

IN THE SUPREME COURT OF FLORIDA

---

**CASE NO. SC23-1333**

---

**WEST FLAGLER ASSOCIATES, LTD. et al.,**

*Petitioners,*

**vs.**

**RON D. DeSANTIS, etc., et al.,**

*Respondents.*

---

An original proceeding on Petition for Writ of Quo Warranto

---

**NO CASINOS, INC.'S *AMICUS CURIAE* BRIEF  
IN SUPPORT OF PETITIONERS**

---

Todd K. Norman  
Olivia R. Share  
Nelson Mullins  
390 N. Orange Ave., Suite 1400  
Orlando, Florida 32801  
(407) 839-4200  
todd.norman@nelsonmullins.com  
olivia.share@nelsonmullins.com

Beverly A. Pohl  
Nelson Mullins  
1905 N.W. Corporate Blvd.,  
Suite 310  
Boca Raton, Florida 33431  
(954) 745-5249  
beverly.pohl@nelsonmullins.com

*Counsel for Amicus Curiae, No Casinos, Inc.*

**TABLE OF CONTENTS**

|  | <b>Page</b> |
|--|-------------|
| Table of contents .....  | i           |
| Table of citations .....   | ii          |
| Statement of the interest of the <i>Amicus Curiae</i> .....  | 1           |
| Summary of argument .....  | 2           |
| Argument .....   | 6           |
| Introduction .....   | 6           |
| I. Amendment 3, now article X, section 30, Florida Constitution, represents a landslide victory for opponents of expanded gambling in this State, which faithful public officials cannot lawfully circumvent.....  | 7           |
| II. The Respondents’ actions that would lead to statewide gambling through personal mobile devices are inimical to public policy preferences of their constituents, who spoke loud and clear by passing the amendment entitled, “ <i>Voter Control of Gambling in Florida.</i> ” ..... | 14          |
| A. The exclusivity provisions of the Compact implicitly recognize that the voters have not authorized sports betting in Florida. ....  | 14          |
| B. A reminder of the public policy factors that motivated voters to pass Amendment 3 .....   | 17          |
| Conclusion.....  | 24          |
| Certificate of service .....   | 26          |
| Certificate of compliance .....  | 28          |

**TABLE OF CITATIONS**

| <b>Cases</b>  | <b>Page</b> |
|---|-------------|
| <i>Florida House of Representatives v. Crist</i> ,<br>999 So. 2d 601 (Fla. 2008) .....  | 2, 13, 16   |
| <i>Monterra MF, LLC v. Haaland</i> , No. 1:21-cv-02513-DLF,<br>ECF No. 53 (D.D.C. Nov. 9, 2021).....  | 3           |
| <i>W. Flagler Assocs., Ltd. v. Haaland</i> , No. 1:21-cv-02192-DLF,<br>ECF No. 1-6 (D.D.C. Aug. 16, 2021) .....   | 8           |
| <i>W. Flagler Assocs., Ltd. v. Haaland</i> , No. 1:21-cv-02192-DLF,<br>ECF No. 41 (D.D.C. Nov. 9, 2021).....  | 3           |
| <i>W. Flagler Assocs., Ltd. v. Haaland</i> , No. 23A315,<br>2023 WL 6628931 (Roberts, Circuit Justice, D.C. Cir., Oct.<br>12, 2023).....                | 12          |
| <i>W. Flagler Assocs., Ltd. v. Haaland</i> , 573 F. Supp. 3d 260 (D.D.C.<br>2021) .....   | 10          |
| <i>W. Flagler Assocs., Ltd. v. Haaland</i> , 71 F.4th 1059 (D.C. Cir.<br>2023), <i>reh’g en banc denied</i> , 2023 WL 5985186 (Sept. 11,<br>2023) ..... | 10–12       |

**Constitutional provisions, statutes, and rules**

|                                   |               |
|-----------------------------------|---------------|
| Amendment 3 (2018) .....          | <i>passim</i> |
| Art. II, § 5(b), Fla. Const. .... | 16            |
| Art. X, § 30, Fla. Const.....     | <i>passim</i> |
| Art. X, § 30(a), Fla. Const. .... | 7             |
| Art. X, § 30(c), Fla. Const. .... | 7             |

