person, organization or entity, if such disclosure will not compromise the interest sought to be protected. The provisions of this Subsection do not require the SCA to reveal any active criminal investigation or criminal intelligence information, as those terms are defined in s. 119.011, Florida Statutes, as such provision may be amended from time-to-time by the Florida Legislature.

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 the parties recognize 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 for, 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 NIGC that 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. The SCA may continue the practice of providing information to the Office of Economic and Demographic Research, or any successor entities, for use in estimating gaming revenues pursuant to s. 216.136(3), Florida Statutes. Representatives of the SCA, including representatives of the coordinator of the Office of Economic and Demographic Research of the Florida Legislature, or any successor entities, 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, including the information specified in Section A.1 and A.2. 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, personnel 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 sixteen (16) hours spread over two (2) consecutive days. The SCA may conduct inspections of more than sixteen (16) hours spread over those two (2) consecutive days, if the SCA determines that additional inspection hours are needed to address 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 Six Hundred (1,600) hours for all random inspections and audit reviews. If the Tribe adds additional facilities, as provided in Part IV, Section D, the annual limit will be increased by Two Hundred Fifty (250) hours per additional facility. 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. The Tribe shall provide the SCA with a dedicated computer terminal at a Facility agreed to by the Tribe and the SCA by which SCA personnel will be able to access relevant electronic records.

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

(c) The Tribe shall have a separate compliance audit prepared for Sports Betting. The SCA may perform one annual review of the Tribe's compliance audit for Sports Betting.

(d) 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 the same for each Facility as well as to review internal controls and the records of violations for the same associated with Sports Betting.

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 unless an inspection has already begun in which case the inspection will be allowed to continue. 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 personnel enter any nonpublic area of a Facility, they shall provide one (1) hour notice and photographic identification to the Commission. The SCA personnel 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 personnel 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 regarding suspected criminal wrongdoing involving the Commission.

F. 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.

G. Nothing herein shall be deemed to prevent the Tribe from entering into a management contract as defined in 25 C.F.R. s. 502.15, or issuing a license following the requirements of 25 C.F.R. s. 522.10; provided that the Tribe remains solely responsible for the operation of Covered Games. For purposes of 25 C.F.R. s. 522.10, the State agrees that the Tribe may license an entity to operate those Covered Games available to the Tribe if the Commission makes a finding that the entity is qualified based on an application and investigation similar to that required by s. 551.104(1), Florida Statutes,

and determines the entity would not be ineligible for a license based on the criteria in s. 551.107(5)-(6), Florida Statutes. The Tribe must provide the SCA sixty (60) calendar days prior written notice before it enters into an agreement with a management contractor or issues a license to a licensee, and shall only enter into a management contract with or issue a license to an entity that is licensed to conduct gaming by another state regulatory entity in the United States.

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. This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction in any way, except as expressly provided herein.

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 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 significant additional 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, C, and E below ("Payments").

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.

C. Revenue Share Payments paid by the Tribe to the State shall be calculated as follows:

1. 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 paragraphs (a) through (k) below (the "Percentage Revenue Share Amount").

For Slot Machines, Raffles and Drawings and New Games

(a) Twelve percent (12%) of all amounts up to and including Two Billion Dollars ($2,000,000,000) of Net Win received by the Tribe from the operation and play of Slot Machines, Raffles and Drawings and any new games permitted by the State, during each Revenue Sharing Cycle;

(b) Seventeen and one half percent (17.5%) of all amounts greater than Two Billion Dollars ($2,000,000,000) up to and including Two Billion Five Hundred Million Dollars ($2,500,000,000) of Net Win received by the Tribe from the operation and play of Slot Machines, Raffles and Drawings and any new games permitted by the State, during each Revenue Sharing Cycle;

(c) Twenty percent (20%) of all amounts greater than Two Billion Five Hundred Million Dollars ($2,500,000,000) up to and including Three Billion Dollars ($3,000,000,000) of Net Win received by the Tribe from the operation and play of Slot Machines, Raffles and Drawings and any new games permitted by the State, during each Revenue Sharing Cycle;

(d) Twenty-two and one-half percent (22.5%) 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 Slot Machines, Raffles and Drawings and any new games permitted by the State, during each Revenue Sharing Cycle; and

(e) Twenty-five percent (25%) of all amounts greater than Three Billion Five Hundred Million Dollars ($3,500,000,000) of Net Win received by the Tribe from the operation and play of Slot Machines, Raffles and Drawings and any new games permitted by the State, during each Revenue Sharing Cycle;

For Table Games

(f) Fifteen percent (15%) of all amounts up to and including One Billion Dollars ($1,000,000,000) of Net Win received by the Tribe from the operation and play of Table Games, during each Revenue Sharing Cycle;

(g) Seventeen and one half percent (17.5%) of all amounts greater than One Billion Dollars ($1,000,000,000) up to and including One Billion Five Hundred Million Dollars ($1,500,000,000) of Net Win received by the Tribe from the operation and play of Table Games, during each Revenue Sharing Cycle;

(h) Twenty-two and one-half percent (22.5%) of all amounts greater than One Billion Five Hundred Million Dollars ($1,500,000,000) up to and including Two Billion Dollars ($2,000,000,000) of Net Win received by the Tribe from the operation and play of Table Games, during each Revenue Sharing Cycle; and

(i) Twenty-five percent (25%) of all amounts greater than Two Billion Dollars ($2,000,000,000) of Net Win received by the Tribe from the operation and play of Table Games, during each Revenue Sharing Cycle;

For Sports Betting

(j) Thirteen and three-quarter percent (13.75%) of Net Win received by the Tribe from the operation and play of Sports Betting, during each Revenue Sharing Cycle, excluding the Net Win received by the Tribe on all such wagering by Patrons who access the Tribe's wagering platform via

software that uses a brand of a Qualified Pari-mutuel Permitholder pursuant to Part III, Section CC.3; and

(k) Ten percent (10%) of Net Win received by the Tribe from the operation and play of Sports Betting, during each Revenue Sharing Cycle, on such wagering by Patrons who access the Tribe's wagering platform via software that uses a brand of a Qualified Pari-mutuel Permitholder pursuant to Part III, Section CC.3.

2. Monthly Payment of Revenue Share Payments

(a) On or before the fifteenth (15th) day of the month following each month of the 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 (8.333%) of the estimated Revenue Share Payment to be paid by the Tribe during such Revenue Sharing Cycle.

(b) The Tribe shall, on a quarterly basis, internally "true up" the calculation of the estimated Revenue Share Payment, based on the Tribe's quarterly, audited financial statements related to Covered Games, relative to the previous estimated Revenue Share Payment for the Revenue Sharing Cycle.

(c) The Tribe will make available to the State at the time of the quarterly true-up the basis for the calculation of the payment.

3. Payment Verification

(a) (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 Section C.3.(b) of this Part, 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, 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 Payment for each Revenue Sharing Cycle to the SCA for State review.

(b) 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.

(c) 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 Payment for each Revenue Sharing Cycle or authorize the overpayment to be deducted from the next successive Monthly Payment or Payments.

4. Guaranteed Minimum Compact Term Payment

(a) The total Revenue Share Payments paid by the Tribe to the State pursuant to Section C.1 of this Part shall not be less than One Billion Five Hundred Million Dollars ($1,500,000,000) by the end of the third (3rd) Revenue Sharing Cycle and Two Billion Five Hundred Million Dollars ($2,500,000,000) by the end of the fifth (5th) Revenue Sharing Cycle.

(b) If the total Revenue Share Payments paid by the Tribe to the State pursuant Section C.1 of this Part is less than One Billion Five Hundred Million Dollars ($1,500,000,000) by the end of the third (3rd) Revenue Sharing Cycle and/or less than Two Billion Five Hundred Million Dollars ($2,500,000,000) by the end of the fifth (5th) Revenue Sharing Cycle, then the Tribe shall pay such shortfall to the State within thirty (30) calendar days after the last day of the third (3rd) and/or fifth (5th) Revenue Sharing Cycle, as applicable.

(c) Notwithstanding the foregoing, the Revenue Share Payments paid by the Tribe to the State pursuant to Section C.1 of this Part shall not be

less than Four Hundred Million Dollars ($400,000,000) for any Revenue Sharing Cycle during the first five (5) years of this Compact.

(d) Upon the occurrence of certain events beyond the Tribe's control, including acts of God, war, terrorism, pandemic, fires, floods, or accidents causing closure for more than three (3) days, significant reduction in business for more than three (3) days, 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 Compact Term Payment described above shall be reduced pro rata to reflect the percentage of the total Net Win lost to the Tribe from the impacted Facility or Facilities.

(e) The Tribe's obligation to make the Guaranteed Minimum Compact Term Payment shall cease (i) if the State violates the Tribe's exclusivity and the State fails to cure such violation within 180 days after notice of such breach by the Tribe, or (ii) if the Tribe's authorization to conduct the Covered Games is invalidated, in whole or in part, as a result of a court decision; provided, 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, or the Tribe loses the exclusive right to offer Sports Betting as provided in Part XII, Sections A.3.(a) or B.1, then the Tribe's obligation to pay the full Guaranteed Minimum Compact Term Payment and the other minimum payments set forth in this Section shall be reduced by ten (10) percent.

D. The Annual Oversight Assessment, which shall not exceed Six Hundred Thousand Dollars ($600,000) 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. Such assessment may be used by the State for the operation of the SCA. If the Tribe adds additional facilities, as provided in Part IV, Section D, the Annual Oversight Assessment will be increased by One Hundred Fifty Thousand Dollars ($150,000) per year, indexed for inflation as determined by the Consumer Price Index, per additional facility. 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.

E. The Tribe shall make an annual donation to the Florida Council on Compulsive Gaming or to another provider from which the State procures services pursuant to section 551.118, Florida Statutes, as an assignee of the State in an amount not less than Two Hundred Fifty Thousand Dollars ($250,000) per Facility; provided that if a Facility operates less than three hundred sixty-five (365) days in a year, the amount of the annual donation as to such Facility will be calculated by dividing the number of days during the year that the Facility was open by three hundred sixty-five (365) and multiplying the result by Two Hundred Fifty Thousand Dollars ($250,000).

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 claim, 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. GRANT OF EXCLUSIVITY; REDUCTION OF TRIBAL PAYMENTS BECAUSE OF LOSS OF EXCLUSIVITY OR OTHER CHANGES IN FLORIDA LAW

The intent of this Part 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, without State-authorized competition from other persons, organizations, or entities offering Class III Gaming or Other Casino-Style Gaming.

A. 1. If, after January 1, 2021, Florida law is amended by action of the Florida Legislature or, except pursuant to Section A.3 of this Part, by an amendment adopted 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 January 1, 2021, other than as provided in Part XII, Section B.2, or (2) new forms of Class III Gaming or Other Casino-Style Gaming that were not in operation as of January 1, 2021, the Payments due to the State pursuant to Part XI, Sections C and E of this Compact shall cease when the newly authorized gaming begins to be offered for public or private use. Nothing in this provision limits the State's ability to invoke the dispute resolution process set forth in Part XIII to challenge the Tribe's claim that the State violated its exclusivity. The cessation of payments due to the State pursuant to Part XI,

Sections C and E of this Compact shall continue until such gaming is no longer operated, in which event the Payments shall resume.

2. If an 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 January 1, 2021, 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 C and E of this Compact into an escrow account to provide the Florida Legislature with the opportunity to pass legislation to reverse such decision or ruling. Nothing in this provision limits the State's ability to invoke the dispute resolution process set forth in Part XIII to challenge the Tribe's claim that the State violated its exclusivity. If the Florida Legislature fails to act or if such Class III Gaming or Other Casino-Style Gaming is not illegal and no longer operated after action by the Florida Legislature within fifteen (15) months after the Tribe's notice of such expanded gaming or, if the State challenges such claim using the dispute resolution process set forth in Part XIII, within twelve (12) months after the conclusion of the dispute resolution process, whichever is later, 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 C and E 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. Nothing herein shall be construed to grandfather or otherwise permit any violation of the Tribe's exclusivity that occurred prior to the Effective Date of this Compact, as

long as the Tribe provides notice to the State of such violation if the violation is known by the Tribe prior to the Effective Date.

3. If after January 1, 2021, the Florida Constitution is amended, without action by the Legislature, by an initiative pursuant to Article XI, s. 3 to authorize:

(a) Sports Betting, other than at a Tribal Facility as specified in this Compact, then the Tribe shall make payments to the State for all future Revenue Sharing Cycles based on the percentage payments set forth in Part XI, Section C but shall be permitted, when the newly authorized Sports Betting begins to be offered for public or private use, to reduce its payments due to the State on the Net Win on Covered Games by excluding Net Win from Sports Betting.

(b) Class III Gaming or Other Casino-Style Gaming, excluding Sports Betting and any form of online or remote gaming, at any location less than one hundred (100) miles on a straight line from a Tribal Facility, other than the relocation of a pari-mutuel license or permit which may be transferred, relocated, or moved pursuant to Part XII, Section B.2, then the Tribe shall make payments to the State for all future Revenue Sharing Cycles based on the percentage payments set forth in Part XI, Section C but shall be permitted, when the newly authorized expanded gaming begins to be offered for public or private use, to reduce its payments due to the State on the Net Win on Covered Games by excluding the Net Win (other than on Sports Betting) from any Facility within one hundred (100) miles of the new location where the Class III Gaming or Other Casino-

Style Gaming is offered. If the Florida Constitution is amended, without action by the Legislature, by an initiative pursuant to Article XI, s. 3 to authorize Class III Gaming or Other Casino-Style Gaming, excluding Sports Betting and any form of online or remote gaming, at any location more than one hundred (100) miles on a straight line from a Facility, the Tribe's exclusivity under this Part is not violated.

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

1. Any Class III Gaming or Other Casino-Style 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 January 1, 2021. However, if such tribe is permitted to offer Sports Betting to players physically located in the State but not on Indian Lands, then the Tribe shall make payments to the State for all future Revenue Sharing Cycles based on the percentage payments set forth in Part XI, Section C but shall be permitted, when the newly authorized Sports Betting begins to be offered for public or private use, to reduce its Revenue Share Payments due to the State by excluding twenty five (25) percent of its Net Win from Sports Betting, but Revenue Share Payments shall be calculated based on no less than ten (10) percent of Net Win received by the Tribe from the operation and play of Sports Betting during each Revenue Sharing Cycle, including the Net Win received by the Tribe on all such wagering by Patrons who access the Tribe's wagering

platform via software that uses a brand of a Qualified Pari-mutuel Permitholder pursuant to Part III, Section CC.3.

2. (a) 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 or at 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 Slot Machines without the Tribe's written consent to any location in a county other than Broward County or Miami-Dade County where the new location is within one hundred (100) miles on a straight line from any Facility, or without the Tribe's written consent to any location in either Broward County or Miami-Dade County where the new location is within fifteen (15) miles on a straight line from any Facility in Broward County. Scientific testing and evaluation of Slot Machines required by State law must be conducted by an Independent Testing Laboratory. Slot Machines may not offer games using tangible playing cards (e.g., paper or plastic), but may offer games using electronic or virtual cards.

(b) If State law is changed to authorize the operation of more than two thousand (2,000) Slot Machines at any of the four (4) licensed pari-mutuel facilities in Broward County or the four (4) licensed pari-mutuel facilities in Miami-Dade County, which are authorized to operate Slot Machines, then the Tribe shall make payments to the State for all future Revenue

Sharing Cycles based on the percentage payments set forth in Part XI, Section C but shall be permitted, when the newly authorized expanded gaming begins to be offered, to reduce its payments due to the State on the Net Win by excluding fifty (50) percent of the Net Win received by the Tribe from the operation and play of Slot Machines at its Facilities in Broward County. The reduction of payments due to the State pursuant to Part XI, Section C and E of this Compact shall continue until State law is changed so that the maximum number of Slot Machines which may be operated at any of the four (4) licensed pari-mutuel facilities in Broward County or any of the four (4) licensed pari-mutuel facilities in Miami-Dade County is two thousand (2,000) or fewer Slot Machines at each location, in which event the Payments shall resume effective on the first (1st) day of the first (1st) calendar month after the State law restoring the limit of two thousand (2,000) Slot Machines per location becomes effective.

3. 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 Card Minders, both as defined in Part III, at each pari-mutuel facility licensed as of January 1, 2021, and not located in either Broward County or Miami-Dade County.

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

5. The operation of poker at cardrooms licensed by the State, but not including any game banked by the house, a player or any other person or entity. Notwithstanding the foregoing, a poker game played in the designated player manner, as authorized by the State prior to the enactment of Article X, s. 30 of the Florida Constitution, where one player is permitted but not required to cover other players' wagers, shall not be considered a violation of the Tribe's exclusivity if the following restrictions are enacted in state law and implemented by rule, if appropriate, prior to, or within twelve (12) months following the Effective Date of this Compact: (a) each cardroom is restricted to offering only those specific designated player card games that were identified in cardroom license applications approved by the SCA on or before March 15, 2018, and any substantially similar poker games that were identified in cardroom license applications approved by the SCA on or before April 1, 2021; (b) no cardroom is permitted to offer more than (i) ten (10) designated player card tables, if the cardroom is located in a county where Slot Machines are operated, or (ii) thirty (30) designated player card tables, if the cardroom is not located in a county where Slot Machines are operated; (c) no cardroom operator has any direct economic interest in a designated player game except for the rake; and (d) no cardroom operator receives any portion of the designated player's winnings. Notwithstanding the foregoing, if the operation of all designated player card games ceases, then for so long as all such games remain out of operation, the Tribe agrees to increase each of the revenue share percentages set forth in Part XI, Section C.1 by one percent (1%).

6. The operation of Class III Gaming or Other Casino-Style Gaming, excluding Sports Betting or any form of online or remote gaming, at any location not less than one hundred (100) miles on a straight line from any Facility.

7. The operation by the Florida Department of Lottery of those types of lottery games authorized under chapter 24, Florida Statutes, including any technologic enhancements for lottery games, but not technologic enhancements that would allow (i) any player-activated or operated machine or device other than a Lottery Vending Machine such as video lottery terminals (VLTs), (ii) any banked or banking card or table game, (iii) any type of wagering on any professional sport or athletic event, any Olympic or international sports competition event, any collegiate sport or athletic event, or any motor vehicle race, or any portion of any of the foregoing, or (iv) any type of online or remote type of Class III Gaming or Other Casino-Style Gaming. A "player-activated or operated machine or device" does not include an electronic device connected via the Internet or otherwise to web applications or websites approved by or operated by the Florida Department of the Lottery which: (i) allows a player or user the ability to scan a play slip for a draw game for presentation to a lottery retailer to enable the player or user to purchase a paper ticket at a lottery retailer's physical location; (ii) communicates the winning numbers for draw lottery games to a player or user; or (iii) facilitates the purchase of a paper lottery ticket. 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 as described in Part III, Section R.2 may be installed at any licensed pari-mutuel facility.

8. Except as otherwise provided, the operation of games authorized by chapters 546 and 849, Florida Statutes, on January 1, 2021. In addition, hand-held or table-top bingo card minders may be used in connection with the play of bingo games authorized by s. 849.0931, Florida Statutes, as of January 1, 2021. Bingo card minders must require players to input manually each individual number or symbol announced by a live caller. Further, no bingo card minder may display or represent the game result through any means, including, but not limited to, video or mechanical reels or other slot machine or casino game themes, other than highlighting the winning numbers or symbols marked or covered on the tangible bingo cards or giving an audio alert that the player's card has a prize-winning pattern.

9. The operation of Fantasy Sports Contests.

10. The provision of marketing services by a Qualified Pari-mutuel Permitholder pursuant to a written agreement with the Tribe associated with the Tribe's operation of Sport Betting.

11. Expanded gaming conducted pursuant to an amendment to the Florida Constitution approved by an initiative pursuant to Article XI, s. 3 that is funded in whole or in part by the Tribe.

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 C and E 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 C and E 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 D of this Compact.

E. The Tribe acknowledges that the following event shall not trigger any remedy under this Compact and does not affect the exclusivity provisions of this Compact: Any change to the tax rate paid to the State by licensed pari-mutuel permitholders for the operation of Slot Machines as recognized by Section B.2 of this Part, if the effective tax rate on "slot machine revenues," as that term is defined in s. 551.102(13), Florida Statutes, is not less than thirty (30) percent; provided any such change is not enacted earlier than during the 2023 Regular Session of the Florida Legislature. If the effective tax rate of "slot machine revenue," as that term is defined in s. 551.102(13), Florida Statutes, falls below thirty (30) percent or a reduced tax is enacted prior to the 2023 Regular Session of the Florida Legislature, then the Tribe shall make payments to the State for all future Revenue Sharing Cycles based on the percentage payments set forth in Part XI, Section C but shall be permitted to exclude fifty (50) percent of the revenue generated by Slot Machines at its Facilities in Broward County until the tax rate is restored to its previous rate.

F. The Tribe agrees to work with the State in good faith to address possible violations of the Tribe's exclusivity.

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 shall 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 certify 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 agreed to 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; and

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, 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, 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, except as set forth below, if either Part XI or Part XII is held by a court of competent jurisdiction to be invalid, this Compact will become null and void at the option of either the Tribe or the State. 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, as explained in Part XI, Section C.4(e). However, Payments due to the State pursuant to Part XI, Sections C and E of this Compact shall continue.

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, including a duty to enforce the law against illegal activity, but only a remedy for the Tribe if gaming under state jurisdiction is expanded by affirmative action of the State.

C. This Compact, together with all documents referenced herein, sets forth the full and complete agreement of the Parties and subject to the terms hereof supersedes any prior oral or written understandings with respect to the subject matter hereof.

D. This Compact is intended to meet the requirements of the Indian Gaming Regulatory Act as of 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 forth 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 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 only 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.

E. 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.

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

G. 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 and the State shall work together to 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
400 South Monroe Street
PL-05, The Capitol
Tallahassee, Florida 32301

General Counsel to the Governor
400 South Monroe Street
Room 209, The Capitol
Tallahassee, Florida 32301

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

General Counsel to the Tribe
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 and approved as a tribal-state compact within the meaning of the Indian Gaming Regulatory Act either by action of the U.S. Secretary of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8), shall become effective 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 terminate on July 31, 2051.

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 U.S. Secretary of the Interior 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. Ratification by the Legislature 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 and shall be provided to the SCA within fourteen (14) calendar days of becoming effective. If the State has an objection to any change to the tribal ordinance, regulation or procedure that is the subject of the notice on the ground that its adoption is 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. 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. Any dispute over whether a party has engaged in good faith negotiations under this Part shall not be subject to suit pursuant to Part XIII, and this Part is not a waiver of the State's sovereign immunity from suit over claims alleging the failure to negotiate in good faith, as recognized in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

B. Except as set forth in Part XII, Section A.3(a), if the State permits any other person or entity to offer any form of online or remote gaming, then the Tribe shall be permitted to accept wagers on the same, specific form of gaming from players physically located within the State using mobile or other electronic devices and such wagers 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. If the State revokes its permission to the person or entity to offer any form of online or remote gaming, then the Tribe's coextensive authorization in this Section is also revoked.

C. 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.

D. 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 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.

E. Smoking

The Tribe and the State recognize that opportunities to engage in gaming in smoke-free or reduced-smoke environments provide both health and other benefits to Patrons, and the Tribe has already instituted a non-smoking section at all of its Facilities. 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 Covered Games at all new construction at its Facilities and at all of its new Facilities;

3. Install non-smoking, vented tables for Covered 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.

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

G. 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.

H. 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.

I. 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, except for any standards concerning smoking in Section E of this Part.

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 U.S. Secretary of the Interior or by operation of law under 25 U.S.C. s. 2710(d)(8) upon 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

Ron DeSantis
Governor

Date: 23 April, 2021

Seminole Tribe of Florida

Marcellus W. Osceola, Jr.
Chairman of the Tribal Council

Date: 4/23/, 2021

An act relating to the implementation of the 2021 gaming compact between the Seminole Tribe of Florida and the State of Florida; amending s. 285.710, F.S.; revising the definition of the term "compact"; providing for legislative approval and ratification of a gaming compact between the Seminole Tribe of Florida and the state; requiring the Governor to cooperate with the Tribe in seeking approval and ratification of such compact from the United States Secretary of the Interior; specifying that such compact supersedes a certain other gaming compact under certain circumstances; revising local government share distributions; authorizing the Tribe to conduct additional games, contests, and sports betting; providing age requirements for fantasy sports contests and sports betting; specifying that certain games and gaming activities do not violate the laws of this state; conforming cross-references; amending s. 285.712, F.S.; revising requirements for the Secretary of State relating to a compact; amending s. 551.102, F.S.; defining the term "independent testing laboratory"; amending s. 551.103, F.S.; conforming a provision to changes made by the act; amending s. 849.086, F.S.; providing conditions, requirements, and prohibitions relating to poker games played in a designated player manner; prohibiting a person licensed to operate a cardroom from operating certain games; providing contingent effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Effective upon becoming a law, paragraph (a) of subsection (1) and subsection (3) of section 285.710, Florida Statutes, are amended to read:

285.710 Compact authorization.—

(1) As used in this section, the term:

(a) "Compact" means the most recent ratified and approved gaming compact between the Seminole Tribe of Florida and the State of Florida~~, executed on April 7, 2010~~.

(3)(a) The gaming compact between the Seminole Tribe of Florida and the State of Florida, executed by the Governor and the Tribe on April 7, 2010, was ~~is~~ ratified and approved by chapter 2010-29, Laws of Florida.

(b) 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, is ratified and approved. 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. Upon becoming effective, such compact supersedes the gaming compact ratified and approved under paragraph (a). If the gaming compact ratified and approved under this paragraph is not approved by the United States Secretary of the Interior or is invalidated by court action or change in federal law, the gaming compact ratified and approved under paragraph (a) shall remain in effect ~~The Governor shall cooperate with the Tribe in seeking approval of the compact from the United States Secretary of the~~

~~Interior~~.

Section 2. Paragraphs (b), (c), and (d) of subsection (10) and subsection (13) of section 285.710, Florida Statutes, are amended, and paragraph (h) is added to subsection (10) of that section, to read:

285.710 Compact authorization.—

(10) The calculations necessary to determine the local government share distributions shall be made by the state compliance agency based upon the net win per facility as provided by the Tribe. The local government share attributable to each casino shall be distributed as follows:

(b) Broward County shall receive 25 percent, the City of Hollywood shall receive 42.5 ~~55~~ percent, the Town of Davie shall receive 22.5 ~~10~~ percent, and the City of Dania Beach shall receive 10 percent of the local government share derived from the Seminole Indian Casino-Hollywood.

(c) Broward County shall receive 25 percent, the City of Hollywood shall receive 42.5 ~~55~~ percent, the Town of Davie shall receive 22.5 ~~10~~ percent, and the City of Dania Beach shall receive 10 percent of the local government share derived from the Seminole Hard Rock Hotel & Casino-Hollywood.

(d) Collier County shall receive 75 ~~100~~ percent and the Immokalee Fire Control District shall receive 25 percent of the local government share derived from the Seminole Indian Casino-Immokalee.

(h) Broward County shall receive 25 percent, the City of Hollywood shall receive 35 percent, the Town of Davie shall receive 30 percent, and the City of Dania Beach shall receive 10 percent of the local government share derived from the

additional facilities authorized to be added to the Tribe's Hollywood Reservation under the gaming compact ratified, approved, and described in subsection (3).

(13)(a) 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)(a), if the compact described in subsection (3)(b) is not effective:

1.~~(a)~~ Slot machines, as defined in s. 551.102(9) ~~s. 551.102(8)~~.

2.~~(b)~~ Banking or banked card games, including baccarat, chemin de fer, and blackjack or 21 at the tribal facilities in Broward County, Collier County, and Hillsborough County.

3.~~(c)~~ Raffles and drawings.

(b) 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:

1. Slot machines, as defined in s. 551.102(9).

2. Banking or banked card games, including baccarat, chemin

de fer, and blackjack (21), and card games banked by the house, by a bank established by the house, or by a player.

3. Raffles and drawings.

4. Craps, including dice games such as sic-bo and any similar variations thereof.

5. Roulette, including big six and any similar variations thereof.

6. Fantasy sports contests. The acceptance of entry fees for fantasy sports contests conducted by the Tribe, including the receipt of entry fees paid 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 contests on the Tribe's Indian lands are located. A person must be 21 years of age or older to pay an entry fee for fantasy sports contests.

7. Sports betting. Wagers 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. A person must be 21 years of age or older to wager on sports betting.

Games and gaming activities authorized under this subsection and conducted pursuant to a gaming compact ratified and approved under subsection (3) do not violate the laws of this state.

Section 3. Effective upon becoming a law, subsection (4) of section 285.712, Florida Statutes, is amended to read:

285.712 Tribal-state gaming compacts.—

(4) Upon receipt of an act ratifying a tribal-state compact, the Secretary of State shall coordinate with the parties to the compact to formally submit ~~forward~~ a copy of the executed compact and the ratifying act to the United States Secretary of the Interior for his or her review and approval, in accordance with 25 U.S.C. s. 2710(d)(8) ~~25 U.S.C. s. 2710(8)(d)~~.

Section 4. Present subsections (5) through (13) of section 551.102, Florida Statutes, are redesignated as subsections (6) through (14), respectively, and a new subsection (5) is added to that section, to read:

551.102 Definitions.—As used in this chapter, the term:

(5) "Independent testing laboratory" means an independent laboratory:

(a) With demonstrated competence testing gaming machines and equipment;

(b) That is licensed by at least 10 other states; and

(c) That has not had its license suspended or revoked by any other state within the immediately preceding 10 years.

Section 5. Paragraph (c) of subsection (1) of section 551.103, Florida Statutes, is amended to read:

551.103 Powers and duties of the division and law enforcement.—

(1) The division shall adopt, pursuant to the provisions of ss. 120.536(1) and 120.54, all rules necessary to implement, administer, and regulate slot machine gaming as authorized in this chapter. Such rules must include:

(c) Procedures to scientifically test and technically evaluate slot machines for compliance with this chapter. The division may contract with an independent testing laboratory to

conduct any necessary testing under this section. ~~The independent testing laboratory must have a national reputation which is demonstrably competent and qualified to scientifically test and evaluate slot machines for compliance with this chapter and to otherwise perform the functions assigned to it in this chapter.~~ An independent testing laboratory shall not be owned or controlled by a licensee. The use of an independent testing laboratory for any purpose related to the conduct of slot machine gaming by a licensee under this chapter shall be made from a list of one or more laboratories approved by the division.

Section 6. Subsection (10) and paragraph (a) of subsection (12) of section 849.086, Florida Statutes, are amended, and paragraph (h) is added to subsection (7) of that section, to read:

849.086 Cardrooms authorized.—

(7) CONDITIONS FOR OPERATING A CARDROOM.—

(h) Poker games played in a designated player manner in which one player is permitted, but not required, to cover other players' wagers must comply with the following restrictions:

1. Poker games to be played in a designated player manner must have been identified in cardroom license applications approved by the division on or before March 15, 2018, or, if a substantially similar poker game, identified in cardroom license applications approved by the division on or before April 1, 2021.

2. If the cardroom is located in a county where slot machine gaming is authorized under chapter 285 or chapter 551, the cardroom operator is limited to offering no more than 10

tables for the play of poker games in a designated player manner.

3. If the cardroom is located in a county where slot machine gaming is not authorized under chapter 285 or chapter 551, the cardroom operator is limited to offering no more than 30 tables for the play of poker games in a designated player manner.

4. There may not be more than nine players and the nonplayer dealer at each table.

(10) FEE FOR PARTICIPATION; PROHIBITIONS RELATING TO ECONOMIC INTEREST AND WINNINGS FOR CERTAIN GAMES.—

(a) The cardroom operator may charge a fee for the right to participate in games conducted at the cardroom. Such fee may be either a flat fee or hourly rate for the use of a seat at a table or a rake subject to the posted maximum amount but may not be based on the amount won by players. The rake-off, if any, must be made in an obvious manner and placed in a designated rake area which is clearly visible to all players. Notice of the amount of the participation fee charged shall be posted in a conspicuous place in the cardroom and at each table at all times.

(b)1. A cardroom operator may not have any direct economic interest in a poker game played in a designated player manner, except for the rake.

2. A cardroom operator may not receive any portion of the winnings of a poker game played in a designated player manner.

(12) PROHIBITED ACTIVITIES.—

(a) No person licensed to operate a cardroom may conduct any banking game or any game not specifically authorized by this

section or operate any game that violates the exclusivity provided in the gaming compact ratified, approved, and described in s. 285.710(3).

Section 7. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect only if the Gaming Compact between the Seminole Tribe of Florida and the State of Florida executed by the Governor and the Seminole Tribe of Florida on April 23, 2021, as amended on May 17, 2021, under the Indian Gaming Regulatory Act of 1988, is approved or deemed approved and not voided by the United States Department of the Interior, and shall take effect on the date that notice of the effective date of the compact is published in the Federal Register.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

AUG 06 2021

The Honorable Marcellus W. Osceola, Jr.
Chairman, Seminole Tribe of Florida
6300 Stirling Road
Hollywood, Florida 33024

Dear Chairman Osceola:

On June 21, 2021, the Department of the Interior (Department) received the class III gaming compact (Compact) between the Seminole Tribe of Florida (Tribe) and the State of Florida (State).[1] Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701, *et seq.*, the Secretary of the Interior (Secretary) may approve or disapprove a compact within 45 days of its submission. 25 U.S.C. § 2710(d)(8). Should the Secretary take no action within the 45-day timeframe, the compact is "considered to have been approved" but only "to the extent that the compact is consistent with the provisions of [IGRA]." *Id.* at 2710(d)(8)(C).

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.

SUMMARY

When Congress enacted IGRA in 1988, it authorized state governments to play a limited role in the regulation of class III Indian gaming. Congress also recognized that this limited expansion of state influence over matters historically left to tribal self-government could be used to undermine tribal sovereignty. Congress, therefore, required states to negotiate class III gaming compacts in good faith, provided a remedy in the event that states refused to negotiate in good faith, limited the scope of bargaining for class III gaming compacts, and prohibited states from using the process to impose taxes on tribal gaming operations.

Congress also required tribes and states to submit class III gaming compacts to the Department for a final review before a compact may take effect. In undertaking this review, the Department works to ensure that the compact is not used to diminish tribal sovereignty at the expense of accreting state power; and, to preserve symmetry in the bargaining power of tribes and states.

In 1995, the United States Supreme Court effectively rendered certain aspects of IGRA's tribal-sovereignty protection provisions inoperable for many tribes in *Seminole Tribe v. Florida*, 517 U.S. 44

[1] The parties submitted the required documents to comply with 25 C.F.R. § 293.8, including a signed original Compact, Tribal Council Resolution No. C-297-21, and certification in Part XIX of the Compact that the Governor affirms his authority to act for the State. The parties also included a copy of the legislation enacted by the State that certifies the gaming Compact is ratified and approved.

(1995) – a case that arose out of the Seminole Tribe's first efforts to negotiate a class III gaming compact with the State of Florida. One of the biggest consequences of the Court's decision in the *Seminole* case was an expansion of state bargaining power when negotiating class III gaming compacts with tribes. Consequently, the Department's review of class III gaming compacts became even more important to preserving tribal sovereignty under IGRA and maintaining the limited expansion of state authority that Congress granted.

Each class III gaming compact is unique and responds to the particular interests and relative bargaining power of the parties to the agreement. As part of the trust obligation to tribes, the Department must consider these unique factors as it undertakes its review pursuant to 25 U.S.C. § 2710.

In this instance, the Department is aware of the exceptional bargaining position of the Tribe. Notwithstanding the Supreme Court's 1995 opinion, the Tribe's gaming operations have resulted in an incredible success story. Through a mix of business savvy and shrewdness, the Tribe has grown its gaming operations from limited class II facilities to globally-recognized class III gaming operations – and has been able to successfully negotiate class III gaming compacts with the State to facilitate that expansion.

We considered these circumstances when conducting our review, and it informed our assessment of whether certain Compact provisions were the outcome of bilateral good-faith negotiations.

As explained below, the Department has concerns regarding the inclusion of provisions relating to jurisdiction over tort claims and mandatory vendor contracts. We also believe it is important that the Department address the provisions relating to internet gaming activities and revenue sharing.

BACKGROUND

1. *"Hub and Spoke" Model for Mobile Sports Betting*

The Compact authorizes the Tribe to continue to conduct class III gaming on its lands and expands the allowable scope of gaming to include mobile sports betting, amongst other games. The Tribe may conduct and operate sports books to offer sports betting on professional and collegiate sport events through mobile or electronic devices by patrons physically located within the State. Compact, Part III.CC.1-2. Pursuant to the Compact and State law, such wagering is deemed to be exclusively conducted by the Tribe at the location of the servers that process such wagering activity on the Tribe's Indian lands. *Id.*; Part IV.A; Part III.CC.2. "Sports Betting" is defined as wagering on past or future professional sports or athletic event or contest, Olympic sport or international event, any collegiate sport or motor vehicle race, but not proposition bets on collegiate sports. *Id.* Part III.CC.

The Tribe and State refer to this arrangement as a "hub and spoke" model, where the Tribe's servers are the hub, and the spokes are the mobile devices and contracted Qualified Pari-mutuel Permitholders facilities where the wagers originate. The State legislature authorized mobile sports betting exclusively for the Tribe through legislation enacted at the same time it ratified the Compact. The Tribe will have statewide exclusivity for sports betting, and in the event of a breach due to a citizen's initiative the Tribe's sports betting revenue share will be reduced to zero. Compact, Part XII.A.3.(a). If another tribe is permitted to offer state-wide sports betting in partnership with a commercial entity, the

Tribe will reduce its sports betting revenue share by 25 percent.[2] Compact, Part XII.B.1. If the Tribe loses the ability to offer sports betting, the guaranteed minimum payment will be reduced by 10 percent. Compact, Part XI.C.4(e).

2. *Revenue Sharing and Exclusivity*

The Compact and accompanying State legislation authorize the Tribe to continue to conduct the following types of games that were previously authorized: slot machines; raffles and drawings; and banked card games, including baccarat, chemin de fer, and blackjack. *See* Compact, Part III.F, FF. The Tribe is also authorized to conduct the following new games: craps, including dice games such as sic-bo and any similar variations; roulette, including big six and any similar variations; sports betting (at casinos and on mobile devices); and fantasy sports contests (if authorized by future legislation). *Id.* Part III.F.3-5, L, FF, CC. The Tribe can also offer any new games authorized by the State, including online gaming. *Id.* Part III.F.6; Part XVIII.B.

The Compact provides that the Tribe will receive substantial exclusivity for Covered Games[3] with a list of exceptions to such exclusivity. The Tribe will obtain exclusivity for offering craps, roulette and similar games (with a limited exception) and state-wide exclusivity for sports betting including mobile sports betting. *See* Compact Part XII. The Compact includes eleven noted exceptions to the Tribe's exclusivity, which are paraphrased below:

i) Any Class III Gaming[4] or other Casino-Style Gaming[5] authorized by a compact between the State and any other federally recognized tribe under IGRA, provided that the Tribe has land in trust as of January 2, 2021;

ii) The operation of Slot Machines at each of the four currently operating licensed pari-mutuel facilities in Broward County or at the four currently operating licensed pari-mutuel facilities in Miami-Dade County, provided that the licenses are not transferred to a location in a county other than Broward County or Miami-Dade County where the new location is within100 miles on a straight line from any Tribal Facility or in Broward or Miami-Dade County where the new location is within 15 miles on a straight line from any Tribal Facility in Broward County;

iii) The operation of a total of not more than 350 historic racing machines and electronic bingo card minders at each pari-mutuel facility licensed as of January 2, 2021, and not located in either Broward or Miami-Dade County;

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[2] Letter from Marcellus Osceola, Jr., Chairman of the Tribal Council, Seminole Tribe of Florida, to Paula Hart, Director Office of Indian Gaming, Response to Questions on Seminole Compact, dated July 13, 2021.

[3] "Covered Game" is defined as slot machines, raffles and drawings, table games, fantasy sports contests, sports betting, and any new game authorized by Florida law for any person for any purpose. Compact, Part III.F.

[4] Under the Compact, "Class III Gaming" means the forms of class III gaming defined in 25 U.S.C. § 2703(8), and by the regulations of the National Indian Gaming Commission or any successor commission. Compact, Part III.C.

[5] Under the Compact, "Other Casino-Style Gaming" is given the same definition as "casino gambling" in Article X, s. 30 of the Florida Constitution, but not excluding any games authorized by Article X, s. 15 of the Florida Constitution if such games involve any slot-like or casino-style game. Compact, Part III.U.

iv) The operation of Pari-Mutuel Wagering Activities at pari-mutuel facilities licensed by the State;

v) The operation of poker at card rooms licensed by the State, but not including any game banked by the house, a player or any other person or entity;

vi) The operation of Class III Gaming or other Casino-Style Gaming, excluding Sports Betting or any other form of online or remote gaming, at any location not less than one hundred (100) miles on a straight line from any Tribal Facility;

vii) The operation by the Florida Department of Lottery of certain types of lottery games;

viii) The operation of games authorized by chapters 546 and 849, Florida Statutes, on January 21, 2021;

ix) The operation of Fantasy Sports Contests;

x) The provision of marketing services by a Qualified Pari-mutuel Permitholder[6] pursuant to a written agreement with the Tribe associated with the Tribe's operation of Sports Betting;

xi) Expanded gaming conducted pursuant to an amendment to the Florida Constitution approved by an initiative pursuant to Article XI, s.3 that is funded in whole or in part by the Tribe.

See Compact, Part XII.B.

The Compact provides that the Tribe can conduct Covered Games at any of its identified seven facilities existing on Indian lands and such facilities may be relocated, expanded or replaced by another facility on the same Indian land with advance notice to the State of 60 calendar days. Compact, Part IV.B. The Compact limits the Tribe from building Las Vegas-style casino resorts on its Brighton Reservation (Okeechobee, FL) or Big Cypress Reservation (Clewiston, FL), but authorizes the Tribe to build up to three additional facilities on its Hollywood Reservation. *Id.* Part IV.C-D.

The Compact also provides that the Tribe will pay the State a guaranteed minimum of $2.5 billion in revenue sharing over the first five years of the Compact ("Guaranteed Minimum Compact Term Payment"). Compact, Part XI.C. Revenue sharing is separated into tiers categorized by the type of game: the tiers start at 12 percent for slot machines, raffles and drawings, and new games and increase through several tiers to 25 percent based on Net Win[7], and start at 15 percent for table games up to 25 percent based on Net Win. *Id.* Part XI.C.1(a)-(i). The Tribe will pay a revenue share of 13.75 percent of sports betting Net Win if the Tribe enters into marketing agreement contracts with at least three Qualified Pari-mutuel Permitholders. Part XI.C.1(j)-(k). The Tribe will pay a reduced revenue share of 10 percent on the Net Win generated through the contracted Qualified Pari-mutual Permitholders.

[6] A Qualified Pari-mutuel Permitholder must hold a pari-mutuel operating permit or license under the appropriate Florida Statute and a slot machine or cardroom license under the appropriate Florida Statute. Compact, Part III.X.

[7] "Net Win" is defined as the total receipts from the play of all Covered Games less all prize payouts and free play or promotional credits issued by the Tribe.

Id. If the Tribe does not contract with at least 3 Qualified Pari-mutuel Permitholders, it will pay 15.75 percent sports betting Net Win. *Id.* Part III.CC.4, and Part XI.C.1(j)-(k).

Finally, the Compact authorizes the Tribe to stop or reduce the Guaranteed Minimum Compact Term Payment if the State authorizes specified gaming in violation of the Tribe's exclusivity rights or if a force majeure event occurs. Compact, Part XI.C.4(d)-(e). If at any time the Tribe is not legally permitted to offer sports betting as described in the Compact, including to patrons physically located in the State but not on Indian lands, or the Tribe loses the exclusive right to offer sports betting by citizen initiative or by allowing other tribes to conduct sports betting in the State but not on Indian lands, then the Tribe's obligation to pay the full Guaranteed Minimum Compact Term Payment and the other minimum payments is reduced by ten percent. *Id.* Part XI.C.4(e).

3. *Notable Regulatory Provisions*

The Compact addresses tort remedies for patrons of the Tribe's gaming facilities and provides that upon a written notice process, the Tribe and patron will have one year to resolve the dispute. Compact, Part VI.D(1)-(4). Should the dispute not be resolved within one year, 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..." *Id.* Part VI.D(4). The Tribe waives its immunity from suit "to the same extent as the State of Florida waives its sovereign immunity" pursuant to specified State laws. *Id.* Part VI.D(5).

The Compact also provides an arrangement in which the Tribe must negotiate agreements with Qualified Pari-mutuel Permitholders to provide marketing services or similar agreements for the Tribe's sports betting operation. Compact, Part III.CC.4.