**TABLE OF CITATIONS**

|  | <b>Page</b> |
|--|-------------|
| Art. XI, § 3, Fla. Const.....  | 4, 15       |
| 25 U.S.C. § 2710(d)(3)(C)(vii).....  | 10          |
| § 285.14, Fla. Stat. ....  | 7           |
| § 285.710(13)(b)7, Fla. Stat. ....   | 7           |
| § 849.04, Fla. Stat. ....  | 21          |
| § 849.142, Fla. Stat.....  | 7           |
| Fla. R. Civ. P. 1.260(d).....  | 4           |
| Fla. R. App. P. 9.210 .....  | 28          |
| Fla. R. App. P. 9.360(c)(2) .....  | 4           |
| Fla. R. App. P. 9.370(b) .....   | 28          |
| Fla. R. App. P. 9.045 .....  | 28          |
| <br><b>Other</b>   |             |
| Ballotpedia, <i>Florida Amendment 3, Voter Approval of Casino Gambling Initiative (2018)</i> ,<br><a href="https://ballotpedia.org/Florida_Amendment_3,_Voter_Approval_of_Casino_Gambling_Initiative_(2018)#Campaign_finance">https://ballotpedia.org/Florida Amendment 3, Voter Approval of Casino Gambling Initiative (2018)#Campaign_finance</a><br>(relevant information included in “Campaigns for and against Amendment 3,” and “Arguments”) ..... | 18          |

**TABLE OF CITATIONS**

**Page**

Daily Mail, *Shocking Toll of Gambling Adverts on Children: Two in Three Teenagers Say They Feel Bombarded by Betting Firms* (Jan. 28, 2018), <https://www.dailymail.co.uk/news/article-5323373/Two-three-teenagers-feel-bombarded-betting-firms.html>. ..... 22

Nat. Cen. for Social Research, *Exploring Online Patterns of Play* (March 9, 2021), [https://www.begambleaware.org/sites/default/files/2021-03/PoP\\_Interim%20Report\\_Short\\_Final.pdf](https://www.begambleaware.org/sites/default/files/2021-03/PoP_Interim%20Report_Short_Final.pdf). ... 20

New York Council on Problem Gambling, *The Dangers of Youth Gambling Addiction*, [https://knowtheodds.org/wp-content/uads/2013/05/NYCPG\\_ebook\\_YouthGambling\\_052114.pdf](https://knowtheodds.org/wp-content/uads/2013/05/NYCPG_ebook_YouthGambling_052114.pdf). ..... 21

NIH, *Who Makes In-Play Bets? Investigating the Demographics, Psychological Characteristics, and Gambling-Related Harms of In-Play Sports Bettors* (June 19, 2023), <https://pubmed.ncbi.nlm.nih.gov/37335776/>..... 20

**STATEMENT OF THE INTEREST OF THE AMICUS CURIAE**

No Casinos, Inc., a Florida nonprofit organization, has a long history in opposing the expansion of gambling in the State of Florida. No Casinos and its predecessor organization have been involved in gambling policy issues since the 1970s, opposing gambling expansion when proposed by citizen initiative in 1978, 1986, 1994, and 2004, and in the legislative and administrative arenas since 2012. No Casinos authored article X, section 30 and launched the citizen initiative effort brought by the sponsor, Voters in Charge, in support of its ballot placement as Amendment 3, which appeared on the 2018 ballot. No Casinos, Inc. and Voters in Charge campaigned for its successful passage by an overwhelming 71% of Florida voters. No Casinos, Inc. authored and supported Amendment 3 in order to explicitly remove the Legislature’s authority to authorize certain forms of gambling, and vest that authority exclusively with Florida voters. In this Court, No Casinos, Inc. has often appeared as *amicus curiae*, providing the perspective of opponents of expanded gambling within this State.

## **SUMMARY OF ARGUMENT**

This Court should grant the Petition for Writ of Quo Warranto. As the author of and most visible advocate for Amendment 3, *amicus curiae*, No Casinos, Inc., proceeds on the premise that sports betting, which is permitted statewide under the Compact and challenged statutes, is within the definition of casino gambling in article X, section 30, Florida Constitution.<sup>1</sup> *Amicus* also agrees that quo warranto is the correct vehicle to allow this Court to decide the question of law presented by the Petition.