> If for any reason the Tribe does not have valid written contracts with at least three (3) or more Qualified Pari-mutuel Permitholders upon or following the commencement of the Tribe's Sports Betting operation, the Payments due to the State...based on the Net Win received by the Tribe from the operation and play of Sports Betting shall increase by two (2) percent until the Tribe has valid written contracts with at least three (3) Qualified Pari-mutuel Permitholders to perform marketing or similar services for the Tribe's Sports Betting.

Id.

ANALYSIS

Pursuant to IGRA, the Secretary is vested with the discretionary authority to disapprove a proposed class III compact when it violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians. *See* 25 U.S.C. §2710(d)(8).[8] The IGRA limits the subjects over which states and tribes may negotiate a

[8] At the outset, it is important to note the public concern surrounding the State constitutionality of the legislative authorization of sports betting within the State of Florida. IGRA provides the Secretary with discretionary authority to disapprove a compact only in limited circumstances. Those circumstances do not permit the Department to consider questions of State law in its review. 25 U.S.C. § 2710(d)(8)(B). *See also Pueblo of Santa Ana v. Kelly* 104 F.3d 1546, 1556 (10th Cir. 1997).

tribal-state gaming compact, and prohibits the imposition of a tax, fee, charge, or other assessment on Indian gaming except to defray the state's cost of regulating class III gaming activities. *Id.* §2710(d)(3)(C); §2710(d)(4). In fulfilling the United States' trust obligations to tribes, the Department reviews compacts to ensure that they comply with Federal law, were the product of bilateral good-faith negotiations, and that they respect the boundaries of tribal sovereignty that Congress altered when it enacted IGRA.

The Department adheres to the statutory limitations imposed by the IGRA, but must avoid a paternalistic approach by balancing its review through acknowledgment of the inherent sovereign authority of tribes to engage in economic development and make business decisions that respond to their unique circumstances and are in the best interests of their citizens. While gaming has been the most successful means of economic development for tribes in the modern era, the industry is continually changing with the emergence of new technology. The Department must apply the law in a manner that ensures tribes are not hindered from utilizing new technology in an evolving industry.

1. Hub and Spoke Model Internet Gaming

This Compact requires the Department to examine the "hub and spoke" model of internet gaming under IGRA as a matter of first impression. While Congress did not contemplate the new era of internet gaming when it adopted IGRA, it crafted IGRA as a flexible statute that acknowledged tribal sovereignty, was enacted for the benefit of tribal economic development, and for promoting tribal-state cooperation.[9] IGRA provides that class III gaming is lawful on Indian lands if: authorized by a tribal ordinance or resolution, 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).

In examining the permissibility of mobile sports betting under IGRA as a novel matter, the Department seeks to uphold the intent of IGRA and notes that: 1) evolving technology should not be an impediment to tribes participating in the gaming industry; 2) the pursuit of mobile gaming is in-line with the public policy considerations of IGRA to promote tribal economic development, self-sufficiency, and strong tribal governments; and 3) the purposes of IGRA would be served through the improvement of tribal-state cooperation in the regulation of mobile wagering.

Until recently, compact review under IGRA was limited to "brick and mortar" gaming facilities located on Indian lands, with both the player and the bet taking place in one physical location. By virtue of internet gaming, however, the player can be in one physical location and the server—which facilitates the wager—can be in a separate location, creating ambiguity as to the physical location where the wager occurs.

Courts and agencies have previously examined tribal use of the internet for gaming, finding that such an offering was impermissible under IGRA. However, those cases presented scenarios where tribal

Consequently, any concern surrounding the State's authorization of sports betting is outside the scope of the Department's review, and the Department has relied on the representations of the Governor of Florida that the gaming was properly authorized.

[9] Even in 1988, Congress provided context for evolving technological gaming changes, specifically noting in the context of class II gaming that "tribes should be given the opportunity to take advantage of modern methods" of conducting the gaming and that linking players across reservations or states by means of "telephone, cable, television or satellite" is acceptable. S. Rept. 100-446 at 9.

internet wagering was not done with the consent of a State pursuant to a tribal-state compact; and, in some instance, where state law prohibited the contemplated form of online gaming.[10]

Here, both the Compact and the State law authorize the Tribe to engage in mobile sports betting and provide that the gaming takes place on Indian lands where: (1) the Tribe owns and operates the gaming, (2) the server is located on Indian lands; and (3) the player is located within the geographic bounds of the State.

The IGRA provides that a tribe and state may negotiate for "the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity" and "the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations." 25 U.S.C. § 2710(d)(3)(c)(i)-(ii). When developing IGRA's framework for tribal-state compacts, Congress stressed the importance of tribes and states engaging in dialogue over how best to achieve tribal gaming's "mutual benefits." As the Senate Committee report stated, "[s]tates and tribes are encouraged to conduct negotiations within the context of the mutual benefits that can flow to and from tribes [sic] and States. This is a strong and serious presumption that must provide the framework for negotiations."[11]

Congress also specifically addressed the issues that may be the subject of negotiations between a tribe and a state in reaching a compact. In describing the scope of negotiations in Section 11(d)(3)(C), the Senate Committee "recognize[d] that subparts of each of the broad areas may be more inclusive" and that "[a] compact may allocate most or all of the jurisdictional responsibility to the tribe, to the State or to any variation in between."[12] The Committee noted that states are not required to forgo any state governmental rights to engage in or regulate class III gaming except whatever they may voluntarily cede to a tribe under a compact.[13] This understanding was ultimately reflected in the final text of IGRA at 25 U.S.C. § 2710.

We acknowledge that IGRA did not confer authority on tribes to engage in gaming—tribes retain the inherent sovereign authority to engage in gaming and IGRA codified this right while limiting the extent of such authority. Thus, while Congress did limit the subjects to be negotiated in a compact, it specifically contemplated the authority to tribes and states to *negotiate the allocation of criminal and civil jurisdiction and laws directly related to the regulation of Indian gaming*. *See* 25 U.S.C. § 2710(d)(3)(c)(i)-(ii) (emphasis added). The IGRA should not be an impediment to tribes that seek to modernize their gaming offerings, and this jurisdictional agreement aligns with the policy goals of

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[10] *See California v. Iipay Nation of Santa Ysabel*, 898 F.3d 960 (9th Cir. 2018); Letter from Kevin K. Washburn, General Counsel, NIGC, to Robert A. Rosette (Oct. 26, 2000) (2000 NIGC Letter); Letter from Kevin K. Washburn, General Counsel, NIGC, to Joseph Speck, Nic-A-Bob Productions (March 13, 2001) (2001 NIGC Letter); *but see* Stipulation to Consent Judgment at 8, *Michigan v. Hannahville*, No. 2:17-cv-00045 (W.D. Mich. March 14, 2016) (approved March 15, 2017) ("If a change in state law is enacted which is intended to permit or permits the sale of Class III-style gaming or Electronic Games of Chance through the internet or through a similar digital, online, or virtual format, online operations of said games shall be considered Class III games for purposes of…the Compact, but only to the extent that the games are authorized under state law.").

[11] Sen. Rep. No. 100-446, at 13 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3083 (1988).

[12] *Id.* at 14.

[13] *Id.* at 14.

IGRA to promote tribal economic development while ensuring regulatory control of Indian gaming. The Department will not read restrictions into IGRA that do not exist.

Accordingly, provided that a player is not physically located on another Tribe's Indian lands, a Tribe should have the opportunity to engage in this type of gaming pursuant to a tribal-state gaming compact.[14]

As technology and internet gaming evolve, other jurisdictions are deeming wagers to occur at a specified location. Multiple states have enacted laws that deem a bet to have occurred at the location of the servers, regardless of where the player is physically located in the state.[15] The Compact reflects this modern understanding of how to regulate online gaming.

The Department also recognizes the ability of tribes to engage in other models of online gaming involving state commercial licenses to accept bets off Indian lands. A tribal government may exercise its sovereignty and determine which model works best for its situation. In this scenario, however, the Tribe and the State were able to resolve jurisdictional issues and negotiate for the inclusion of mobile sports betting in the Compact.

2. Revenue Share and Exclusivity

The Department reviews revenue sharing provisions with great scrutiny. Because the IGRA sharply limits the circumstances under which an Indian tribe can make direct payments to a state, we begin with the premise that a Tribe's payments to a state or local government for anything beyond the costs of regulating class III gaming activities are a prohibited "tax, fee, charge, or other assessment." 25 U.S.C. § 2710(d)(4).

Thus, in order to be permissible, we analyze the revenue sharing by first determining whether the State has offered meaningful concessions to the Tribe that it was otherwise not required to negotiate. We then examine whether the value of the concessions provide substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the Compact. *See Rincon Band of Luiseno Mission of the Rincon Reservation v. Schwarzenegger*, 602 F. 3rd 1019 (9th Cir. 2010), cert. denied, 113 S. Ct. 3055 (2011) (an increase in revenue sharing from current levels must be accompanied by additional meaningful concessions that provide substantial economic benefit to the tribe).

a. Meaningful Concessions

The State is offering the Tribe state-wide exclusivity for sports betting, exclusivity for new table game, and fantasy sports contests (if authorized by future legislation). *See* Compact, Part III.F.3-6, L, CC, FF; Part XVIII.B. The Compact also permits the Tribe to open three additional facilities on its Hollywood Reservation and removes all limitations on the Tribe's right to install class II player terminals. Compact, Part IV.A, C-D.

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[14] Class III gaming is "lawful on Indian lands" only if such gaming is authorized by the "Indian tribe having jurisdiction over such lands." 25 U.S.C. § 2710(d)(1)(A)(i). Thus, to be permissible under the IGRA, a tribe must geofence its gaming to ensure players are not located on other Indian lands.

[15] *See* Mich. Comp. Laws Ann. § 432.304(2); N.J. Stat. Ann. § 5:12-95.20; R.I. Gen. Laws Ann. § 42-61.2-1(16); W. Va. Code Ann. § 29-22E-15(f).

Additionally, the Compact imposes limitations on designated player card games allowed pursuant to a State license, settling a disagreement between the Tribe and State. Compact, XII.B.5. It further places new restrictions on the number of slot machines permitted at the eight pari-mutuel facilities in Broward and Miami-Dade Counties; restricts bingo card minders to be offered in connection with charitable organizations' bingo games under State law; and places restrictions on the relocation of pari-mutuel permits to ensure that a permit is not located within 15 miles of the Tribe's gaming facilities in Broward County and at least 100 miles from the Tribe's other gaming facilities. Compact, Part XII.B.2, B.9. Thus, the Tribe enjoys an increase in exclusivity under the Compact when compared with its 2010 Tribal-State Compact.

While ordinary and routine subjects of negotiation about the regulation of gaming—such as the number of permissible gaming devices—are not meaningful concessions for purposes of the revenue sharing analysis, the State's concession of class III gaming exclusivity to the Tribe is considered a meaningful concession in this instance. As discussed below, the State's concessions provide a substantial economic benefit to the Tribe that justifies the revenue sharing under the Compact.

b. Substantial Economic Benefit

In examining whether a compact confers a substantial economic benefit on a tribe that justifies the proposed revenue sharing, the Department first scrutinizes whether the tribe is the primary beneficiary of the gaming operation. 25 U.S.C. § 2702 (2). Here, the concessions on behalf of the State—such as the exclusivity for sports betting and increased exclusivity for other games—create a substantial projected increase in revenue for the Tribe, ensuring it is the primary beneficiary.

The Supplemental Economic Justification supplied by the Tribe notes the anticipated increase in revenue and provides justification to show that the exceptions have "little or no impact on the value of exclusivity."[16] The Tribe's primary gaming market is located within a 100 mile radius of its facilities where 82 percent of all Florida residents reside.[17] This area is an established gaming market: there are no other tribal gaming facilities and no new class III commercial gaming facilities within 100 miles. If State permits for slot machines (or pari-mutuels) are relocated within the State, the Tribe has negotiated and preserved its exclusivity for the area and taken into consideration the financial implications. *See* Compact Part XII.B.2(a); Supplemental Economic Justification at 4-7.

The Compact also provides that the Tribe will pay the State a Guaranteed Minimum Compact Term Payment of $2.5 billion over the first five years of the Compact. If exclusivity is breached, the Tribe receives a reduction in revenue sharing without ceasing all payments to the State. In other circumstances, we might consider a guaranteed minimum payment from the Tribe to the State as an impermissible tax, fee, or assessment on the Tribe's gaming operations. But in this instance, we must consider the Tribe's unique circumstances that led to this agreement.

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[16] Cover Letter to 2021 Compact- Supplemental Economic Justification from Jim Shore, Seminole Tribe General Counsel to Ms. Paula Hart (July 13, 2021). The Tribe submitted its confidential economic and financial information which is marked confidential and was submitted to the Department with an expectation of confidentiality. This information is protected from release to third parties without the consent of the Tribe (5 U.S.C § 552(b)(4)).

[17] *See* Supplemental Economic Justification at 12.

The Tribe has a proven record of success with its gaming operations and has justified the revenue sharing provisions with economic and geographic data. The Guaranteed Minimum Compact Term Payment is also couched with a force majeure clause to provide protection for the Tribe. The Tribe's 2010 Tribal-State Compact also contained a flat fee of revenue sharing to the State, requiring the Tribe to pay $1 billion over 5 years. The Tribe successfully fulfilled its revenue sharing obligations under that compact and based on the projected revenue under the 2021 Compact with the addition of state-wide exclusivity for sports betting, including mobile sports betting, the Tribe is confident that it can satisfy the Guaranteed Minimum Compact Term Payment.

The Department is concerned with the revenue sharing provisions in this Compact and these provisions should not be considered a model for other states to generally impose on tribes. However, we are confident that the State's concessions confer a substantial economic benefit on the Tribe that justifies the proposed revenue sharing in this instance, and that these terms are the outcome of good-faith bilateral negotiations.

3. Permissible Subjects of Compact Negotiations

Through IGRA, Congress ensured a regulatory scheme that sought to balance state, federal, and tribal interests in regulating gaming activities on Indian lands. In doing so, Congress limited the subjects of negotiation in a gaming compact to the following enumerated provisions:

i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

v) remedies for breach of contract;

vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

vii) any other subjects that are directly related to the operation of gaming activities.

25 U.S.C. § 2710(d)(3)(c).

It is against this backdrop in which we review the Compact's provisions. Importantly, we must construe the State's regulatory authority over tribal gaming activities narrowly—as intended by IGRA—and recognize the Tribal government's inherent right to self-regulate its gaming when conducted on Indian lands and under allowable law.

In reviewing the Tribe's Compact, we have significant concerns with the provisions relating to the allocation of jurisdiction to the State over patron disputes and tort claims. Compact, Part VI.D(6).

Unlike allocating gaming jurisdiction referenced above in relation to the "hub and spoke" model of gaming, tort claim jurisdiction is not directly related to the licensing and regulation of gaming, and we believe that this provision may violate the limited reach of state civil jurisdiction allowed under IGRA. In limiting the negotiable subjects of a compact, the intent of IGRA is to ensure that states cannot leverage compact negotiations to impose jurisdiction over tribal lands. *See* Committee Report for IGRA, S. Rep. 100-446 at 14. Although the Department approved a similar provision in the 2010 Tribal-State Compact, we note that judicial interpretation of these types of provisions has evolved and courts have held that changing the venue for tort claims to state jurisdiction is an impermissible subject for negotiation under the IGRA. *See Chicken Ranch Rancheria of Me-Wuk Indians v. Newsom,* No. 1:19-CV-0024 AWI SKO, 2021 WL 1212712 at *7 (E.D. Cal. March 31, 2021) (citing *Pueblo of Santa Ana v. Nash*, 972 F. Supp. 2d 1254 (D.N.M. 2013)) ("First, the ability to resolve disputes within the tribal court system is the legal default position. Indeed, as discussed above, changing the venue of patron personal injury and employee claims from tribal court to state court is not a permitted topic of IGRA negotiation.").

Compacts are not the appropriate vehicle to shift patron dispute and tort claim jurisdiction to the states. The Department must uphold its trust responsibility to tribes and ensure that states do not inappropriately attempt to leverage compact negotiations to have tribes submit to state jurisdiction in areas that are not directly related to the operation of gaming. Accordingly, we believe that this provision is an impermissible compact provision under IGRA and is likely unenforceable.

4. Other Concerns

In addition to the issues discussed above, the Department has concerns with the Compact's provisions that require the Tribe to contract with Qualified Pari-mutuel Permitholders to provide marketing services for the Tribe's sports book.

The Compact contains a provision that incentivizes the Tribe to enter into marketing agreements with State-licensed Qualified Pari-mutuel Permitholders related to the Tribe's operation of mobile sports betting. The Compact requires that the Tribe, within three months of the Compact effective date, negotiate contracts with a minimum of three or more Qualified Pari-mutuel Permitholders or pay the State an additional two percent of the net win from its sports betting operation. Compact Part III.CC.4. When the Tribe does enter into these marketing contracts, it is required to compensate the contracted Qualified Pari-mutuel Permitholders 60 percent of the difference between the net win that an operator generates and a "reasonable and proportionate share of all expenses incurred by the Tribe". *Id.* Part III.CC.3.(c).

The Department is concerned with the sole proprietary interest of the gaming operation in relation to these agreements. The IGRA requires that a tribe have the sole proprietary interest in, and responsibility for, the tribal gaming operation to ensure that it receives the primary benefit of its gaming revenue, consistent with IGRA's statutory goals. 25 U.S.C. §§ 2702, 2710(b)(2)(A). When examining whether a tribe has the sole proprietary interest in the gaming operation, three factors are

relevant: "1) the term of the relationship; 2) the amount of revenue paid to the third party; and 3) the right of control provided to the third party over the gaming activity." *City of Duluth v. Fond du Lac Band of Lake Superior Chippewa*, 830 F. Supp. 2d 712, 723 (D. Minn. 2011) (cleaned up), *aff'd in pertinent part*, 702 F.3d 1147 (8th Cir. 2013) (discussing NIGC adjudication of proprietary interest provision)).

The term of these marketing contracts is "no less than 5 years" and raises a question as to whether such marketing contracts will constitute management contracts requiring further review by the National Indian Gaming Commission. Compact Part III.CC.3.(g); 25 U.S.C. § 2711. The Tribe has represented that it is the sole operator for its sports books and will not share any management responsibilities with the pari-mutuels, however it must also pay 60 percent of the difference between net win from any business that the contracted Qualified Pari-mutuel generates and the Tribe's expenses. This arrangement further raises a question as to whether the contracted Qualified Pari-mutuel's interests in the Tribe's sports betting operation become proprietary.

Accordingly, the Department does not endorse the marketing agreement arrangement provided in the Compact.

CONCLUSION

We undertook a thorough review of the Compact and additional materials submitted by the Tribe but took no action within the prescribed 45-day timeframe. As a result, the Compact is "considered to have been approved by the Secretary, but only to the extent [it] is consistent with the provisions of [IGRA]." 25 U.S.C. § 2710(d)(8)(C).

The Compact will become effective upon the publication of notice in the Federal Register, as required by 25 U.S.C. § 2710(d)(3)(8)(D).

The Department commends the Tribe's extraordinary accomplishments in its gaming endeavors and wishes the Tribe continued success. A similar letter is being sent to the Honorable Ron DeSantis, Governor of Florida.

Sincerely,

Bryan Newland
Principal Deputy Assistant Secretary – Indian Affairs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WEST FLAGLER ASSOCIATES, LTD., d/b/a MAGIC CITY CASINO, and BONITA-FORT MYERS CORPORATION, d/b/a BONITA SPRINGS POKER ROOM, *Plaintiffs,* vs. DEB HAALAND, in her official capacity as SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR and UNITED STATES DEPARTMENT OF THE INTERIOR, *Defendants.*	Case No. 1:21-cv-02192-DLF

PLAINTIFFS' STATEMENT OF UNCONTESTED MATERIAL FACTS ACCOMPANYING MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE, A PRELIMINARY INJUNCTION

Pursuant to Local Rule 7(h) and the Court's Standard Order on Civil Cases, Dkt. 6, Plaintiffs submit this statement of material facts as to which it contends there is no general dispute. This Statement of Uncontested Material Facts accompanies Plaintiffs' Motion for Summary Judgment or in the Alternative, a Preliminary Injunction.

I. The Parties

A. West Flagler

1. Plaintiff West Flagler Associates, Ltd. ("West Flagler") is a Florida limited partnership that since 2009 has owned and operated the casino known as Magic City Casino located in Miami, Florida. Declaration of Scott Savin dated September 21, 2021 ("Savin Decl") ¶ 3.

2. West Flagler has been owned and operated by the Havenick family for over sixty-five years. Savin Decl. ¶ 4.

3. The Havenick family became owners when the patriarch of the family, Isadore Hecht, bought Flagler Greyhound Park in the early 1950s. *Id.* ¶ 4.

4. For over fifty years, West Flagler has held a pari-mutuel permit to conduct greyhound racing at what is now known as Magic City Casino. *Id.* ¶ 5.

5. Pari-mutuel is 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. *Id.* ¶ 6; Fla. Stat. § 550.02(22).

6. A pari-mutuel system limits the gains for the bettors and the profits for the business offering the gaming. Savin Decl. ¶ 6

7. Profits for companies offering pari-mutuel wagering are highly dependent on the amount of money wagered, as the companies receive only that percentage cut for expenses and taxes, and do not make a profit based on bettors' success. *Id.*

8. 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. *Id.* ¶ 7.

9. 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. *Id.*

10. In 2009, Florida allowed slot machines to be legalized by local referendum, and such referenda passed in Miami-Dade and Broward Counties. *Id.* ¶ 8; *see also* Fla. Stat. § 551.101.

11. In 2009 after the electorates of Miami-Dade and Broward Counties voted to approve slot machines, Magic City Casino became the first casino in Miami to offer Las Vegas-style slot machines. Savin Decl. ¶ 8.

12. Under the name Magic City Racing, West Flagler also sponsors thoroughbred racehorses that compete at local tracks. *Id*. ¶ 3.

13. Magic City Casino is a licensed pari-mutuel facility authorized to operate a jai alai fronton, simulcast betting on dog racing that occurs outside of Florida, slots and a card room. *Id.* ¶ 3.

14. 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. *Id*. ¶ 8.

15. Magic City Casino draws in both in-state and out-of-state visitors. *Id*.

16. 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. *Id.* ¶ 9.

17. Also in 2018, live greyhound and other dog racing were banned in Florida, but slots and poker were allowed to continue as "grandfathered" businesses. *Id*. at 2, n.1; *Id.* ¶ 10; *see also* FLA. CONST. art. X, § 32.

18. 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. Savin Decl. ¶ 11.

19. As part of this effort, West Flagler has invested over $55,000,000 on capital improvements, and continues to make additional capital improvements to the casino each year. *Id*.

20. Magic City Casino has its own jai-alai roster and, prior to COVID-19, was drawing over 1,000 fans per week. *Id*. ¶ 12.

21. Simulcast betting at Magic City Casino is open seven 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. *Id*.

22. In 2020, Magic City Casino also launched the Jai Alai Channel on YouTube. *Id*.

23. Magic City Casino has approximately 425 employees. *Id.* ¶ 13.

24. Magic City Casino is located less than thirty miles from the Seminole Tribe of Florida's ("the Tribe") Hard Rock Hollywood Casino, which first opened in 2004. *Id.* ¶ 14.

25. Since 2009, when West Flagler began operating Magic City Casino, it has competed with the Tribe for gaming patrons. Savin Decl. ¶ 14.

B. Bonita

26. Plaintiff Bonita-Fort Myers Corporations ("Bonita") is a Florida corporation that operates Bonita Springs Poker Room, an affiliate of Magic City Casino, because both are indirectly controlled by the Havenick family. *Id*. ¶ 15.

27. As with West Flagler, the Bonita Springs Poker Room arises out of an investment made over 50 years ago, when the Havenick family acquired the Naples-Fort Myers Greyhound Racing & Poker in Bonita Springs. *Id*.

28. After live greyhound racing became illegal in Florida, Bonita closed the greyhound racing portion of the facility in May 2020. *Id.* 2, n.1; *Id.* ¶ 16.

29. Thereafter, 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. *Id.* ¶ 16.

30. The Bonita Springs Poker Room operates a 37-table, live casino-style poker room. *Id.*

31. Similar to 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. *Id.*

32. It features such games such as ultimate Texas hold'em, three-card poker, high-card flush, jackpot hold'em and DJ wild, year round. *Id.*

33. The Bonita Springs Poker Room has approximately 150 employees. *Id.* ¶ 17.

34. The Bonita Springs Poker Room is located approximately twenty-one miles from the Tribe's Immokalee Casino. *Id.* ¶ 18.

35. The Bonita Springs Poker Room is located approximately one hundred and fifty miles from the Tribe's Tampa Hard Rock Casino. *Id.*

36. Bonita competes with the Tribe for gaming patrons. *Id.*

II. Defendants

37. Defendant Deb Haaland (the "Secretary") is the Secretary of the United States Department of the Interior, and is responsible for approval of gaming compacts under IGRA. *See https://www.doi.gov/secretary-deb-haaland*.

38. Defendant United States Department of the Interior ("DOI") is an executive department of the United States, and is responsible for implementation of IGRA. *See* https://www.bia.gov/as-ia/oig.

III. The Tribe

39. The Tribe has seven gaming facilities on its six reservations located throughout the state. *See* https://www.semtribe.com/stof/enterprises/gaming-facilities.

40. The Tribe is a "federally-recognized tribal government possessing sovereign powers and rights of self-government." *See* ECF 1-1, 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.").

41. The Tribe's Hard Rock Hollywood Casino has been enormously successful. *See* ECF 1-6 at 3 (The "Tribe's gaming operations have resulted in an incredible success story. Through a mix of business savvy and shrewdness, the Tribe has grown its gaming operations from limited class II facilities to globally-recognized class III gaming operations . . . ."); *id.* at 10 ("The Tribe has a proven record of success with its gaming operations . . . ."); Fla. Office of Econ. & Demographic Res., *Seminole Compact: Revenue Overview*, at 1, 6 (Jan. 2017), http://edr.state.fl.us/content/presentations/gaming/GamingCompactRevenueOverview2017.pdf (showing a tribal casino net win of $2.2 billion for fiscal year 2014-15, and projected to grow); Lauren Debter, *An Alligator Wrestler, a Casino Boss and a $12 Billion Tribe*, Forbes (Oct. 19, 2016), https://www.forbes.com/sites/laurengensler/2016/10/19/seminole-tribe-florida-hard-rock-cafe/ (describing a $1.5 billion per year in profits).

IV. The Compact

42. On April 23, 2021, Florida Governor Ron DeSantis and the Tribe entered into a tribal state gaming compact (the "Compact"). ECF 1-1.

43. The Compact renewed and extended the timeline for the gaming already permitted under a 2010 compact negotiated between the Tribe and then-Florida Governor Charlie Crist. *Id.* Part II, Sec. F; Part III, Sec. F; Part XVI, Sec. B. *See also* ECF 1-4, Part III, Sec. 4; Part XVI, Sec. B.

44. The Compact continues to allow the Tribe to conduct slot machines, raffles and drawings, and banked card games on its own reservations. *Id.*

45. The Compact also authorizes the Tribe to conduct new forms of gaming, including craps, roulette, "Fantasy Sports Contests" and "Sports Betting." *Id.*, Part III, Sec. F; Part IV, Sec. A.

46. The Compact's definition of "Sports Betting" includes:

> 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, pari-mutuel wagering….

Id., Part III, Sec. CC.

47. The Compact's definition of "Sports Betting" includes a condition that:

> 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, 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.

Id., Part III, Sec. CC.2.

48. The Compact also provides that:

> wagers 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.

ECF 1-1, Part IV, Sec. A.

49. The Compact's definition of Sports Betting includes a condition that permits the Tribe to enter into contracts to offer Sports Betting through electronic devices located at pari-mutuel facilities willing to contract with the Tribe ("Qualified Pari-mutuel Permitholders"). *Id.*, Part III, Sec. CC.3.

50. The Compact requires the Tribe to compensate a Qualified Pari-mutuel Permitholder for its services "by payment of an amount not less than sixty (60) percent of the

difference between: (i) the Net Win earned by the Tribe on all such wagering by Patrons who access the Tribe's wagering platform via software that uses a brand of the Qualified Pari-mutuel Permitholder; and (ii) a reasonable and proportionate share of all expenses incurred by the Tribe in operating and conducting such wagering…." *Id.*

51. The Compact further provides the following with respect to Permitholders:

> Within three (3) months of the Effective Date of this Compact. the Tribe shall negotiate in good fa ith with any and all willing Qualified Pari-mutuel Permitholders to enter into written contracts as provided in this Section. If for any reason the Tribe does not have valid written contracts with at least three (3) or more Qualified Pari-rnutuel Permitholders upon or following the commencement of the Tribe's Sports Betting operation, the Payments due to the State pursuant to Part XI, Section C.IU) of this Compact based on the Net Win received by the Tribe from the operation and play of Sports Betting shall increase by two (2) percent until the Tribe has valid written contracts with at least three (3) Qualified Pari-mutuel Permitholders to perform marketing or similar services for the Tribe's Sports Betting. If the Tribe has written contracts with three (3) or more Qualified Pari-mutuel Permitholders, the Tribe shall make good faith offers to other Qualified Pari-mutuel Permitholders, upon request, with terms similar to those of its executed contracts.

Id., Part III, Sec. CC.4.

52. The Compact includes the following severance provision:

> … 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. … 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 …

ECF 1-1, Part XIV, Sec. A.

53. After the Compact was submitted to the Florida Legislature for ratification, the Compact was amended to provide that the Tribe will not implement online sports betting before October 15, 2021. ECF 1-5.

54. On May 19, 2021, the Florida Legislature ratified the Compact as amended, by passing the Implementing Law. *See* ECF 1-2.

55. The Implementing Law adopts the definitions in the Compact and amends Florida law to ratify and approve the amended Compact. *Id.* at 4-6 (amending FLA. STAT. § 285.710(13)(b)).

56. The Implementing Law includes the following provision:

> "wagers 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."

ECF 1-2, at 5 (amending FLA. STAT. § 285.710(13)(b)).

57. On May 25, 2021, Governor DeSantis approved the Implementing Law. *See* Fla. Senate, CS/SB 8-A: Gaming, Bill History, https://www.flsenate.gov/Session/Bill/2021A/8A.

58. In late May or early June, representatives of Hard Rock Digital informed Plaintiffs that the Tribe will not begin its online sports betting business until on or around November 15, 2021. Savin Decl. ¶ 23

V. Defendants Approved the Compact by Operation of Law.

59. On June 21, 2021, the State and/or the Tribe submitted the 2021 Compact for approval to the Secretary. ECF 1-6 at 1.

60. Under the Indian Gaming Regulatory Act ("IGRA"), if the Secretary does not approve or disapprove such a compact within 45 days after it is submitted to the Secretary for

approval, "the compact shall be considered to have been approved by the Secretary." 25 U.S.C. § 2710(d)(8)(C).

61. The Secretary took no action to allow or disallow the Compact prior to the expiration of the forty-fifth day – August 5, 2021. ECF 1-6 at 1.

62. The Compact became effective on August 11, 2021, when notice of the approval was published in the Federal Register. Approval by Operation of Law of Tribal-State Class III Gaming Compact in the State of Florida, 86 Fed. Reg. 44,037 (Dep't of Interior Aug. 11, 2021).

63. On August 6, 2021, Bryan Newland, Principal Deputy Assistant Secretary – Indian Affairs of the DOI, sent a twelve-page, single-spaced letter to the Chairman of the Tribe and Governor DeSantis explaining why the Secretary permitted the approval of the Compact (the "DOI Letter"). ECF 1-6.

VI. Irreparable Harm

64. If the online sports betting provisions of the Compact go into effect, West Flagler and Bonita will suffer serious and immediate harm. Savin Decl. ¶¶ 24-32.

65. If the online sports betting provisions of the Compact go into effect, Plaintiffs' existing customers will divert some of the money they currently spend on the types of gaming offered at Magic City Casino and the Bonita Springs Poker Room to the online sports gaming offered by the Tribe. *Id.* ¶ 25; *see also generally* Declaration of Jonathan Chavez dated September 21, 2021, Ex. A ("Chavez Report").

66. Some of West Flagler and Bonita's customers will prefer to conduct their gaming online. Savin Decl. ¶ 25; *see also generally* Chavez Report.

67. The ability to conduct cash wagering is an important feature to many of West Flagler's and Bonita's customers who do not wish to be tracked or to release personal information. Savin Decl. ¶ 25.

68. The Tribe has not identified any way that pari-mutuels could offer on-site cash wagers for sports betting. *Id.*

69. Plaintiffs' counsel retained experts to conduct and analyze a survey of customers as to the likely impact of the Compact's online sports gaming provisions. Savin Decl. ¶ 26. *See also* Declaration of Luis Padron dated September 21, 2021; Chavez Report.

70. The expert retained to analyze the survey results determined that, using the most conservative statistical methodology, Plaintiffs' existing customers expect to divert between 10% and 16% of their current spend on pari-mutuel gaming and poker to online sports betting if it becomes available in Florida. Chavez Report at 10.

71. The expert retained to analyze the survey results determined that, using the statistical methodology used by business planners, Plaintiffs' existing customers expect to divert significantly more of their current spend on pari-mutuel gaming and poker to online sports betting if it becomes available in Florida than that estimated using the most conservative statistical methodology. *Id.* at 11-12.

72. If the online sports betting provisions of the Compact go into effect, Plaintiffs' ability to generate new business and new customer bases at their traditional pari-mutuel facilities will be diminished. Savin Decl. ¶ 27.

73. If the online sports betting provisions of the Compact go into effect, at least some potential new customers who otherwise would have traveled to Plaintiffs' facilities to conduct in-person gaming will prefer the convenience of the Tribe's online sports betting business. *Id.*

74. If the online sports betting provisions of the Compact go into effect, the resulting loss of current and future business will diminish West Flagler's and Bonita's goodwill. *Id.* ¶ 28.

75. West Flagler and Bonita have spent decades developing their businesses and in-person gaming facilities. *Id.*

76. West Flagler and Bonita have developed significant goodwill in the form of name recognition, a substantial, loyal customer base and intellectual property. *Id.*

77. Currently, West Flagler's and Bonita's gaming offerings are similar to or identical to their competitors' offerings. *Id.*

78. In a market where competitors offer similar or identical gaming, Magic City Casino and Bonita Springs Poker Room draw customers because of their cleanliness, friendliness, honesty, promotions, and entertainment options, among other things. *Id.*

79. Plaintiffs' names, intellectual property and the loyalty of their customer bases are all intertwined with their efforts to make their facilities more hospitable to gaming clients than their competitors. *Id.*

80. If the online sports betting provisions of the Compact go into effect, the Tribe will be able to offer to every person in the State a gaming product – online sports betting – that West Flagler and Bonita will not be able to offer, no matter how hospitable and entertaining their in-person gaming facilities may be. *Id.* ¶ 29.

81. If the online sports betting provisions of the Compact go into effect, the goodwill that Plaintiffs have developed over decades of hard work will erode, because the goodwill that they currently have will no longer set Plaintiffs apart from their competitors. *Id.*

82. If the online sports betting provisions of the Compact go into effect and Plaintiffs do not contract with the Tribe to offer sports betting through electronic kiosks at their facilities, but other pari-mutuel location do, Plaintiffs' ability to compete will be further damaged. *Id.* ¶ 30.

83. Two pari-mutuel competitors of the Magic City Casino are located within five miles of Magic City Casino. *Id.*

84. If the online sports betting provisions of the Compact go into effect and one or both of the pari-mutuel competitors of Magic City Casino located within five miles of Magic City Casino contracts with the Tribe to offer sports betting through electronic kiosks at their facilities, but West Flagler does not, West Flagler will have an even more difficult time convincing customers to visit Magic City Casino, resulting in a further erosion of goodwill. *Id.*

85. If the online sports betting provisions of the Compact become effective, Plaintiffs will incur expenses to maximize the retention of their existing customers, including, increased advertising expenses, increased promotional expenses, increased entertainment expenses, and the cost of enhancements to the in-person gaming facilities. *Id.* ¶ 31.

86. If the online sports betting provisions of the Compact go into effect and Plaintiffs contract with the Tribe to offer sports betting through kiosks at their facilities, they will incur significant additional expenses associated with starting up and maintaining that business, including among other things, negotiating new contracts, installing kiosks and other new equipment, increasing marketing expenditures, enhancing customer service, and strategies and planning for entering the new business. *Id.* ¶¶ 32; 34.

87. If the online sports betting provisions of the Compact go into effect and Plaintiffs contract with the Tribe to offer sports betting through kiosks at their facilities, Plaintiffs would be participating in a scheme that they assert is unlawful for the reasons set forth in their Complaint in this action. *Id.* ¶ 34.

88. If the online sports betting provisions of the Compact go into effect and Plaintiffs contract with the Tribe to offer sports betting through kiosks at their facilities, Plaintiffs will realize

a lesser yield from the kiosks than the yield it now realizes from its current lines of business. *Id.* ¶¶ 35-38.

89. Net revenues from sports betting generally average 7% of the net win. *Id.* ¶ 36.

90. Under the Compact, pari-mutuels that contract with the Tribe to offer sports betting through kiosks at their facilities will not receive the full net revenues from those bets. *Id. See also* ECF 1-1 at Part III, Sec. CC.3(c).

91. Under the Compact, pari-mutuels that contract with the Tribe to offer sports betting through kiosks at their facilities will receive only sixty-percent of the net revenues from those bets minus an additional unknown share of the Tribe's expenses. *Id.*

92. Sixty percent of a 7% net win is approximately 4.2% of the net win. Savin Decl. ¶ 36.

93. If the online sports betting provisions of the Compact go into effect and sports betting through kiosks offered at pari-mutuel facilities yields net revenues of 7% of the net win, and the Tribe charges the owners of those pari-mutuel facilities 1.2% of the net win for expenses, the actual yield for pari-mutuels that contract with the Tribe to offer sports betting through kiosks at their facilities will be approximately 3% of net win, prior to deduction of the pari-mutuels' own expenses. *Id.*

94. It is unclear whether pari-mutuels that contract with the Tribe to offer sports betting through kiosks at their facilities will be able to make any profit off the program. *Id.*

95. Plaintiffs' cardrooms typically yield an average net revenue of $100 to $120 per table per hour – or between $12.50 and $15.00 per player per hour prior to deduction of Plaintiffs' expenses. *Id.* ¶ 37.

96. For pari-mutuels that contract with the Tribe to offer sports betting through kiosks to yield the same net revenue that Plaintiffs typically receive from their cardrooms, each sports betting customer would need to place approximately $400 worth of wagers per hour. *Id.*

97. The average sports betting customer does not place $400 worth of wagers per hour. *Id.*

98. When a customer places a sports wager, that money is tied up for however long it takes to resolve the wager – two to three hours for a football game, for example. *Id.*

99. When a customer places a sports wager, it will not be able to spend the money that it used to place the wager on other gaming, food or entertainment during until the wager is resolved. *Id.*

100. Plaintiffs' simulcast pari-mutuel businesses typically yield a blended rate of net revenues of 10% of the net win, after payment to the providers, but before deduction of their own expenses. *Id.* ¶ 38.

101. A yield of 10% of net win from simulcast pari-mutuel businesses is greater than a 3% yield from sports betting on kiosks. *Id.*

102. If the online sports betting provisions of the Compact go into effect and Plaintiffs do not contract with the Tribe to offer sports betting through kiosks at their facilities, Plaintiffs will lose customers to the Tribe and those other pari-mutuels who do choose to offer on-site sports betting. *Id.* ¶ 39.

103. If the online sports betting provisions of the Compact go into effect and Plaintiffs do not contract with the Tribe to offer sports betting through kiosks at their facilities, and Plaintiffs lose customers to the Tribe and those other pari-mutuels who do choose to offer on-site sports betting, the lost walk-in revenue from those customers would affect Plaintiffs' revenues from slot

machines, card rooms, and pari-mutuel wagering, as well as the ancillary entertainment and dining options offered to patrons of their facilities. *Id.*

104. Although West Flagler and Bonita have done everything the Tribe has asked of it, the Tribe has not given West Flagler or Bonita proposed terms or a draft contract, and has not communicated with West Flagler or Bonita at all since August 1, 2021. *Id.* ¶ 40.

105. Under the Compact, the Tribe needs to successfully persuade only three pari-mutuels from anywhere in the state to enter into contracts, and then it will be required only to offer contracts on "similar terms" to other potential Permitholders. *Id. See also* ECF 1-1 at Part III, Sec. CC.4.

106. The only penalty for the Tribe for failing to enter into the Permitholder program is to pay an additional 2% of revenues to the State. Savin Decl. ¶ 41; ECF 1-1 at Part III, Sec. CC.4

107. The Department of the Interior has questioned whether the Qualified Pari-Mutual Permitholder structure is legally permissible, in part because the profit split between the Tribe and the pari-mutuels appears to the DOI to unfairly benefit the pari-mutuels. Savin Decl. ¶ 32; ECF 1-6 at 11-12.

September 21, 2021

Respectfully submitted,

By: */s/ Hamish P.M. Hume*
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WEST FLAGLER ASSOCIATES, LTD., d/b/a MAGIC CITY CASINO, and BONITA-FORT MYERS CORPORATION, d/b/a BONITA SPRINGS POKER ROOM, *Plaintiffs,* vs. DEB HAALAND, in her official capacity as SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR and UNITED STATES DEPARTMENT OF THE INTERIOR, *Defendants.*	Case No. 1:21-cv-02192-DLF

PLAINTIFFS' NOTICE OF MATERIAL FACTUAL DEVELOPMENT AND INTENT TO RELY UPON ADDITIONAL EVIDENCE AT HEARING

Plaintiffs West Flagler Associates, Ltd. and Bonita-Fort Myers Corporation (collectively, "Plaintiffs") submit this Notice of a Material Factual Development and Intent to Rely Upon Additional Evidence at the Hearing scheduled for Friday, November 5, 2021 in this matter.

First, a factual development has occurred that is material to the argument scheduled for this Friday, November 5, 2021. As set forth in Plaintiffs' filings in this matter, a representative of the Tribe employed by Hard Rock Digital informed Plaintiffs that the Tribe would not implement online sports betting in Florida until on or around November 15, 2021. ECF 9 at 2, 3, 4; ECF 19 at 8 n.4, 44; ECF 19-3 at ¶ 23; ECF 30 at 30, 33; ECF 31 at 23, 25. Plaintiffs relied on that date in their motion papers. However, contrary to Plaintiffs' understanding, the Tribe actually launched its online sports gaming operation this Monday, November 1, 2021, via a phone app called "Hard Rock Sportsbook." *See* Exhibit A.

As a result of this material development, Plaintiffs give notice to Defendants, the putative intervenor Tribe, and the Court of Plaintiffs' intent at the upcoming hearing to present and rely upon the public record evidence included in Exhibit A.

November 3, 2021

Respectfully submitted,

By: /s/ *Hamish P.M. Hume*

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2021, this document and all its attachments were filed with the Clerk of the Court of the U.S. District Court of the District of Columbia by using the CM/ECF system, which will automatically generate and serve notices of this filing to all counsel of record.

Dated: November 3, 2021

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EXHIBIT A

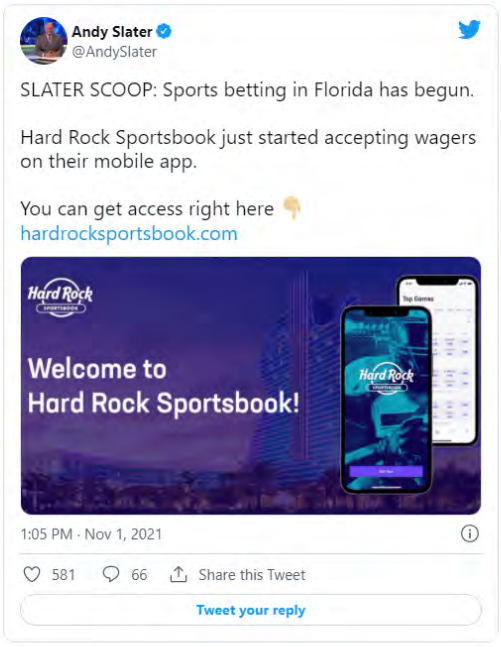
Suprise! Hard Rock Sportsbook launches Florida online sports betting

Robert Linnehan | 2 days ago

There was no notice, no signs that Florida and the Seminole Tribe would launch Florida online sports betting today.

But here we are. The Seminole Tribe and Hard Rock Sportsbook has officially launched online sports betting in the state. As first reported by Andy Slater of Fox Sports 640, Florida residents can create and fund sports betting accounts with the Hard Rock Sportsbook app and place sports bets.

FLORIDA ONLINE SPORTS BETTING IS LIVE



Florida online sports betting still faces a mountain of legal challenges, but for now it is live and allowing residents to place bets.