Thus, Respondents' conduct leading to a Compact with the Seminole Tribe that expands casino gambling to permit sports betting on mobile devices located anywhere in Florida violates the text, spirit, and public policy behind article X, section 30, of the Florida Constitution. *See Fla. House of Representatives v. Crist*, 999 So., 2d 601 (Fla. 2008) (holding that the Governor exceeded his authority in negotiating and signing a Compact). Indeed, the "hub and spoke" rationale for the Compact and the Implementing Law—"deeming" such gambling to be on Tribal land simply because computer servers

---

<sup>1</sup> See *infra*, pp. 8-9 (quoting 2021 Compact, Part III.CC) (defining "Sports Betting") (Pet. App. 17) (same).

are located there—is so transparently false and outcome driven that it is disrespectful to the Florida Constitution, as the organic and superior law of this State, and disrespectful to the voters who spoke unequivocally in favor of Amendment 3 in 2018. This Court should so hold. Notably, federal defendants in related litigation have taken the position that “under federal law, the location of the bettor determines where the bet is placed,” and that a tribal-state compact cannot, by fiat, change the location of the bettor.<sup>2</sup>

The Compact with the Seminole Tribe of Florida was negotiated, signed, and implemented by the Governor and the legislator Respondents’ predecessors in office, for the stated reason of deriving State revenue from Tribal sports betting revenues.<sup>3</sup> But Respondents’

---

<sup>2</sup> See *Monterra MF, LLC v. Haaland*, No. 1:21-cv-02513-DLF, ECF No. 53, p. 2 (D.D.C. Nov. 9, 2021) (Federal Defs.’ Suppl. Memo.). The Secretary wrote that, “if a bet is placed within Florida but outside the confines of the Tribe’s Indian lands, *the bet occurs outside of Indian lands* and must be authorized by state law, rather than IGRA.” *Id.* (emphasis supplied). And in the *West Flagler* federal litigation, the federal defendants similarly told the district court that they “recognize that when persons in Florida physically located off of the Tribe’s Indian lands place wagers, they are *not doing so on the Tribe’s Indian lands.*” *W. Flagler Assocs. v. Haaland*, No. 1:21-cv-02192-DLF, ECF No. 41, p. 8 (D.D.C. Nov. 9, 2021) (emphasis supplied).

<sup>3</sup> Respondent Paul Renner, as the current Speaker of the House, and Kathleen Passidomo, as the current President of the Senate, are



motivation is not a consideration for this Court. And, the degree to which the parties to that Compact feared and sought to discourage Florida voters from even participating in any decision to expand gambling, despite it being expressly reserved exclusively to the voters by article X, section 30, is best illustrated by the Compact provisions that would cease those payments to the State, should a later citizen initiative expand sports betting in a manner that would end the Tribe's exclusive ability to offer such gambling throughout the State. *Only* the voters, through the citizen initiative process found in article XI, section 3 of the Florida Constitution, have the power to make such decisions. Respondents' willingness to overlook and attempt to contract and then legislate around that power, via a legal fiction that sports betting authorized by the Compact is deemed to take place on Tribal land (wink, wink) should not be countenanced.

Finally, it is worth recalling the public policy reasons that motivated supporters of Amendment 3—such as a history of limits

---

named Respondents in their official capacities only. *Cf.* Fla. R. Civ. P. 1.260(d); Fla. R. App. P. 9.360(c)(2). In contrast, Governor DeSantis did sign the 2021 Compact with the Tribe, but the relief sought by Petitioners is also against the Governor in his official capacity only.

on gambling in Florida, concerns about criminal influences, addiction, and difficulties with regulation of underage betting— still exist, and are no less compelling whether the voters are asked to decide whether gambling should be expanded within the State, or whether Respondents, as public officials, allow it to happen. Among the policy concerns is the fact that under the Compact, gambling is regulated by the Tribe with minimal State input, thereby depriving Florida citizens of the benefits of government accountability for statewide activities the State has allowed by contract.

Just as statutes must be viewed in context, these public policy concerns that led to the passage of Amendment 3 provide context that may explain its extraordinary support, then and now. Respondents' conduct in negotiating and implementing the sports betting provisions of the Compact turned a blind eye not only to an existing provision in the Florida Constitution, but also to compelling policy reasons not to turn Florida into a state defined by pervasive gambling.

## **ARGUMENT**

### **Introduction**

*Amicus curiae*, No Casinos, Inc., with a long history of public advocacy opposing the unrestrained expansion of gambling in this State, and as the author and primary proponent of Amendment 3, leading to article X, section 30, Florida Constitution, fully supports the arguments in the Petition for Quo Warranto filed by West Flagler Associates, Ltd. and others. Although some overlap is inevitable here, we have endeavored not to merely duplicate Petitioners' thorough and persuasive arguments, but to add to the discussion.

Below, we provide additional but related grounds for this Court to exercise its discretionary jurisdiction and grant the relief Petitioners request, striking the challenged statutes and Compact provisions allowing statewide casino gambling via sports betting as unconstitutional.

**I. Amendment 3, now article X, section 30, Florida Constitution, represents a landslide victory for opponents of expanded gambling in this State, which faithful public officials cannot lawfully circumvent.**

Article X, section 30, Florida Constitution (notably entitled *Voter control* of gambling in Florida), is unambiguous:

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.

Art. X, § 30(a), Fla. Const. (emphasis supplied).

Nonetheless, in 2021, the Seminole Tribe of Florida and the State of Florida entered into a compact under the Indian Gaming Regulatory Act (“IGRA”) (*see* Pet. App. 14, ¶ P) that purports to grant the Tribe the exclusive right to operate online sports betting throughout the State of Florida. Seeking to invoke the provision in subsection (c) of article X, section 30, that allows the State to enter into a “gaming compact” for gambling on “tribal lands,” both the Compact and Implementing Law (defined by Petitioners as §§ 285.710(13)(b)(7), 285.14, and 849.142) (Pet. 2; *see also* Pet. App.

79-108) are designed to allow online sports wagers to be made from off-reservation lands, almost anywhere in the State, *so long as the server accepting the wager is located on the Seminole Tribe's land.* This arrangement, which *pretends* the person placing the bet is not in a part of Florida where such gambling is prohibited, is referred to as the “hub and spoke” model, wherein the tribe’s wager-accepting server is the hub, and the spokes are the consumers’ mobile devices located anywhere across the State.<sup>4</sup>

Sports betting is defined in the Compact as follows, and contains the legal fiction that sports betting throughout the State is “deemed” to be on Indian land:

“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

---

<sup>4</sup> See *West Flagler Assocs., Ltd. v. Haaland*, No. 1:21-cv-02192-DLF, ECF No. 1-6 (D.D.C. Aug. 16, 2021) (Aug. 6, 2021 Letter from Bryan Newland, Principal Deputy Sec'y, U.S. Dep't of Interior for Indian Aff. to The Honorable Marcellus W. Osceola, Jr., Chairman, Seminole Tribe of Florida) (discussing the “hub and spoke” model for mobile sports betting, and also advising that the Compact “is considered to have been approved by operation of law, to the extent that it complies with IGRA and existing Federal law.”).

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. . . .*

(Pet. App. 17-18) (2021 Compact, Part III.CC) (emphasis supplied).

When the Compact was deemed approved by the Secretary of the Interior, Petitioners immediately challenged, under the Administrative Procedure Act, whether the Secretary’s approval (*via*

inaction) violated IGRA (see *W. Flagler Assocs. v. Haaland*, 573 F. Supp. 3d 260 (D.D.C. 2021)). Petitioners argued, in pertinent part, that the Compact impermissibly authorizes gambling outside of Indian lands. The District of Columbia District Court agreed, holding that the Compact’s language “deeming” bets placed outside Indian lands to occur on Indian lands impermissibly exceeded the scope of IGRA, and therefore the Secretary was obligated to disapprove it. 573 F. Supp. 3d at 275. But on appeal, the D.C. Circuit Court reversed, and held that the Compact complied with IGRA because it does not *authorize* online sports betting outside of tribal lands, but rather, permissibly *addresses* an activity that is “‘directly related to’ gaming.” See *W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059, 1062 (D.C. Cir. 2023) (citing 25 U.S.C. § 2710(d)(3)(C)(vii), *reh’g en banc denied*, 2023 WL 5985186 (Sept. 11, 2023)).