Online sports betting was included in the approved Florida and Seminole

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35 MINUTES AGO
CFB insider Bruce Feldman details Florida struggles, questions whether Gators are going in right direction

57 MINUTES AGO
Minnesota announces extension for P.J. Fleck

1 HOUR AGO
Bryan Harsin reflects on first year at Auburn, compliments Jimbo Fisher's game planning

1 HOUR AGO
Lane Kiffin discusses Hugh Freeze's impact on SEC offenses, Ole Miss' injury situation

Tribe gaming compact and has long been a point of contention with Florida pari-mutuels and anti-gambling state groups.

LAUNCH AHEAD OF FEDERAL HEARING MAY PROVE COSTLY

A lawsuit filed in Washington, D.C., by West Flagler Associates against Deb Haaland, Secretary of the U.S. Department of the Interior, will likely determine the future of Florida online sports betting and will be heard this Friday, Nov. 5.

The D.C. lawsuit will be heard in an Article III regulated court by an objective judicial body.

The Seminole Tribe's decision to launch online sports betting prior to the hearing may prove to be a costly decision, Daniel Wallach, principal at Wallach Legal, told *Saturday Down South*.

> "Jumping the gun in advance of a federal court hearing (directed to that very issue) will likely not go over well with the federal district court judge, particularly after it was represented in court papers that the launch would not be before November 15. That may prove to be another unforced error. We'll see on Friday," he said.

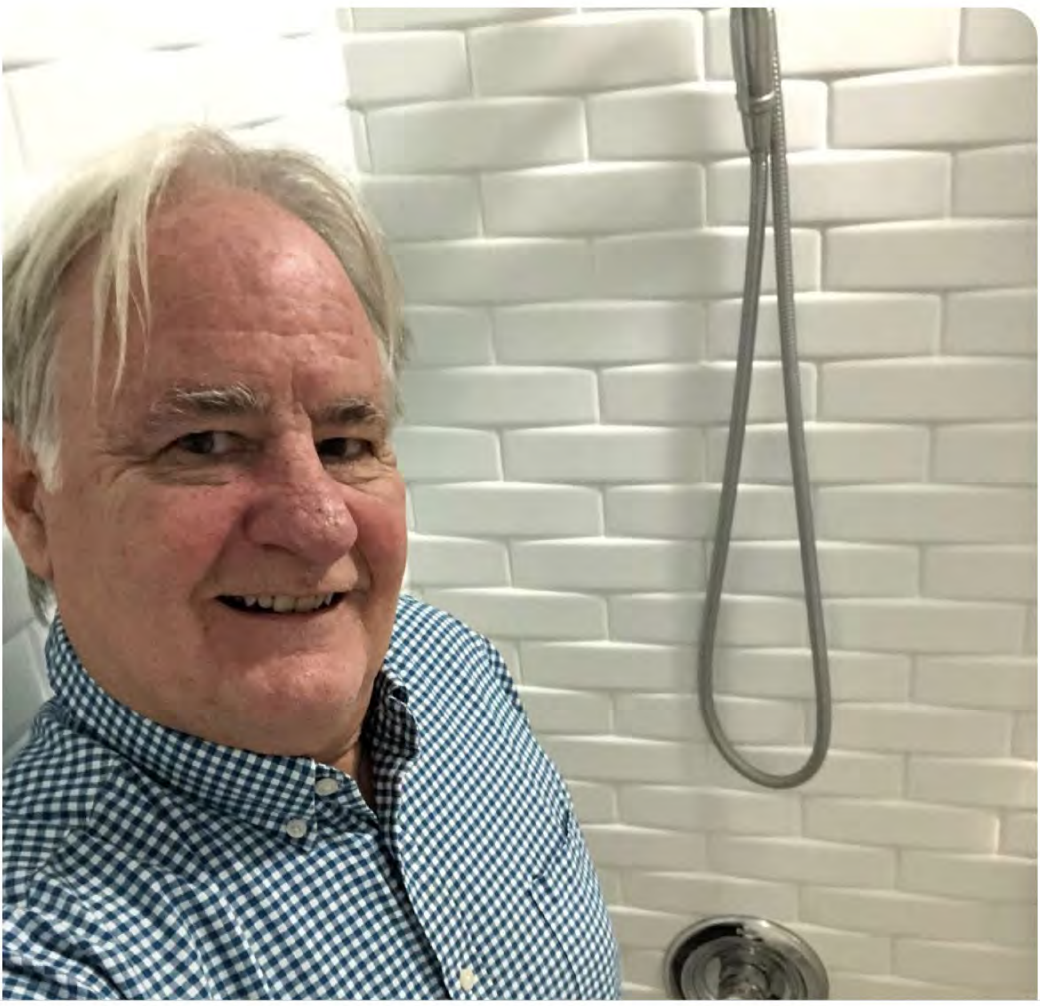
Prior agency interpretations of IGRA, two failed prior attempts by Congress to amend IGRA to expand its reach to include online sports betting, a Ninth Circuit U.S. Court of Appeals affirmation that bettors placing mobile wagers outside tribal lands is not protected by IGRA and Florida's prior admission on an almost identical point all lead to trouble for the online sports betting component of the gaming compact, Wallach previous told *Saturday Down South*.

ROBERT LINNEHAN

Robert is an expert on sports betting in the United States, specifically the legalization process and regulation surrounding the industry.

Scott Powers
@ScottFist

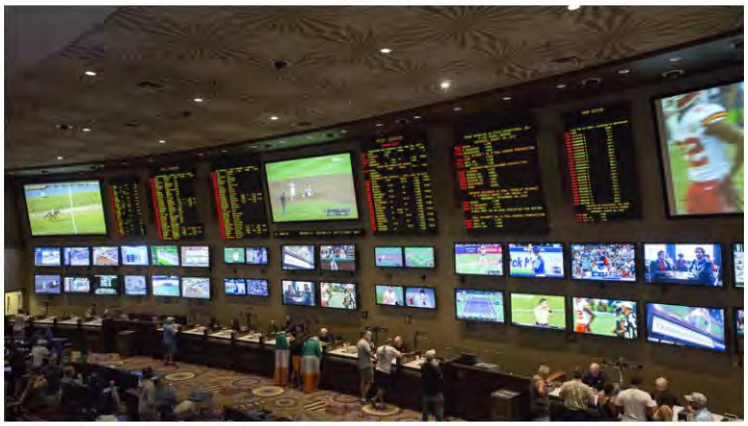
It is now legal to place sports bets on a smart phone in Florida. The Hard Rock Sportsbook app has gone live. And yes, as Rep. @VoteRandyFine suggested, you can do it in your bathtub. I tried. It worked. (I'll prolly lose, but that's another story.) floridapolitics.com/archives/46961...



NEWS / THE BUZZ ON FLORIDA POLITICS

Florida pari-mutuels, Seminole Tribe reach sports betting agreements

Tampa Bay Downs and TGT Poker & Racebook in Tampa are among the facilities that made deals.



THE TRIBE HAS SO FAR NEGOTIATED AGREEMENTS WITH FIVE PARI-MUTUEL FACILITIES THAT WILL MARKET SPORTS BETTING AND GET A 60 PERCENT CUT OF PROFITS GENERATED BY THE MARKETING.

By News Service of Florida

Published Oct 28
Updated Oct 29

TALLAHASSEE — Continuing to move forward with a major gambling deal with the state, the Seminole Tribe of Florida has reached agreements with five pari-mutuel facilities to help market sports betting — including Tampa Bay Downs and TGT Poker & Racebook in Tampa.

The gambling deal, which was negotiated by Gov. Ron DeSantis this spring and approved by lawmakers during a May special session, allows the tribe to operate online sports betting that will be available to people throughout the state.

But part of the deal also called for the tribe to negotiate agreements with pari-mutuel facilities that would market sports betting and get a 60 percent cut of profits generated by the marketing. The tribe announced Thursday that it has reached agreements with the Palm Beach Kennel Club; Hialeah Park Casino, Ocala Gainesville Poker and Ocala Breeders' Sales Co., Tampa Bay Downs, and TGT Poker & Racebook in Tampa.

The tribe, which said it expects to sign agreements with other pari-mutuels, has not announced when sports betting will start.

"Today's announcement follows through on the tribe's commitment to include pari-mutuel marketing partners in Florida sports betting," Jim Allen, CEO of Seminole Gaming and chairman of Hard Rock International, which is owned by the Seminole Tribe, said in a prepared statement. "They are an important component for the coming launch of sports betting throughout the state of Florida."

Sports betting was banned in most of the country until the U.S. Supreme Court in 2018 struck down a federal law in a New Jersey case. Since then, many states have started allowing betting on sporting events, at least in part as a way to bring in tax dollars.

The new Florida law will allow gamblers anywhere in the state to place sports bets on smartphones or other online devices, with the bets run through servers on Seminole Tribe property. Pari-mutuels that enter contracts with the tribe will market sports betting at their facilities.

Under the deal, known as a compact, the tribe is expected to pay $2.5 billion to the state over the first five years. That is in exchange for being allowed to operate sports betting and offer games such as craps and roulette at tribal casinos.

The tribe said Thursday the state received a first payment of $37 million in October. DeSantis issued a statement describing the compact as "historic."

"Not only will this compact bring a guaranteed $2.5 billion in revenue over the next five years, but it also brings together Florida pari-mutuel businesses from across the state in a creative partnership with the Seminole Tribe, providing increased access to safe and transparent sports betting in Florida," DeSantis said.

But the compact has drawn legal challenges, at least in part because of the sports betting plan.

Owners of the pari-mutuels Magic City Casino in Miami-Dade County and Bonita Springs Poker Room in Southwest Florida have filed a federal lawsuit in Washington, D.C., as have two prominent South Florida businessmen and the group No Casinos.

Those pending lawsuits were filed against the U.S. Department of the Interior, which oversees Indian gambling issues and allowed the compact to move forward.

The owners of Magic City Casino and Bonita Springs Poker Room also filed a federal lawsuit in Tallahassee, but U.S. District Judge Allen Winsor dismissed that case this month.

Among other things, the owners of Magic City Casino and Bonita Springs Poker Room have argued that sports betting operated by the tribe will hurt their businesses.

"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," the lawsuit filed in Tallahassee said. "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."

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— BY JIM SAUNDERS

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JFUNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WEST FLAGLER ASSOCIATES *et al.*, *Plaintiffs*, v. DEB HAALAND, Secretary, U.S. Department of the Interior, *et al.*, *Defendants.*	No. 21-cv-2192 (DLF)
MONTERRA MF, LLC *et al.*, *Plaintiffs*, v. DEB HAALAND, Secretary, U.S. Department of the Interior, *et al.*, *Defendants.*	No. 21-cv-2513 (DLF)

MEMORANDUM OPINION

In August 2021, the Secretary of the Interior approved a gaming compact between the State of Florida and the Seminole Tribe of Florida. The Compact authorizes the Tribe to offer online sports betting throughout the State, including to bettors located off tribal lands. In these related cases, the plaintiffs argue that the Compact violates the Indian Gaming Regulatory Act, the Unlawful Internet Gambling Enforcement Act, the Wire Act, and the Equal Protection Clause. They accordingly ask this Court to "set aside" the Secretary's approval of the Compact pursuant to the Administrative Procedure Act. 5 U.S.C. § 706(2)(A).

Before the Court are the plaintiffs' Motions for Summary Judgment in both the *West Flagler* case and the *Monterra* case, Dkt. 19 (*West Flagler*), Dkt. 37 (*Monterra*); the Tribe's respective Motions to Intervene, Dkt. 13 (*West Flagler*), Dkt. 31 (*Monterra*); and the Secretary's respective Motions to Dismiss, Dkt. 25 (*West Flagler*), Dkt. 35 (*Monterra*).[1] For the reasons that follow, the Court will hold that the Compact violates IGRA and grant the *West Flagler* plaintiffs' motion for summary judgment. Additionally, the Court will deny the *Monterra* plaintiffs' motion as moot, deny the Tribe's motions, and deny the Secretary's motions.

I. BACKGROUND

A. Statutory Background

The Indian Gaming Regulation Act (IGRA) "creates a framework for regulating gaming activity on Indian lands." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 785 (2014). To that end, the Act divides gaming activities into three classes. *See* 25 U.S.C §§ 2710(a), 2710(d)(1). Class III gaming, the kind involved here, includes both casino games and sports betting. *See id.* §§ 2703(6)–(8); 25 C.F.R. § 502.4(c). To host class III gaming "on Indian lands," a tribe must "enter[] into" a compact with the state in which its lands are located. 25 U.S.C. § 2710(d)(1)(C). These compacts "prescribe[] rules for operating gaming, allocate[] law enforcement authority between the tribe and State, and provide[] remedies for breach of the agreement's terms." *Bay Mills*, 572 U.S. at 785 (citation omitted). As relevant here, a compact may take effect only after the Secretary of the Interior has both approved its terms and noticed its approval in the Federal Register. *See* 25 U.S.C § 2710(d)(3)(B).

[1] The Court resolves these cases together because they challenge the same gaming compact, raise overlapping questions of law, and seek overlapping forms of relief. For clarity, the Court will use parentheticals to identify the case name with which each filing is associated.

IGRA closely regulates the Secretary's review of gaming compacts. To start, it provides that the Secretary may disapprove a compact "only if [it] violates" another provision of IGRA, "any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands," or "the trust obligations of the United States to Indians." *Id.* § 2710(d)(8)(B). IGRA also provides that the Secretary must either approve or disapprove each compact within 45 days of receiving it. *See id.* § 2710(d)(8)(C). Otherwise, the compact shall "be considered to have been approved by the Secretary, but only to the extent the compact is consistent with" IGRA. *Id.* The D.C. Circuit has squarely held, first, that these default approvals are "reviewable" in federal court and, second, that the Secretary "must . . . disapprove" unlawful compacts. *Amador Cty. v. Salazar*, 640 F.3d 373, 381–83 (D.C. Cir. 2011).

B. Factual Background

This case concerns a class III gaming compact between the State of Florida and the Seminole Tribe of Florida. *See* Compl. Ex. A (Compact), Dkt. 1-1 (*West Flagler*). Before the Compact took effect, Florida law prohibited wagering on "any trial or contest of skill, speed[,] power or endurance." *See* Fl. Stat. § 849.14 (2020). Although that prohibition contained a narrow exception for horse racing, dog racing, and jai alai, *see id.* § 550.155(1), it barred betting on all major sports, including football, baseball, and basketball, *see id.* § 849.14; *see also* State of Fl. Amicus Br. at 1, 8, Dkt. 28 (*West Flagler*). The Florida Constitution also limited the conditions in which the State could expand sports betting going forward. *See* Fl. Const. art. X, § 30(a). Specifically, it provided that the State could only expand such betting through a "citizens' initiative," *id.* §§ 30(a)–(b), with the caveat that "nothing herein . . . limit[s] the ability of the state or Native American tribes to negotiate gaming compacts" under IGRA, *id.* § 30(c).

The compact in this case expanded the Tribe's ability to host sports betting throughout the State. In relevant part, the Compact defines "sports betting" to mean "wagering on any past or future professional sport or athletic event, competition or contest," Compact § III(CC); classifies "sports betting" as a "covered game," *id.* § III(F); and authorizes the Tribe "to operate Covered Games on its Indian lands, as defined in [IGRA]," *id.* § IV(A). The Compact also provides that all in-state wagers on sporting events "shall be deemed . . . to be exclusively conducted by the Tribe at its Facilities where the sports book(s) . . . are located," even those that are made "using an electronic device" "by a Patron physically located in the State but not on Indian lands." *Id.* § III(CC)(2); *see also id.* § IV(A) (providing that "wagers on Sports Betting . . . shall be deemed to take place exclusively where received"). In this manner, the Compact authorizes online sports betting throughout the State. And because the State has not entered a similar agreement with any other entity, the Compact grants the Tribe a monopoly over both all online betting and all wagers on major sporting events. *See* Tribe's Mot. to Intervene at 1–3, Dkt. 13 (*West Flagler*).

On June 21, 2021, the Secretary of the Interior received a copy of the Compact. *See* Compl. Ex. F (Approval Letter) at 1, Dkt. 1-6 (*West Flagler*). Because the Secretary took no action on it within forty-five days, *see id.*, she approved the Compact by default on August 5, *see* 25 U.S.C § 2710(d)(8)(C). The next day, the Secretary explained her no-action decision in a letter to the Tribe. *See generally* Approval Letter. The letter reasoned that IGRA allows the Tribe to offer online sports betting to persons who are not physically located on its tribal lands. *Id.* at 6–8. To support that conclusion, the letter noted that IGRA allows states and tribes to negotiate the "allocation of criminal and civil jurisdiction," 25 U.S.C. § 2710(d)(3)(c)(i)-(ii), emphasized that Florida consented to the Compact, and argued that "IGRA should not be an

impediment to tribes that seek to modernize their gaming offerings." *Id.* at 7. At the same time, the letter insisted that Florida residents could not place sports bets while "physically located on *another Tribe's* Indian lands." *Id.* at 8 & n.14 (emphasis added). To do so, it reasoned, would violate IGRA's instruction that gaming is "lawful on Indian lands" only if such gaming is authorized by the "Indian tribe having jurisdiction over such lands." *Id.* (quoting 25 U.S.C. § 2710(d)(1)(A)(i)).

On August 11, the Secretary published notice of the Compact in the Federal Register. *See* Indian Gaming; Approval by Operation of Law of Tribal-State Class III Gaming Compact, 86 Fed. Reg. 44,037 (Aug. 11, 2021). At that point, the Compact took effect and acquired the force of law. *See* 25 U.S.C. § 2710(d)(3)(B). Pursuant to that Compact, as well as a Florida statute that implements its terms, *see* Fl. Stat. § 285.710(13)(b), online sports betting is now available in Florida. Although the Tribe initially represented that it would not offer such betting until November 15, *see* Pls.' Mot. for Summ. J. Ex. C (Savin Decl.) ¶ 23, Dkt. 19-3 (*West Flagler*), it in fact launched online betting on November 1, *see* Pls.' Notice of Material Factual Development at 1 & Ex. A, Dkt. 39 (*West Flagler*).

C. Procedural History

On August 16, plaintiffs West Flagler Associates and Bonita-Fort Myers Corporation brought a civil action to challenge the Secretary's approval of the Compact. *See* West Flagler Compl. Both entities own brick-and-mortar casinos in Florida. *See* Savin Decl. ¶¶ 3, 15. To establish Article III standing, they allege that the Compact's allowance for online betting will divert business from their facilities. *See id.* ¶¶ 25–29. On the merits, they argue that the Compact's authorization of online betting violates IGRA, the Unlawful Internet Gambling Enforcement Act (UIGEA), the Wire Act, and the Equal Protection Clause. *See* Compl. ¶¶ 124–

28; Pls.' Mot. for Summ. J. at 18–38, Dkt. 19 (*West Flagler*). Of these, their leading argument is that the Compact violates IGRA because it authorizes class III gambling outside of "Indian lands." Pls.' Mot. for Summ. J. at 18 (quoting 25 U.S.C. § 2710(d)(8)(A)).

On September 17, the Tribe moved to intervene for the limited purpose of filing a motion to dismiss. *See* Tribe's Mot. to Intervene, Dkt. 13 (*West Flagler*). The Tribe argues that it may intervene as of right because it has an economic interest in the Compact and because the Secretary will not adequately protect that interest. *See id.* at 9–13; *see also* Fed. R. Civ. P. 24(a). The Tribe further argues that it is an indispensable party to this litigation, *see* Fed. R. Civ. P. 19, but that its sovereign immunity prevents its joinder. *See* Tribe's Proposed Mot. to Dismiss at 4–11, Dkt. 13-4 (*West Flagler*). Finally, the Tribe argues that filing its motion to intervene did not waive its sovereign immunity. *See id.* at 5–6. To the contrary, it argues that "limited intervention [is] an appropriate mechanism through which parties may file motions to dismiss under Rule 19 . . . based on sovereign immunity." Tribe's Mot. to Intervene at 5. *See also* Tribe's Mot. to Intervene, Dkt. 31, and Proposed Mot. to Dismiss, Dkt. 31-4 (raising the same argument in the *Monterra* litigation).

On September 27, Monterra MF and its co-plaintiffs filed a separate challenge to the Secretary's approval. *See* Compl., Dkt. 1 (*Monterra*). All but one of these co-plaintiffs live, work, or own property near Florida casinos. *See id.* ¶¶ 22–29. The remaining plaintiff, No Casinos, is a nonprofit organization that opposes the expansion of gambling in Florida. *See id.* ¶ 30. To establish Article III standing, these plaintiffs allege that the expansion of gambling in Florida will increase neighborhood traffic, increase criminal activity, and reduce their property values. *See* Pls.' Mem. in Supp. of Mot. for Summ. J. at 12, Dkt. 37-4 (*Monterra*). On the merits, they join the *West Flagler* plaintiffs in arguing that the Compact's online gambling rules

violate IGRA, UIGEA, and the Wire Act. *See id.* at 15–23. They also argue that the Compact's expansion of in-person gambling violates both the Florida Constitution and a separate provision of IGRA, which conditions the lawfulness of class III gaming on whether the state "permits such gaming for any purpose by any person, organization, or entity," 25 U.S.C. § 2710(d)(1)(B). *See id.* at 23–28.

The *West Flagler* plaintiffs moved for summary judgment on September 21. Dkt. 19 (*West Flagler*). The *Monterra* plaintiffs followed suit on October 15. Dkt. 35 (*Monterra*). The Secretary then moved to dismiss both plaintiffs' cases for lack of standing. *See* Gov't's Mot. to Dismiss at 8–17, Dkt. 25 (*West Flagler*); Gov't's Mot. to Dismiss at 8–15, Dkt. 35 (*Monterra*). The Secretary also argued that the plaintiffs failed to state a claim under IGRA, that IGRA does not require her to consider questions of state law, and that West Flagler's constitutional argument fails. *See* Gov't's Mot. at 17–31 (*West Flagler*); Gov't's Mot. at 15–19 (*Monterra*). The Secretary did not, however, address whether the online gaming contemplated by the Compact occurs on or off "Indian lands," 25 U.S.C. § 2710(d)(8)(A).

On November 5, the Court held a hearing on the above motions.[2] The cases are now ripe for review.

II. LEGAL STANDARD

A court grants summary judgment if the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). A

[2] At the hearing, government counsel was unable to take a position on the location of online gaming under the Compact. *See* Rough Hr'g Tr. at 51–53. The Court thus directed counsel to file a supplemental brief on the merits on or before November 9. *See* Min. Order of Nov. 5, 2021. Counsel has since done so. *See* Dkt. 40–41 (*West Flagler*); Dkt. 52–53 (*Monterra*).