The D.C. Circuit opinion emphasized that it was dealt a narrow hand, i.e., to decide whether the Secretary of the Interior’s no-action approval of the Compact complied with IGRA. The court explained that its decision should not be read to mean that IGRA provides independent legal authority for gambling activity that occurs outside of Indian lands, where that activity would otherwise violate state law:

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. . . .

71 F.4th at 1062 (emphasis added). Indeed, the D.C. Circuit explained that state law is critical to the question of whether the parties to the Compact could lawfully “deem” sports betting throughout Florida to be occurring on Indian land. Thus, the court explicitly left it to this State’s courts to say what Florida law means, and how that affects the Compact:

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.

*W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th at 1068 (emphasis supplied).

When the decision became final, Petitioners moved for a stay of the mandate by the Supreme Court, indicating an intent to file a petition for certiorari within 45 days. On October 12, 2023, the Chief Justice recalled the D.C. Circuit’s mandate, ordered an expedited response to the motion, and stayed the case pending further order from Justice Roberts or the Supreme Court. *See West Flagler Assocs., Ltd. v. Haaland*, No. 23A315, 2023 WL 6628931 (Roberts, Circuit Justice, D.C. Cir., Oct. 12, 2023) (Order on application for stay).

Based on what was left unresolved in the federal courts, the need for this Court’s quo warranto review is evident: to resolve the

unanswered question of whether the Compact’s “hub and spoke” method of deeming off-reservation wagers to be placed on tribal lands violates Florida’s Constitution and Florida’s public policy. No Casinos agrees with Petitioners that it does. This Court should exercise its discretionary jurisdiction, and grant the writ. *See generally Florida House of Representatives v. Crist*, 999 So. 2d 601, 608 (Fla. 2008) (“the importance and immediacy of the issue justifies our deciding this matter now rather than transferring it for resolution in a declaratory judgment action”).

In *Crist*, this Court found that the Governor violated the separation of powers principle when he negotiated and signed an Indian gaming compact without authorization by the Legislature: “We hold that the Governor does not have the constitutional authority to bind the State to a gaming compact that clearly departs from the State’s public policy by legalizing types of gaming that are illegal everywhere else in the State.” *Id.*, 999 So. 2d at 603. Here, too, Respondents’ actions clearly depart from the State’s public policy—contained in article X, section 30 of the Florida Constitution—that voters, not elected officials, have the exclusive authority to decide whether to expand casino gambling in this State.

**II. The Respondents’ actions that would lead to statewide gambling through personal mobile devices are inimical to public policy preferences of their constituents, who spoke loud and clear by passing the amendment entitled, “Voter Control of Gambling in Florida.”**

**A. The exclusivity provisions of the Compact implicitly recognize that the voters have not authorized sports betting in Florida.**

In 2018, by passing Amendment 3, Florida citizens decided that voters, and not Florida’s Governor or Legislature, have the constitutional and *exclusive* right to decide whether to authorize casino gambling in the State of Florida. It is also significant that an overwhelming 71% of voters ultimately voted in favor of Amendment 3. But the Compact that Respondents have committed to snatches away the voters’ constitutional right to decide whether casino gambling should be expanded in Florida, attempting to construct a legal fiction to get around newly ratified requirements for expanding gambling in the State.

Petitioners are correct that the Compact and Implementing Law improperly “seek to circumvent the will of the People” by stripping citizens of their right to vote on the expansion of sports betting in Florida. *See* Pet. 33. While supporting that view, *Amicus*, No Casinos, also brings to this Court’s attention that these laws do not just

attempt to *circumvent* the article X, section 30 requirements, they provide a *de facto* admission that this type of gambling must be approved by voters.

In return for the Legislature’s authorization of the Tribe’s statewide exclusivity for sports betting, the Compact requires the Tribe to pay the State certain set revenue share percentages of its sports betting Net Win.<sup>5</sup> (See Pet. App. 49–57) (2021 Compact, Part XI.C). However, Part XII.A.3.(a) provides that if the Tribe’s statewide exclusivity of sports