"material" fact is one with potential to change the substantive outcome of the litigation. *See Liberty Lobby*, 477 U.S. at 248; *Holcomb v. Powell*, 433 F.3d 889, 895 (D.C. Cir. 2006). A dispute is "genuine" if a reasonable jury could determine that the evidence warrants a verdict for the nonmoving party. *See Liberty Lobby*, 477 U.S. at 248; *Holcomb*, 433 F.3d at 895.

In an Administrative Procedure Act case, summary judgment "serves as the mechanism for deciding, as a matter of law, whether the agency action is supported by the administrative record and otherwise consistent with the APA standard of review." *Sierra Club v. Mainella*, 459 F. Supp. 2d 76, 90 (D.D.C. 2006). The Court will "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," *id.* § 706(2)(C), or "unsupported by substantial evidence," *id.* § 706(2)(E).

III. ANALYSIS

A. West Flagler Has Article III Standing

Before reaching the merits of either action, this Court must first determine whether at least one plaintiff has Article III standing. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998). To establish standing, a plaintiff must demonstrate that he has suffered an "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotation marks and citations omitted). The plaintiff must also establish that there is "a causal connection between the injury and the conduct complained of" and that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 560–61 (internal quotation marks and citation omitted). Each of these elements "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Id.* at 561. As such, at the

summary judgment stage, a plaintiff "can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true." *Id.* (internal quotation marks and citation omitted).

Under the "basic law of economics," *New World Radio, Inc. v. FCC*, 294 F.3d 164, 172 (D.C. Cir. 2002) (citation omitted), an "actual or imminent increase in competition" establishes an injury in fact, *Am. Inst. of Certified Pub. Accts. v. IRS*, 804 F.3d 1193, 1197 (D.C. Cir. 2015). Litigants accordingly suffer an injury "when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition against them." *Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) (internal quotation marks and citation omitted). Because "a loss of even a small amount of money is ordinarily an injury," *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017), any increase in competition suffices to establish Article III standing, *see Ipsen Biopharmaceuticals, Inc. v. Becerra*, 2021 WL 4399531, at *8 (D.D.C. Sept. 24, 2021) (citation omitted).

Here, West Flagler alleges that the Compact "will divert business that would have been spent at [its facilities] and cause it to be spent on online sports gaming offered by the Tribe." Savin Decl. ¶ 25. In its view, this diversion will occur because some customers "will prefer the ease of online gaming" to gaming in-person at West Flagler's casino. *Id.* That prediction is reasonable and hardly "speculative." *Lujan*, 504 U.S. at 561. Indeed, West Flagler surveyed its patrons to prove that very point. *See* West Flagler Mot. for Summ. J. Ex. D (Chavez Decl.), Dkt. 19-4. The survey found that between ten and fifteen percent of those patrons would "wager online and shift a non-zero amount of their current gambling spending away from" games West Flagler currently offers. *Id.* at 10. The survey further explained that the above percentage rests on "conservative" assumptions and "likely understates the full universe of individuals whose

behavior would change." *Id.* at 11. Without discussing those assumptions in detail, the Court reads the survey to show a substantial probability that authorizing online gambling has caused West Flagler some competitive injury.

The Secretary's objections to standing do not persuade.

First, West Flagler's survey supports its bottom-line conclusion. Although the Secretary challenges the survey's methodology, *see* Gov't's Mot. at 10–15 (*West Flagler*), West Flagler retained an expert to both design the survey's approach and defend it in exacting detail, *see* Chavez Decl. at 3–7. Many of the Secretary's objections to that approach lack any merit.[3] And even if they had merit, each of them concerns only to the "magnitude" of West Flagler's competitive injury, "which has no bearing on whether it [] established Article III standing." *Ipsen Biopharmaceuticals*, 2021 WL 4399531, at *8 (citing *Czyzewski*, 137 S. Ct. at 983). In other words, even if the survey sampled an unrepresentative segment of the casino's patrons, *see* Gov't's Mot. to Dismiss at 11 n.6, it still shows that at least one of those patrons will divert some of his gambling spend to online sports betting. That "loss of even a small amount of money" is enough for competitive standing. *Czyzewski*, 137 S. Ct. at 983.

Second, West Flagler's injury does not "depend[] on [its] own business decisions." *See* Gov't's Mot. to Dismiss at 15. It is true that West Flagler could offer sports betting in its casino by partnering with the Tribe. *See id.* But West Flagler has shown a substantial probability that this partnership would leave it less profitable than it was before. *See* Savin Decl. ¶¶ 34–38.

[3] For instance, the Secretary challenges the inference, from a respondent's answer that he would "open an online sports wagering account," Chavez Decl. at 9, that he would "*actually* place bets online," Gov't's Mot. at 13 (emphasis in original). But placing bets online is the obvious purpose of opening an online betting account. And nothing in the requirement of an "imminent" injury, as described in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), requires ignoring this common-sense connection.

Under the partnership, the Tribe would place sports-betting kiosks in West Flagler's casino and receive up to 40% of the revenue that the kiosks generate. *See* Compact § III(CC)(3)–(4); Savin Decl. ¶ 36. That arrangement would both require substantial upfront investments and substantially decrease the average, long-term yield from the games West Flagler offers. *See* Savin. Decl. ¶¶ 34, 36–37. For those reasons, forcing West Flagler to choose between entering the partnership and losing further competitive ground is itself an injury. That injury is amplified by the Secretary's earlier suggestion that this kind of partnership may independently violate IGRA.[4] *See* Approval Letter at 11–12. And in any event, even if West Flagler could offer in-person sports betting on the same terms as the Tribe, its inability to host *online* sports betting would still create a competitive injury. *See supra.*

For the reasons above, the Court finds that West Flagler has adequately established a competitive injury. It also finds that this injury was both caused by the conduct challenged in this action and redressable by a favorable decision on the merits. *See Lujan*, 504 U.S. at 560–61. On that first point, there is a "causal connection" between West Flagler's injury and the Secretary's approval of the gaming Compact, *id.*, without which the Tribe could not offer online sports betting, 25 U.S.C. § 2710(d)(1)(C). And on the second, setting aside the Secretary's approval would prevent the Tribe from offering such betting, at least under the current Compact. Because that result would fully redress West Flagler's injury, West Flagler has Article III standing. *See Lujan*, 504 U.S. at 560–61.

This Court need not address whether the other plaintiffs in these actions have standing.

[4] The Secretary suggested that this kind of partnership may violate 25 U.S.C. § 2710(b)(2)(A) by giving non-Indian entities a proprietary interest in Indian gaming. *See* Approval Letter at 11–12. The Secretary never addresses the tension between encouraging West Flagler to enter such a partnership in this litigation and advising that such partnerships are unlawful elsewhere.

As a general matter, "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006). Although the *West Flagler* and *Monterra* suits raise different claims, they seek the same relief—principally, the vacatur of the Secretary's default approval. *See* Compl. at 42 (*West Flagler*); Compl. at 37, Dkt. 1 (*Monterra*). And because the Court will grant that relief in the *West Flagler* action, it has no occasion to consider the separate arguments in the *Monterra* filing, let alone whether the *Monterra* plaintiffs independently have Article III standing. *See Louie v. Dickson*, 964 F.3d 50, 55 (D.C. Cir. 2020) (noting that a case is moot when a court "cannot grant any relief beyond that already afforded").

B. The Tribe Is Not an Indispensable Party

Next, the Court must resolve the Tribe's motion to intervene, *see* Dkt. 13, and motion to dismiss, *see* Dkt. 13-4. As both parties acknowledge, federal courts disagree on whether a sovereign may intervene in an action while preserving its sovereign immunity. *Compare*, *e.g.*, *Cnty. Sec. Agency v. Ohio Dep't of Com.*, 296 F.3d 477, 483 (6th Cir. 2002) (holding that "a motion to intervene is fundamentally incompatible with an objection to personal jurisdiction"), *with MGM Glob. Resorts Dev., LLC v. DOI*, 2020 WL 5545496, at *5–6 (D.D.C. Sept. 16, 2020) (declining to adopt an "'all or nothing' approach to intervention"). At the same time, controlling precedent makes clear that courts may address whether a person is required in or indispensable to an action *sua sponte*. *See Republic of Philippines v. Pimentel*, 553 U.S. 851, 861 (2008) ("A court with proper jurisdiction may also consider *sua sponte* the absence of a required person and dismiss for failure to join."); *see also Wichita & Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765, 772 n.6 (D.C. Cir. 1986) (finding an "independent duty to raise" an "indispensable party claim" based on tribal immunity). In this case, the Tribe moves to intervene solely to argue

for dismissal on the ground that it is a required and indispensable party. Accordingly, to conserve judicial resources, the Court will exercise its discretion to decide whether the Tribe is a required and indispensable party before resolving its motion to intervene.

The Federal Rules of Civil Procedure require joining each person that has "an interest relating to the subject of the action" if that person is subject to suit and if "disposing of the action in [his] absence" might "impede the person's ability to protect the interest." Fed. R. Civ. P. 19(a)(1)(B)(i). The Tribe is a "required party," in this respect, because it "has an interest in the validity of [its] compact . . ., and [its] interest would be directly affected by the relief that [West Flagler] seeks." *Kickapoo Tribe of Indians of Kickapoo Rsrv. in Kansas v. Babbitt*, 43 F.3d 1491, 1495 (D.C. Cir. 1995). The Federal Rules further provide that, if a required party "cannot be joined," the court must "determine whether, in equity and good conscience, the action . . . should be dismissed." Fed. R. Civ. P. 19(b). In this case, the Tribe cannot be joined because it "enjoys sovereign immunity." *Kickapoo Tribe*, 43 F.3d at 1495; *see Bay Mills Indian Cmty.*, 572 U.S. at 788 (noting that tribes possess "common-law immunity from suit traditionally enjoyed by sovereign powers" (citation omitted)). Accordingly, to determine whether this action "should be dismissed," the Court must determine whether "equity and good conscience" permit the action to proceed in the Tribe's absence. Fed. R. Civ. P. 19(b).

Federal Rule 19(b) lists four factors that bear on whether a party is indispensable. *See* Fed. R. Civ. P. 19(b). They are, first, "the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;" second, "the extent to which any prejudice could be lessened or avoided;" third, "whether a judgment rendered in the person's absence would be adequate;" and fourth, "whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder." *Id.* Although the Federal Rules present these

factors as non-exclusive, the D.C. Circuit has held that "there is very little room for balancing of other factors" where a necessary party is immune from suit. *Kickapoo Tribe*, 43 F.3d at 1496.

Beginning with the first factor, resolving this case in the present posture would not prejudice the Tribe. *See* Fed. R. Civ. P. 19(b)(1)–(2). Although the Tribe argues that this case implicates its sovereign immunity, *see* Proposed Mot. to Dismiss at 8–9, the Tribe is not a party to this case, and the plaintiffs make no attempt to bind either the Tribe or its agents. *See Wuterich v. Murtha*, 562 F.3d 375, 386 (D.C. Cir. 2009) ("[S]overeign immunity is an immunity from suit."); *see also Mowrer v. DOT*, 14 F.4th 723, 741–43 (D.C. Cir. 2021) (Katsas, J., concurring) (explaining that sovereign immunity is "effectively a rule of personal jurisdiction"). Further, unlike in *Republic of Philippines v. Pimentel*, this case does not resolve the ownership of any asset to which the Tribe has a "nonfrivolous, substantive claim," which would indirectly violate the Tribe's immunity. 553 U.S. at 868–69. Instead, the plaintiffs challenge a decision that IGRA commits to the Secretary and for which that statute provides "law to apply" in federal court, *Amador Cty.*, 640 F.3d at 381 (citing 25 U.S.C. § 2710(d)(8)(C)). In these circumstances, holding that the *federal* government erred in applying *federal* law would fully respect the Tribe's sovereign immunity.

Moreover, although the Tribe has a financial interest in the Compact, it is unclear how proceeding in its absence would harm that interest. The first factor in Rule 19(b) asks whether a party suffers prejudice from the fact that an adverse decision is "rendered in [its] absence," not simply from the fact that a decision is adverse. Fed. R. Civ. P. 19(b)(1); *see also* Fed. R. Civ. P. 19(a)(1)(B)(i) (similarly asking whether "a person's absence may . . . impair or impede [his] ability to protect [an] interest"). Here, the Tribe's absence is not prejudicial because both the Secretary and the State of Florida have defended the Compact on its merits. *See* Gov't's Mot. to

Dismiss at 17–31; Fl. Amicus Br., Dkt. 28; Gov't's Suppl. Memo, Dkt. 41 (all *West Flagler*). The Secretary and the State share the Tribe's position on the key issue in this case—*i.e.*, that the Compact is consistent with IGRA. The Tribe never identifies how its litigation interests differ from those of the other sovereigns. *See* Tribe's Reply in Supp. of Mot. to Intervene at 11–13, Dkt. 24 (*West Flagler*). And although the Tribe asks this Court to simply assume that their interests conflict, *see id.* at 11, its request is inconsistent with applying Rule 19(b) based on "practical considerations in the context of particular litigation," as controlling precedent requires, *Kickapoo Tribe*, 43 F.3d at 1495 (citation omitted). In these circumstances, where there is "no conflict . . . between the Secretary's interest and the interest of the nonparty Tribe[]," the D.C. Circuit has held that the Secretary may "adequately represent" the Tribe's interests.[5] *Ramah Navajo Sch. Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1351 (D.C. Cir. 1996); *see also Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1259 (10th Cir. 2001) (finding that the potential prejudice to a tribe's interest was reduced by "the presence of the Secretary as a party defendant" with "virtually identical" interests). The Court thus finds that the first Rule 19(b) factor favors permitting this litigation to proceed.

The second Rule 19(b) factor does not alter this analysis. Having found that the extent of any prejudice to the Tribe does not warrant dismissal, it makes little sense to ask whether "protective provisions in [this Court's] judgment" or "shaping [its] relief" would lessen that

[5] The Tribe cites *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312 (D.C. Cir. 2015), to argue that courts "look skeptically on government entities serving as adequate advocates for private parties." *Id.* at 321; *see* Tribe's Proposed Mot. to Dismiss at 3–4. But *Crossroads* noted that skepticism in explaining why an absent party could intervene under Federal Rule of Civil Procedure 24(a), which is allowed more liberally than dismissal under Rule 19(b). *See id.* (noting that the adequacy requirement in Rule 24(a) is "not onerous" and that movants "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation").

prejudice. Fed. R. Civ. P. 19(b)(2). The ability to minimize prejudice, in other words, bears on indispensability only when there is prejudice to be minimized.

Moreover, because the Court can issue an "adequate" judgment in the Tribe's absence, the third Rule 19(b) factor also favors allowing this action to proceed. Fed. R. Civ. P. 19(b)(3). As used in this context, "adequacy refers to the public stake in settling disputes by wholes, whenever possible." *Pimentel*, 553 U.S. at 870 (quoting *Provident Tradesmens Bank & Tr. Co. v. Patterson*, 390 U.S. 102, 111 (1968)). The adequacy requirement thus furthers the "social interest in the efficient administration of justice and the avoidance of multiple litigation." *Id.* (quoting *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 738 (1977)). Here, the *West Flagler* plaintiffs challenge an action by the Secretary and obtaining relief against the Secretary would fully redress their injury. Those plaintiffs have indicated no interest in suing the Tribe, and the Tribe's sovereign immunity would block most efforts to that effect, *see Bay Mills*, 572 U.S. at 788–89. Accordingly, there is no possibility that the failure to join the Tribe would produce "multiple litigation." *Pimentel*, 553 U.S. at 870 (citation omitted).

Finally, because the plaintiffs would have no "adequate remedy if the action were dismissed for nonjoinder," the fourth Rule 19(b) factor also favors proceeding. Fed. R. Civ. P. 19(b)(4). Dismissing this suit would not allow the plaintiffs to proceed in an alternate forum, for example, after curing a defect in personal jurisdiction. To the contrary, holding that the Tribe is indispensable in this case, where the Tribe has made no particularized showing of prejudice, would require treating tribes as indispensable in *every* case that challenges the Secretary's approval of a gaming compact. And under that rule, those approvals will *never* be subject to judicial review because the nonjoinder of a tribe will *always* require dismissal. The D.C. Circuit,

which reached the merits in another compact-approval case, has not adopted that extreme and unworkable conclusion. *See Amador Cty.*, 640 F.3d at 378–84.

The Tribe's remaining arguments, both of which rely on unpublished and out-of-circuit decisions, do not persuade. To start, the Tribe invokes *Friends of Amador County v. Salazar*, 554 F. App'x 562 (9th Cir. 2014), which held that the Secretary could not adequately represent a tribe's interest in a challenge to an IGRA gaming compact, *see id.* at 564–66. But there, the government's responses at a status conference "caused the district court to suspect" that the government would litigate the case in line with "its national Indian policy, even if contrary to the Tribe's interests." *Id.* at 564. Consistent with that suspicion, the government later failed to "appear at oral argument or file any brief in the appeal." *Id.* There is no similar evidence of "divergent interests" in this case. *Id.* The Tribe also cites a decision from the Northern District of Florida, which found that a tribe was indispensable to an IGRA compact-approval case while taking no position on whether the tribe's interests diverged from the Secretary's. *See PPI, Inc. v. Kempthorne*, No. 4:08-cv-248, 2008 WL 2705431 (N.D. Fl. 2008). But that decision erred in holding that the judicial review of a no-action approval would violate the tribe's "sovereign right not to have its legal duties judicially determined without consent," *id.* at *4, and also failed to address most of the considerations discussed above. Accordingly, the Court will not follow the decision here.

For the reasons above, the Court finds that "equity and good conscience" permit this action to continue in the Tribe's absence. Fed. R. Civ. P. 19(b). This conclusion resolves the Tribe's motion to intervene. Because the Tribe moved to intervene solely to move for dismissal, because the Tribe seeks dismissal on the sole ground that it is indispensable, and because the Tribe is not indispensable, the Tribe's motion for limited intervention is denied as moot.

C. The Compact violates IGRA by authorizing gaming off Indian lands

On the merits, it is well-settled that IGRA authorizes sports betting only on Indian lands. This requirement stems from IGRA § 2710(d)(8)(A), which authorizes the Secretary to approve compacts "governing gaming on Indian lands." 25 U.S.C. § 2710(d)(8)(A). It is repeated in IGRA § 2710(d)(1), which lists the conditions under which "[c]lass III gaming activities shall be lawful on Indian lands." *Id.* § 2710(d)(1). Altogether, over a dozen provisions in IGRA regulate gaming on "Indian lands,"[6] and none regulate gaming in another location. Indeed, if there were any doubt on the issue, the Supreme Court has emphasized that "[e]verything—literally everything—in IGRA affords tools . . . to regulate gaming on Indian lands, and nowhere else." *Bay Mills*, 572 U.S. at 795.

It is equally clear that the Secretary must reject compacts that violate IGRA's terms. The D.C. Circuit addressed this very issue in *Amador County v. Salazar*, which held that IGRA imposes "an obligation on the Secretary to affirmatively disapprove any compact" that is inconsistent with its terms, 640 F.3d at 382. The Circuit drew this obligation from IGRA § 2710(d)(8)(C), which provides that secretarial inaction may approve a compact "only to the extent the compact is consistent with" the Act, 25 U.S.C. § 2710(d)(8)(C). *See Amador County*, 640 F.3d at 381–82. And in explaining the obligation, the court held that the above provision creates "law to apply" for the review of secretarial inaction and emphasized that the Secretary "may not allow a compact that violates [the provision's] caveat to go into effect." *Id.* at 381. Because *Amador County* controls here, and because IRGA authorizes gaming only on Indian lands, it follows that the Secretary must reject any gaming compact that authorizes gaming at any

[6] These provisions include 25 U.S.C. § 2710(a)(1), (a)(2), (b)(1), (b)(2), (b)(4), (d)(1), (d)(2)(A), (d)(2)(C), (d)(3)(A), (d)(5), (d)(7)(A)(ii), (d)(8)(A).

other location.

The instant Compact attempts to authorize sports betting both on and off Indian lands. In its own words, the Compact authorizes such betting by patrons who are "physically located in the State [of Florida] but *not on* [*the Tribe's*] *Indian Lands*." Compact § III(CC)(2) (emphasis added). That italicized phrase is no slip of the tongue, but instead describes the basic consequence of authorizing online betting throughout the State. Most locations in Florida are not Indian lands, which IGRA defines to mean lands "within the limits of any Indian reservation," "held in trust by the United States for the benefit of any Indian tribe," or "over which an Indian tribe exercises governmental power," 25 U.S.C. § 2703(4). And although the Compact "deem[s]" all sports betting to occur at the location of the Tribe's "sports book(s)" and supporting servers, *see* Compact § III(CC)(2), this Court cannot accept that fiction. When a federal statute authorizes an activity only at specific locations, parties may not evade that limitation by "deeming" their activity to occur where it, as a factual matter, does not. *See CSX Transp., Inc. v. Ala. Dep't of Revenue*, 562 U.S. 277, 291 (2011) ("[A] statute should be interpreted so as not to render one part inoperative."). Accordingly, because the Compact allows patrons to wager throughout Florida, including at locations that are not Indian lands, the Compact violates IGRA's "Indian lands" requirement.

The Supreme Court's decision in *Michigan v. Bay Mills Indian Community* confirms that conclusion. In that case, the State of Michigan sought to enjoin class III gaming at a casino that was operated by an Indian tribe but located outside Indian lands. *Bay Mills*, 572 U.S. at 791–93. To do so, it invoked a provision of IGRA that abrogates sovereign immunity for "gaming activity located on Indian lands," 25 U.S.C. § 2710(d)(7)(A)(ii), under the theory that the casino was "authorized, licensed, and operated" from the tribe's reservation, *Bay Mills*, 572 U.S. at 792.

The Court held that the provision did not apply. The Court explained that the phrase "gaming activity" in IGRA describes "the stuff involved in playing class III games," not the administrative actions that support them. *Id.* And because the casino's gaming activity occurred *off* Indian lands, the Court held that IGRA's abrogation of immunity for gaming *on* Indian lands did not apply. *Id.* at 791–792. This same reasoning dooms the instant Compact, which rests on the theory that online betting occurs not where patrons actually play class III games, but instead at the location of the Tribe's sportsbook and servers. Because the Compact authorizes patrons to wager *off* Indian lands, and because those bets clearly qualify as "gaming," 25 U.S.C. § 2710(d)(8)(A), *Bay Mills* makes clear that the instant Compact authorizes gaming *off* Indian lands.

The Secretary's Approval Letter, as submitted to the Tribe on August 6, 2021, lacks a plausible defense of the Compact's scope. First, the letter notes that IGRA allows gaming compacts to govern the "application" of state and tribal laws that are relevant to class III gaming and the "allocation of criminal and civil jurisdiction" between states and tribes with respect to enforcing those laws, 25 U.S.C. § 2710(d)(3)(c)(i)-(ii). *See* Approval Letter at 7. But those provisions, which concern states and tribes' regulatory responsibilities, say nothing about whether gaming activity occurs on "Indian lands," 25 U.S.C. § 2710(d)(8)(A). Second, the Approval Letter notes that "[m]ultiple states have enacted laws that deem a bet to have occurred at the location of the [hosting] servers" and argues that the "Compact reflects this modern understanding of how to regulate online gaming." Approval Letter at 8. But regardless of what states have done in their own jurisdictions, changes in state law do not affect the federal-law issues in this case. Finally, the Approval Letter argues that online sports betting has practical benefits. *See id.* at 8–9. But "[s]uch policy arguments, though proper for legislative

consideration, are irrelevant" here. *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 470 (1978).[7]

The Secretary's lead argument in this litigation fares no better. That argument insists that the Compact authorizes only the online gaming activities that occur on Indian lands, including the receipt of online sports bets that are placed elsewhere. *See* Gov't's Supplementary Mem. at 9, Dkt. 41 (*West Flagler*). The Secretary further argues that a Florida statute permits the remaining gaming activities, which include placing those bets in the first instance. *See id.* at 9–10 (citing Fl. Stat. § 285.710(13)(b)). Finally, the Secretary argues that the sole purpose of the Compact's "deeming" language is to divide regulatory responsibilities between the State and the Tribe. *See id.* at 12. For these reasons, the Secretary argues that all sports betting in Florida, including both placing bets and processing them, is lawful where it occurs.

The principal problem with the above argument is that it is incompatible with the Compact's text. The interpretation of tribal-state gaming compacts is a question of federal law. *See Cachil Dehe Band of Wintun Indians of Colusa Indian Cmty. v. California*, 618 F.3d 1066, 1075–82 (9th Cir. 2010) (reviewing the interpretation of a compact *de novo*). And contrary to the Secretary's position, the plain text of the Compact affirmatively authorizes sports betting both on and off Indian lands. This authorization appears in Section IV(A) of the Compact, which provides the Tribe "is authorized to operate Covered Games on its Indian lands," Compact § IV(A)—a category that includes sports betting, *see id.* § III(F)(5). Section IV(A) then provides, in its very next sentence, that sports wagers "made by players physically located within the State . . . shall be deemed to take place . . . on Indian Lands" at the "location of the servers or

[7] The Approval Letter also argues that patrons may not wager online while "physically located on another Tribe's Indian lands," Approval Letter at 8 & n.14, on the theory that IGRA allows gaming "on Indian lands" only if that gaming is authorized by the "Indian tribe having jurisdiction over such lands," *id.* (quoting 25 U.S.C. § 2710(d)(1)(A)(i)). That argument concedes that online betting occurs at the bettor's location.

other devices used to conduct such wagering activity." *Id.* § IV(A). By simultaneously authorizing sports betting on Indian lands and deeming gaming across Florida to occur on those same lands, Section IV(A) purports to authorize sports betting throughout the State.

Other provisions in the Compact make clear that the "deemed" clause in Section IV(A) plays an authorizing, rather than regulatory role. *See* Gov't's Suppl. Mem. at 4. The title of Section IV, "Authorization and Location of Covered Games," suggests that the location of gaming is relevant to its authorization. *See Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998). Other provisions of the Compact carefully divide regulatory responsibilities between the Tribe and the State. These responsibilities include promulgating rules on who can participate in sports betting, *see id.* § V(A)(2)(e)–(f), the determination of odds "at which wagers may be placed," *id.* § V(A)(2)(d), the reporting of abnormal betting activity, *see id.* § V(A)(2)(j), and the prevention of compulsive gambling, *see id.* § V(D). They also include the resolution of patron disputes, *see id.* § VI, the enforcement of the Compact's provisions, *see id.* § VII, and the regular auditing of gaming activities, *see id.* § VIII. Because the Compact allocates these responsibilities in such fine detail, the Court will not ascribe that same function to the Compact's "deemed" clause, which would render that clause superfluous, *see Corley v. United States*, 556 U.S. 303, 314 (2009).

The final problem with the Secretary's argument is that, although it attempts to read the Compact *in pari materia* with Florida law, its account of that law is inconsistent with the Florida Constitution. Article X, Section 30 of that Constitution provides that the State may expand sports betting only through a citizen's initiative or an IGRA gaming compact. *See* Fl. Const. art. X, §§ 30(a)–(c). And because no citizens' initiative has approved online sports betting, such betting can be lawful in Florida only if it is authorized by a gaming compact. *See id.* Against this

backdrop, it makes little sense to argue that the Florida Legislature authorized sports betting independently of the instant Compact. *See* Gov't's Suppl. Mem. at 4. To the contrary, the better explanation of the Legislature's conduct is that it intended to remove any state-law barriers to the gaming it understood the Compact to authorize. *See* Fl. Stat. § 285.710(13)(b) (providing that games "conducted pursuant to" the Compact "do not violate the laws of this state"). It is important to be clear: this Court is not issuing a final decision on any question of Florida constitutional law. Nonetheless, to the degree that the Secretary invokes Florida law to explain the Compact's terms, her argument misses the mark.

For the reasons above, the Court concludes that the Compact authorizes gaming both on and off Indian lands. The Compact accordingly violates IGRA's "Indian lands" requirement, which means that the Secretary had an affirmative duty to reject it. This disposition warrants granting the *West Flagler* plaintiffs' motion for summary judgment and eliminates any need to address their other arguments on the merits.

D. The Appropriate Remedy Is to Vacate the Compact

The last issue in this case is the plaintiffs' remedy. The issue is governed by § 706 of the APA, which directs courts to "hold unlawful and set aside agency action" that is "not in accordance with law." 5 U.S.C. § 706(2)(A). The "agency action" under review is the Secretary's default approval of the Compact. *See* Compl. ¶ 1 (*West Flagler*). *Amador County* confirms that vacating the Secretary's approval is appropriate. *See* 640 F.3d at 378 (explaining that, if a plaintiff successfully challenges a default approval, "the Secretary would have to reject the compact"). And because the Tribe may offer online gaming "only with secretarial approval of the compact," *id.*; *see also* 25 U.S.C. § 2710(d)(1)(C), vacating the Secretary's approval will fully redress the *West Flagler* plaintiffs' injury. For those reasons, the Court concludes that the

appropriate remedy is to set aside the Secretary's default approval of the Compact.[8]

The remedy also resolves the *Monterra* action. It is true that the *Monterra* plaintiffs have challenged the Compact under a broader legal theory than is addressed in this opinion. *See* Mem. in Supp. at 23–28 (*Monterra*). But those plaintiffs seek the same relief that this opinion provides. *See* Compl. ¶ 139 (*Monterra*) (requesting an "order setting aside defendants' unlawful approval of the 2021 Compact"). And because vacating the Compact fully redresses the injuries that those plaintiffs allege, their request for summary judgment on other grounds is dismissed as moot. *See Dickson*, 964 F.3d at 55.

* * *

In the Court's understanding, the practical effect of this remedy is to reinstate the Tribe's prior gaming compact, which took effect in 2010, *see* Indian Gaming, 75 Fed. Reg. 38,833 (July 6, 2010), and which may remain in effect until 2030, *see* Compl. Ex. D. (Prior Compact) § XVI(B), Dkt. 1-4 (*West Flagler*). *See* Fl. Stat. § 285.710(3)(b). In that respect, this decision restores the legal status of class III gaming in Florida to where it was on August 4, 2021—one day before the Secretary approved the new compact by inaction. Because the more recent Compact is no longer in effect, continuing to offer online sports betting would violate federal law. *See* 25 U.S.C. § 2710(d)(1)(C) (providing that "[c]lass III gaming activities shall be lawful on Indian lands only if . . . [they are] conducted in conformance with a Tribal-State compact . . . that is in effect").

[8] At oral argument, the *West Flagler* plaintiffs suggested that the Court could set aside the compact only to the extent that it conflicts with IGRA. But the Secretary forfeited any request for severance by omitting it from its motions to dismiss, its corresponding replies, and its supplemental briefs. In any event, the Court reads *Amador County*, which identifies the appropriate relief in this case as ordering the Secretary "to reject the compact," as foreclosing line-by-line review of the Compact's terms. *See* 640 F.3d at 378.

This decision does not foreclose other avenues for authorizing online sports betting in Florida. The State and the Tribe may agree to a new compact, with the Secretary's approval, that allows online gaming solely on Indian lands. Alternatively, Florida citizens may authorize such betting across their State through a citizens' initiative. *See* Fl. Const. art. X, §§ 30(c). What the Secretary may not do, however, is approve future compacts that authorize conduct outside IGRA's scope. And IGRA, as the Supreme Court explained in *Bay Mills*, authorizes gaming "on Indian lands, and nowhere else." 572 U.S. at 795.

CONCLUSION

For the foregoing reasons, the *West Flagler* plaintiffs' Motion for Summary Judgment is granted, the *Monterra* plaintiffs' Motion for Summary Judgment is denied as moot, the Tribes' Motions to Intervene are denied, and the Secretary's Motions to Dismiss are denied. A separate order consistent with this decision accompanies this memorandum opinion.

DABNEY L. FRIEDRICH
United States District Judge

November 22, 2021

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued December 14, 2022 Decided June 30, 2023

No. 21-5265

WEST FLAGLER ASSOCIATES, LTD., A FLORIDA LIMITED PARTNERSHIP, DOING BUSINESS AS MAGIC CITY CASINO AND BONITA-FORT MYERS CORPORATION, A FLORIDA CORPORATION, DOING BUSINESS AS BONITA SPRINGS POKER ROOM,
APPELLEES

v.

DEBRA A. HAALAND, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR AND UNITED STATES DEPARTMENT OF THE INTERIOR,
APPELLEES

SEMINOLE TRIBE OF FLORIDA,
APPELLANT

Consolidated with 22-5022

Appeals from the United States District Court
for the District of Columbia
(No. 1:21-cv-02192)

Rachel Heron, Attorney, U.S. Department of Justice, argued the cause for federal appellants. With her on the briefs was *Todd Kim*, Assistant Attorney General.

Barry Richard argued the cause for appellant Seminole Tribe of Florida. With him on the briefs were *Joseph H. Webster, Elliott A. Milhollin,* and *Kaitlyn E. Klass.*

Barry Richard, *Joseph H. Webster, Elliott A. Milhollin,* and *Kaitlyn E. Klass* were on the brief for *amicus curiae* Seminole Tribe of Florida in support of federal appellants. *Henry C. Whitaker,* Solicitor General, Office of the Attorney General for the State of Florida, argued the cause for *amicus curiae* State of Florida in support of federal appellants. With him on the brief was *Ashley Moody,* Attorney General, and *Christopher J. Baum*, Senior Deputy Solicitor General.

Scott Crowell was on the brief for *amici curiae* The National Indian Gaming Association, et al. in support of federal appellants.

Todd Kim, Assistant Attorney General, and *Rachel Heron*, Attorney, U.S. Department of Justice, were on the answering brief for federal appellees.

Hamish P. M. Hume argued the cause for appellees West Flagler Associates, Ltd, et al. With him on the brief were *Amy L. Neuhardt* and *Jon Mills.*

Jenea M. Reed argued the cause for *amici curiae* Monterra MF, LLC, et al. in support of appellees. With her on the brief was *Eugene E. Stearns.*

Before: HENDERSON, WILKINS and CHILDS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WILKINS.

WILKINS, *Circuit Judge*: In 2021, the Seminole Tribe of Florida ("Tribe") and the State of Florida entered into a compact under the Indian Gaming Regulatory Act ("IGRA"), the federal law that regulates gaming on Indian lands. That gaming compact ("Compact"), along with accompanying changes in state law, purported to permit the Tribe to offer online sports betting throughout the state. The Compact became effective when the Secretary of the Interior failed to either approve or disapprove it within 45 days of receiving it from the Tribe and Florida.

The Plaintiffs in this case, brick-and-mortar casinos in Florida, object to the Secretary's decision to allow the Compact to go into effect because in their view, it impermissibly authorizes gaming *outside* of Indian lands, violating IGRA. They also believe that the Compact violates the Wire Act, the Unlawful Internet Gambling Enforcement Act, and the Fifth Amendment, and that the Secretary was required to disapprove the Compact for those reasons as well. The suit named as Defendants the Secretary of the Interior and the Department of the Interior, and the Tribe moved to intervene for the limited purpose of filing a Rule 19 motion to dismiss based on its tribal sovereign immunity. The District Court denied the Tribe's motion and granted summary judgment for the Plaintiffs, finding that the Compact here "attempts to authorize sports betting both on and off Indian lands[,]" in violation of "IGRA's 'Indian lands' requirement." *W. Flagler Assocs. v. Haaland*, 573 F. Supp. 3d 260, 273 (D.D.C. 2021).

We see the case differently. IGRA "regulate[s] gaming on Indian lands, and nowhere else." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 795 (2014). Thus, 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[.]" *Id.* at 796. In fact, IGRA expressly contemplates that a compact "may" do so where the activity is "directly related to" gaming. 25 U.S.C. § 2710(d)(3)(C)(vii). The District Court erred by reading into the Compact a legal effect it does not (and cannot) have, namely, independently authorizing betting by patrons located outside of the Tribe's lands. Rather, the Compact itself authorizes only the betting that occurs on the Tribe's lands; in this respect it satisfied IGRA. Whether it is otherwise lawful for a patron to place bets from non-tribal land within Florida may be a question for that State's courts, but it is not the subject of this litigation and not for us to decide. Today, we hold only that the Secretary did not violate the Administrative Procedure Act ("APA") in choosing not to act and thereby allowing the Compact to go into effect by operation of law. We also find the Plaintiffs' remaining challenges to the Compact meritless, as a matter of law.

Finally, because this decision will effectively keep intact the Compact, resulting in minimal prejudice to the Tribe, we affirm the denial of the Tribe's motion to intervene, albeit on different grounds than did the District Court. Accordingly, we reverse and remand with instructions to enter judgment for the Secretary.

I.

A.

In 1987, the Supreme Court held that states are powerless to regulate gaming on Indian lands. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). In response to that decision, Congress the following year enacted IGRA, 25 U.S.C. § 2701 *et seq.*, which "creates a framework" for doing just that. *Bay Mills*, 572 U.S. at 785. Through IGRA, Congress sought to "balance state, federal, and tribal interests." *Amador Cnty. v. Salazar*, 640 F.3d 373, 376 (D.C. Cir. 2011). IGRA's purposes include "promoting tribal economic development" and "self-sufficiency," "ensur[ing] that the Indian tribe is the primary beneficiary of the gaming operation," and "shield[ing] [tribes] from organized crime and other corrupting influences[.]" 25 U.S.C. § 2702. Both *Cabazon* and IGRA "left fully intact" states' "capacious" regulatory power outside Indian territory. *Bay Mills*, 572 U.S. at 794.

IGRA "divides gaming into three classes." *Id.* at 785. Class III gaming, the kind at issue in this case, is "the most closely regulated" and includes casino games, slot machines, and sports betting. *Id.*; *see also* 25 U.S.C. § 2703(8). A tribe may offer class III gaming on its own lands "only pursuant to, and in compliance with, a compact it has negotiated with the surrounding State." *Bay Mills*, 572 U.S. at 785; *see also* 25 U.S.C. § 2710(d)(1)(C). "A compact typically prescribes rules for operating gaming, allocates law enforcement authority between the tribe and State, and provides remedies for breach of the agreement's terms." *Bay Mills*, 572 U.S. at 785.

Before it takes effect, a tribal-state compact must be approved by the Secretary of the Interior, with notice published in the Federal Register. 25 U.S.C. § 2710(d)(3)(B). When presented with a tribal-state compact, the Secretary can do one

of three things. *See Amador Cnty.*, 640 F.3d at 377 (summarizing the approval process). First, she may affirmatively approve the compact. 25 U.S.C. § 2710(d)(8)(A). Second, she "may disapprove" the compact, but "only if" the compact violates IGRA, another federal law, or the federal government's trust obligations to Indians. *Id.* § 2710(d)(8)(B). Third, if she does not act within 45 days, the compact is "considered . . . approved[,]" "but only to the extent the compact is consistent with the provisions of [IGRA]." *Id.* § 2710(d)(8)(C). The Secretary's decision to take no action within 45 days of receiving the compact, thereby allowing the compact to go into effect under subsection (C), is judicially reviewable. *Amador Cnty.*, 640 F.3d at 383.

B.

The Seminole Tribe of Florida is a federally recognized tribal government. In 2010, it entered into a tribal-state compact with Florida, so that it could offer certain forms of class III gaming on its lands. In 2021, the Tribe and Florida entered into a new compact, the one at issue in this case ("Compact"). At that time, sports betting was illegal throughout the state, with exceptions not relevant here. Fla. Stat. § 849.14. The Compact and related amendments to state law changed this, purporting to allow the Tribe the exclusive right to offer sports betting in the state, including online sports betting by individuals not physically located on the Tribe's lands, as follows.

The Compact requires sports bets to be placed "exclusively by and through one or more sports books conducted and operated by the Tribe or its approved management contractor[.]" J.A. 687 (Compact § III.CC.1). Under the Compact, the Tribe and Florida in turn consider all bets placed through the Tribe's sports book, regardless of

where the person placing the bet is physically located within the state, to occur where the sports book servers are located—in other words, on tribal land:

> The Tribe and State agree that the Tribe is authorized to operate Covered Games on its Indian lands, as defined in [IGRA]. . . . Subject to limitations set forth herein, 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.

J.A. 692 (Compact § IV.A). Similar language appears in another section of the Compact as well. J.A. 687 (Compact § III.CC.2).

The Tribe and Florida executed the Compact in April 2021, and the following month, Governor DeSantis signed a bill that ratified and approved the Compact. That state law adopted the same "deeming" language from the Compact regarding the location of sports bets. Fla. Stat. § 285.710(13)(b)(7) (noting that all sports wagers "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[,]" and that "[g]ames and gaming activities authorized under this subsection and conducted pursuant to a gaming compact . . . do not violate the laws of this state"). In June, the Tribe transmitted the Compact to Secretary Haaland for her review under IGRA. She did not act within the 45-day window, and the Compact accordingly went into effect under 25 U.S.C. § 2710(d)(8)(C). The Compact was published in the Federal Register on August 11,

2021, making it effective. Indian Gaming; Approval by Operation of Law of Tribal-State Class III Gaming Compact in the State of Florida, 86 Fed. Reg. 44,037-01 (Aug. 11, 2021).

C.

The Plaintiffs in this case, West Flagler Associates, Ltd., d/b/a Magic City Casino, and Bonita-Fort Myers Corporation, d/b/a Bonita Springs Poker Room (collectively, "West Flagler"), operate brick-and-mortar casinos in Florida. They sued Secretary Haaland, in her official capacity, and the Department of the Interior (collectively, "the Secretary"), challenging the decision to not act on the Compact within 45 days. They allege that the Secretary's approval through inaction violated the APA for four reasons: (1) its authorization of gaming off of Indian lands was unlawful under IGRA, (2) it violated the Wire Act, (3) it violated the Unlawful Internet Gambling Enforcement Act ("UIGEA"), and (4) it violated the Fifth Amendment's equal protection guarantee. The Plaintiffs sought an injunction vacating and setting aside the Compact.

In the District Court, the Tribe moved to intervene for the limited purpose of filing a Rule 19 motion to dismiss. The Secretary and Plaintiffs opposed the Tribe's motion. Independently, the Secretary moved to dismiss for lack of standing and for failure to state a claim. The Plaintiffs moved for summary judgment.

The District Court considered all three motions together, along with parallel motions in another case involving a challenge to the same Compact by individuals and entities who are wholly opposed to the expansion of gambling within Florida. *See Monterra MF, LLC v. Haaland*, No. 21-cv-2513 (D.D.C.) (complaint filed Sept. 27, 2021). The District Court first denied the Tribe's motion to intervene, finding that it was

a required party but that its interests in this litigation were adequately represented by the Secretary, and therefore the litigation could proceed in the Tribe's absence in equity and good conscience. *See* FED. R. CIV. P. 19(b). The District Court then granted summary judgment for the West Flagler Plaintiffs, finding that the Compact violated IGRA because its online sports betting provisions impermissibly attempted to authorize gaming *off* of Indian lands; accordingly, the Secretary had an affirmative duty to reject it. Finding that the entire Compact must be set aside, the District Court finally dismissed the motions in the *Monterra* litigation as moot, and that portion of the decision is not on appeal. (The *Monterra* plaintiffs have appeared as *amici* in this case and urge affirmance.)

The Tribe appealed the denial of its motion to intervene, which the Secretary and Plaintiffs oppose. The Secretary appealed the grant of summary judgment for Plaintiffs.

II.

We first address the merits of West Flagler's challenge to the Compact, followed by the Tribe's motion to intervene. We review a district court's decision granting summary judgment *de novo*. *Lopez v. Council on American-Islamic Rels. Action Network, Inc.*, 826 F.3d 492, 496 (D.C. Cir. 2016). No material fact is in dispute; the issues on appeal are purely legal.

West Flagler's claims arise under the APA. The APA requires a reviewing court to "hold unlawful and set aside agency action . . . found to be[] (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (B) contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A)–(B). When reviewing a Secretary's decision to not act within the 45-day window when presented with an IGRA compact, this Court has held that 25 U.S.C. § 2710(d)(8)(C) "provides the 'law to apply[]'"—that

is, "the compact is deemed approved 'but only to the extent the compact is consistent with the provisions of [IGRA].'" *Amador Cnty.*, 640 F.3d at 381 (alteration in original).

A.

West Flagler's primary challenge to the Compact is that its online sports betting provisions unlawfully authorize class III gaming outside of Indian lands, in violation of IGRA. In West Flagler's view, our decision in *Amador County* stands for the principle that "IGRA requires the Secretary to 'affirmatively disapprove' any compact that seeks to authorize gaming off Indian lands." West Flagler Br. 20. They argue in turn that the Compact, both in text and effect, necessarily violates that principle. On appeal, the Secretary agrees with the major premise of West Flagler's claim—that IGRA cannot provide an independent source of legal authority for gaming outside of Indian lands—but with one caveat. In her view, "[g]aming outside Indian lands cannot be *authorized* by IGRA, but it may be *addressed* in a compact." Gov't Resp. Br. 2. Thus, the Secretary mainly disputes the minor premise of West Flagler's argument by contending that while the Compact here "discussed" online sports betting off of tribal lands, it did not "authorize" it. And whether or not that gaming is authorized or permissible as a matter of Florida state law falls outside the scope of the Secretary's review. Thus, the logic goes, she had no obligation to disapprove the Compact.

We agree with the Secretary. For our purposes, IGRA's complex regulatory scheme contains two important, related principles. First, IGRA abrogated tribal sovereign immunity for certain gaming activity on Indian lands, and it regulates gaming activity on Indian lands, but "nowhere else." *Bay Mills*, 572 U.S. at 795. This is the core teaching of *Bay Mills*, in which the Supreme Court stated in no uncertain terms:

"Everything—literally everything—in IGRA affords tools (for either state or federal officials) to regulate gaming on Indian lands, and nowhere else." *Id.* Put another way, IGRA generally does not restrict or regulate tribal, or any other, activity outside of Indian lands.

Second, while the function of a class III gaming compact is to authorize gaming on Indian lands, it "may include provisions relating to" a litany of other topics. 25 U.S.C. § 2710(d)(3)(C). These include, among other things, "the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;" "the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;" and "any other subjects that are directly related to the operation of gaming activities." *Id.* § 2710(d)(3)(C)(i), (ii), (vii). *Bay Mills* also teaches that such topics can cover state or tribal activity outside of Indian lands. For instance, a state may use a gaming compact to bargain for a waiver of tribal sovereign immunity for a tribe's gaming activity outside of its lands. *See* 572 U.S. at 796–97. And while there are some limits on what a tribe and a state can agree to in an IGRA gaming compact, the purpose of those limits is generally to ensure that states do not use gaming compacts as a backdoor to exercise regulatory power over tribes that they otherwise would not have. That is not a concern in this case.

Following the precept that "a contractual provision should, if possible, be interpreted in such a fashion as to render it lawful rather than unlawful," we find the Compact's text capable of an interpretation in harmony with these two principles. *Papago Tribal Util. Auth. v. FERC*, 723 F.2d 950, 954 (D.C. Cir. 1983); *see also Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1485 (D.C. Cir. 1997) ("[A]n interpretation that makes the contract

lawful is preferred to one that renders it unlawful."); 11 WILLISTON ON CONTRACTS § 32:11 (4th ed. May 2023 update) ("Consonant with the principle that all parts of a contract be given effect when possible, an interpretation which renders a contract lawful is preferred over one which renders it unlawful."). Recall that the key language over which the parties quarrel is in Compact § IV.A, titled "Authorization and Location of Covered Games." It reads:

> The Tribe and State agree that the Tribe is authorized to operate Covered Games on its Indian lands, as defined in [IGRA.] . . . Subject to limitations set forth herein, 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.

J.A. 692; *see also* J.A. 687 (Compact § III.CC.2, containing the same phrasing).

The first sentence of this section simply states that the Tribe is authorized to operate sports betting on its lands. This is uncontroversial and plainly consistent with IGRA. Next, the Compact discusses wagers on sports betting "made by players physically located within the State using a mobile or other electronic device," which are "deemed to take place exclusively where received." The Compact does not say that these wagers are "authorized" by the Compact (or by any other legal authority). Rather, it simply indicates that the parties to the Compact (*i.e.*, the Tribe and Florida) have agreed that they both consider such activity (*i.e.*, placing those wagers) to occur on tribal lands. Because the Compact requires all gaming

disputes be resolved in accordance with tribal law, *see* J.A. 702 (Compact § VI.A), this "deeming" provision simply allocates jurisdiction between Florida and the Tribe, as permitted by 25 U.S.C. § 2710(d)(3)(C)(i)–(ii).

The discussion of wagers placed from outside Indian lands is also "directly related to the operation of" the Tribe's sports book, and thus falls within the scope of § 2710(d)(3)(C)(vii). The Compact "authorizes" only the Tribe's activity on its own lands, that is, operating the sports book and receiving wagers. The lawfulness of any other related activity such as the placing of wagers from outside Indian lands, under state law or tribal law, is unaffected by its inclusion as a topic in the Compact.

West Flagler contends that reading subsection (d)(3)(C)(vii)—the "catch-all" provision—in this way violates the canon that Congress does not hide elephants in mouseholes. We disagree. To be sure, as one of our sister circuits recently noted: "As a residual clause, § 2710(d)(3)(C)(vii) takes its meaning from, and is limited by, the rest of § 2710(d)(3)(C)." *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1036 (9th Cir. 2022) (citing *Yates v. United States*, 574 U.S. 528, 545 (2015)). But at the same time, "as a residual clause, § 2710(d)(3)(C)(vii) is inevitably broader than the more specific topics enumerated in the paragraphs that precede it." *Chicken Ranch*, 42 F.4th at 1036 (internal quotations and alteration omitted); *see also Republic of Iraq v. Beaty*, 556 U.S. 848, 860 (2009) ("[T]he whole value of a generally phrased residual clause . . . is that it serves as a catchall for matters not specifically contemplated—known unknowns[.]"). Indeed, § 2710(d)(3)(C) covers vast ground, including not only the allocation of civil and criminal jurisdiction between a state and a tribe (no small topic), but also state taxation, remedies for breach of contract, and licensing standards. The power of a state to tax Indian tribes for activity on its own lands, or a

tribe's decision to waive its sovereign immunity from suit by a state, *see Bay Mills*, 572 U.S. at 796, are far from "mouseholes." If they are not mouseholes, subsection (d)(3)(C)(vii)—which, as a residual clause, is "inevitably broader"—cannot constitute a mousehole. Thus, gaming activity outside of Indian lands that is directly related to the gaming activity authorized by a compact may appropriately fall within the scope of subsection (d)(3)(C)(vii).

Cases from other circuits interpreting the catch-all provision confirm our understanding. In *Chicken Ranch*, the Ninth Circuit held that provisions relating to family law, environmental law, and tort law—on which California insisted in exchange for permitting the tribe to conduct gaming—could not be the subject of a valid IGRA compact, as they were not directly related to gaming. 42 F.4th at 1037–39. Similarly, the Tenth Circuit has held that subsection (d)(3)(C)(vii) does not permit a compact provision allowing state courts to hear tort suits arising from injuries at Indian casinos. *Navajo Nation v. Dalley*, 896 F.3d 1196, 1218 (10th Cir. 2018). The lesson from these cases is clear and is confirmed by IGRA's legislative history: states cannot use compacts "as a subterfuge for imposing State jurisdiction on tribal lands[,]" *contra* IGRA's purpose. S. Rep. No. 100-466, at 14 (1988). But that is not what happened here.

Nor does *Amador County*, on which West Flagler heavily relies, compel a different result. There, we emphasized that 25 U.S.C. § 2710(d)(8)(A) "authorizes approval only of compacts 'governing gaming on *Indian lands*,' suggesting that disapproval is obligatory where that particular requirement is unsatisfied." 640 F.3d at 381. But in that case, the entirety of the gaming activity discussed in the compact was located on a piece of land known as "the Rancheria," and the dispositive issue was whether the Rancheria constituted Indian lands or

not. In other words, if the Rancheria did not qualify as Indian lands, *no* provision of the compact would seek to authorize gaming on Indian lands, and thus any approval would plainly exceed the scope of the Secretary's authority under subsection (d)(8)(A). In contrast, the Compact here authorizes a substantial amount of gaming on Indian lands separate and apart from online wagers placed from outside the Tribe's lands, including Las Vegas-style gambling and in-person sports betting at the Tribe's casinos. That is sufficient to fulfill the "particular requirement" that the Compact "govern[s] gaming on *Indian lands*." *Id.* At bottom, West Flagler's argument invites the Court to read the extraneous word "only" into the preceding statutory language, and we decline to do so.

Finally, West Flagler protests that the Secretary's argument necessarily creates two types of IGRA approvals: (a) for activity on Indian lands, approval authorizes the activity, while (b) for activity outside of Indian lands, approval has no meaning or legal effect. In West Flagler's view, this is problematic because an approved IGRA compact is an "instrument of federal law" which "preempts state law[,]" but it would be illogical and unworkable for only some parts of an approved compact to preempt state law. West Flagler Br. 24–25. However, this argument misunderstands the purpose and effect of an IGRA approval.

To start, neither of the two out-of-circuit cases that West Flagler cites stand for the novel proposition that an IGRA compact has the force of federal law with preemptive power. One of those cases merely states that IGRA compacts are a "creation of federal law," which is uncontroversial and indisputable given their statutory origin but falls far short of supporting West Flagler's argument. *See Citizen Potawatomi Nation v. Oklahoma*, 881 F.3d 1226, 1239 (10th Cir. 2018). The other cited case simply states that an IGRA compact

confers upon a tribe a "federal right" to conduct gaming on its own lands, for the purposes of establishing federal court jurisdiction over the action—again, indisputable and beside the point. *See Forest Cnty. Potawatomi Cmty. v. Norquist*, 45 F.3d 1079, 1082 (7th Cir. 1995).

In actuality, the approval process exists so that the Secretary may ensure that a compact does not violate certain federal laws, and her approval is a prerequisite for the compact to have legal effect: nothing more, nothing less. Much discussion in the briefs concerns the issue of whether the Tribe and Florida sought to circumvent state constitutional law by including the online sports betting provisions in the Compact. By way of background, in 2018, Florida amended its constitution with a section titled "Voter Control of Gambling in Florida." Fla. Const. art. X, § 30. Under that amendment, "Florida voters shall have the exclusive right to decide whether to authorize casino gambling in the State of Florida[,]" which can only be done through "a vote by citizens' initiative." *Id.* § 30(a). At the same time, the amendment contains an exception for "casino gambling on tribal lands" pursuant to an IGRA compact. *Id.* § 30(c). No voter referendum was ever held regarding online sports betting; therefore, West Flagler argues, the Tribe and Florida would *have* to believe that the IGRA Compact provides the legal basis for that activity.

Whatever the Tribe and Florida—who are not parties to this litigation—may believe, let us be clear: an IGRA compact cannot provide independent legal authority for gaming activity that occurs outside of Indian lands, where that activity would otherwise violate state law. That is in fact the position advanced by the Secretary—who *is* a party to this litigation—and we agree. *See* Oral Arg. Tr. at 6:14–21 (Counsel for the Secretary: "[I]f the state statute . . . related to this action were to be challenged in Florida state court and were to fall, the

compact that they crafted would give no independent authority for the Tribe to continue to receive bets from outside Indian lands.").

Thus, we hold only that the Secretary's decision not to act on the Compact was consistent with IGRA. In reaching this narrow conclusion, we do not give our imprimatur to all of the activity discussed in the Compact. And particularly, for avoidance of doubt, we express no opinion as to whether the Florida statute ratifying the Compact is constitutional under Fla. Const. art. X, § 30. That question and any other related questions of state law are outside the scope of the Secretary's review of the Compact, are outside the scope of our judicial review, and as a prudential matter are best left for Florida's courts to decide.

B.

The District Court did not reach West Flagler's Wire Act, UIGEA, and Fifth Amendment challenges to the Compact. But because they have been "fully briefed" and present "purely legal questions[,]" we may decide them. *Assoc. of Am. R.R.s v. U.S. Dep't of Transp.*, 821 F.3d 19, 26 (D.C. Cir. 2016); *see also Consumer Energy Council v. FERC*, 673 F.2d 425, 440 (D.C. Cir. 1982). We conclude that these other challenges lack merit as matter of law.

First, we address the justiciability of these claims. IGRA enumerates a limited number of grounds for which a Secretary "may disapprove a compact[,]" including where the compact violates federal law. 25 U.S.C. § 2710(d)(8)(B)(ii). But where, as here, a compact goes into effect due to the Secretary's inaction, IGRA states that the compact is "approved . . . but only to the extent the compact is consistent with the provisions of this chapter." *Id.* § 2710(d)(8)(C). Because subsection (B) uses "may" rather than "shall," while subsection (C) lists

inconsistency with IGRA as the only ground for nullifying a compact considered approved following secretarial inaction, there is a threshold question whether non-IGRA challenges to a compact in these circumstances are judicially reviewable. Dicta from our opinion in *Amador County* strongly suggests that they are, but we have not definitively resolved the question, because the claim in that case was that the compact violated IGRA, not a different federal law. 640 F.3d at 380–83. But we need not resolve that thorny question here, because even assuming that such claims are justiciable, we find that West Flagler's particular challenges fail as a matter of law.

1.

First, West Flagler claims that the Compact authorizes transactions that would violate the federal Wire Act. The Wire Act prohibits anyone "engaged in the business of betting or wagering" from "knowingly us[ing] a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers . . . on any sporting event or contest[.]" 18 U.S.C. § 1084(a). The Act has a safe harbor provision for bets placed to and from states or foreign countries where sports betting is lawful. *Id.* § 1084(b). Violating the Wire Act is a crime punishable by fine or imprisonment. *Id.* § 1084(a).

West Flagler contends that "[o]nline communications are almost invariably routed between servers in and out of state between their origin and destination[,]" and therefore any "realistic implementation of the Compact would require use of wire facilities operating in 'interstate and foreign commerce.'" West Flagler Br. 36. They further argue that the safe harbor provision does not apply, because Indian lands are neither a state nor a foreign country within the meaning of § 1084(b). *Id.* at 36 n.17.

There are several problems with this line of reasoning. As discussed above, the Compact does not itself independently "authorize" wagers placed by patrons located outside Indian lands. That itself forecloses the Wire Act challenge (and the other claims that follow). And even if the Compact did, no matter the scope of our judicial review, IGRA does not require the Secretary to disapprove a compact based on hypothetical violations of federal criminal law that turn on how the Compact is implemented as well as the *mens rea* of the would-be bettors.

In fact, the Compact contains express language that the Tribe "shall ensure" that its sports book operates in "strict compliance" with the Wire Act. J.A. 707 (Compact § VII.A.1(c)). West Flagler does not contest that it would be technically possible for the Tribe to do so. Moreover, the Wire Act is a criminal statute requiring the government to prove *mens rea* in individual circumstances, a principle at odds with the argument that the Compact as a general matter violates the Act, or that the Secretary was required to disapprove it on that basis. Finally, taking West Flagler's argument to its logical end shows why such a challenge cannot be sustained. Under their view, even online betting by patrons who *are* physically located on Indian lands would violate the Wire Act, because some of those bets may be routed off of Indian lands into a state, and then back. There is no support for the novel and sweeping argument that the Wire Act poses such a broad obstacle to an Indian tribe's ability to offer online gambling on its own lands.

2.

In a related vein, West Flagler claims that the Compact violates the UIGEA. That Act prohibits "knowingly accept[ing]" certain forms of payment in connection with "unlawful Internet gambling" such as credit card transactions,

checks, and electronic fund transfers. 31 U.S.C. § 5363. This claim suffers from a similar flaw as the Wire Act claim. Even without defining the precise contours of the scope of our review in this case, our review is of the Secretary's decision not to act when presented with the Compact, not whether all hypothetical implementations of the Compact are lawful under all federal statutes. How the Tribe and Florida ultimately implement the Compact in practice, and whether that implementation is consistent with UIGEA, may be the subject of a future lawsuit, but the Compact does not as a facial matter violate the UIGEA. The Secretary was therefore not required to disapprove the Compact on that basis.

3.

Lastly, West Flagler argues that the Secretary's approval violates the Fifth Amendment's equal protection guarantee because the Compact impermissibly grants the Tribe a statewide monopoly over online sports betting. But even if the Secretary's approval "authorized" all of the activity in the Compact (as we have explained *supra*, it does not), it would survive rational basis review, which is the applicable level of scrutiny here.

We have held that "promoting the economic development of federally recognized Indian tribes (and thus their members)," if "rationally related to a legitimate legislative purpose[,]" is constitutional. *Am. Fed'n of Gov't Emps., AFL-CIO v. United States*, 330 F.3d 513, 522–23 (D.C. Cir. 2003); *see Morton v. Mancari*, 417 U.S. 535, 554 (1974) (upholding a preference for members of Indian tribes where "reasonably and directly related to a legitimate, nonracially based goal"). The exclusivity provisions in the Compact plainly promote the economic development of the Seminole Tribe. They are also rationally related to the legitimate legislative purposes laid out

in IGRA by "ensur[ing] that the Indian tribe is the primary beneficiary of the gaming operation[.]" 25 U.S.C. § 2702(2). Thus, West Flagler's equal protection challenge fails as a matter of law.

III.

Having determined that West Flagler's challenges to the Compact lack merit and judgment for the Secretary is warranted, we are left to decide the Tribe's motion to intervene. The Tribe moved to intervene as of right under Rule 24(a), for the limited purpose of filing a motion to dismiss under Rule 19. In short, a party seeking dismissal under Rule 19 must show that it is a required party that cannot be joined, and without whom the litigation cannot proceed.

Formally, "Rule 19 analysis has two steps." *De Csepel v. Republic of Hungary*, 27 F.4th 736, 746 (D.C. Cir. 2022). "We first determine whether an absent party is 'required'" under Rule 19(a). *Id.* Relevant here, a party is required where it "claims an interest relating to the subject of the action and . . . disposing of the action in the person's absence may . . . as a *practical* matter impair or impede the person's ability to protect the interest[.]" FED. R. CIV. P. 19(a)(1)(B)(i) (emphasis added). If a party is required but cannot be joined (for instance, due to its sovereign immunity), the court must next determine "whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." FED. R. CIV. P. 19(b). Courts refer to step two of this analysis as determining whether the party is "indispensable." *De Csepel*, 27 F.4th at 748. In doing so, a court considers four factors: (1) whether "a judgment rendered in the person's absence might prejudice that person or the existing parties[,]" (2) whether such prejudice can be "lessened or avoided[,]" (3) "whether a judgment rendered in the person's absence would

be adequate[,]" and (4) "whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder." FED. R. CIV. P. 19(b). The Rule 19 inquiry is equitable and discretionary. *See Kickapoo Tribe of Indians v. Babbitt*, 43 F.3d 1491, 1495 (D.C. Cir. 1995); *De Csepel*, 27 F.4th at 747.

The District Court first concluded that the Tribe's proposed Rule 19 motion to dismiss lacked merit. It then denied the Rule 24 motion to intervene as moot. Because the Tribe will suffer minimal to no prejudice in light of this Court's ruling on the merits, we affirm the denial of the motion to intervene on alternate grounds.

Ordinarily, a court decides a prospective party's motion to intervene before summary judgment. The District Court's analysis proceeded in that sequence, though it decided both motions in the same order, and both are presented in this appeal. Our decision to resolve the merits of the case before deciding the Tribe's motion to intervene in *this* instance heeds the well-settled principle that Rule 19 "calls for a pragmatic decision based on practical considerations in the context of particular litigation." *Kickapoo Tribe*, 43 F.3d at 1495; *cf. Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577–78 (1999) (a court may resolve a case by concluding that it lacks personal jurisdiction before confirming its subject-matter jurisdiction where the former presents an easier question, even though the latter delineates more foundational limits on a federal court's Article III power to decide a case). As the Advisory Committee Notes to the Federal Rules state, the Rule 19 inquiry is meant, above all, to be "practical," and courts should ask: "Would the absentee be adversely affected in a practical sense, and if so, would the prejudice be immediate and serious, or remote and minor?" FED. R. CIV. P. 19 advisory committee's note to 1966 amendment; *see also* 7 CHARLES A. WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PROC. CIV. § 1608 (3d ed. Apr. 2023

update) ("[C]ourts must look to the practical likelihood of prejudice . . . rather than the theoretical possibility that [it] may occur."). This principle underlies the rule itself and is the reason a case may proceed when a non-party's interests are adequately represented by a party.

Here, there is little practical difference between a Rule 19 dismissal on the one hand, and a judgment for the Secretary on the other. Both would keep intact the 2021 Compact, the relief that the Tribe ultimately seeks. In fact, the Tribe did not shy away from expressing its views on the merits of this case; it filed an *amicus* brief explaining the reasons it believes the District Court erred in vacating the Compact, separate and apart from the denial of its motion to intervene. While the ability to file an *amicus* brief is never *per se* "enough to eliminate prejudice," *Wichita & Affiliated Tribes v. Hodel*, 788 F.2d 765, 775 (D.C. Cir. 1986), the Tribe's brief lessens whatever prejudice it would suffer from having this issue resolved favorably in its absence. In reaching this conclusion, we do not discount or take lightly the Tribe's "substantial interest" in its sovereign immunity, *see Republic of Philippines v. Pimentel*, 553 U.S. 851, 868–69 (2008), but we ultimately find that any infringement on that immunity is "remote" and "theoretical" in these unique circumstances. Because Rule 19's guiding "philosophy . . . is to avoid dismissal whenever possible[,]" we find that the practical benefits of deciding this case on the merits outweighs any prejudice to the Tribe. 7 CHARLES A. WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PROC. CIV. § 1604 (3d ed. Apr. 2023 update).

* * *

For these reasons, we vacate the opinion below, and the District Court is directed to enter judgment for the Secretary. We affirm the denial of the Tribe's motion to intervene.

It is so ordered.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5265 **September Term, 2023**

1:21-cv-02192-DLF

Filed On: September 11, 2023

West Flagler Associates, Ltd., a Florida Limited Partnership, doing business as Magic City Casino and Bonita-Fort Myers Corporation, a Florida Corporation, doing business as Bonita Springs Poker Room,

Appellees

v.

Debra A. Haaland, in her official capacity as Secretary of the United States Department of the Interior and United States Department of the Interior,

Appellees

Seminole Tribe of Florida,

Appellant

Consolidated with 22-5022

BEFORE: Srinivasan, Chief Judge; Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

O R D E R

Upon consideration of appellees' petition for rehearing en banc, the response thereto, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5265 **September Term, 2023**

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5265 **September Term, 2023**

1:21-cv-02192-DLF

Filed On: September 28, 2023

West Flagler Associates, Ltd., a Florida Limited Partnership, doing business as Magic City Casino and Bonita-Fort Myers Corporation, a Florida Corporation, doing business as Bonita Springs Poker Room,

Appellees

v.

Debra A. Haaland, in her official capacity as Secretary of the United States Department of the Interior and United States Department of the Interior,

Appellees

Seminole Tribe of Florida,

Appellant

Consolidated with 22-5022

BEFORE: Henderson, Wilkins, and Childs, Circuit Judges

O R D E R

Upon consideration of appellees' motion to stay issuance of the mandate pending the Supreme Court's disposition of a petition for writ of certiorari or, in the alternative, to stay issuance of the mandate for a reasonable time to permit appellees to seek a stay from the Supreme Court, and the opposition thereto, it is

ORDERED that the motion be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk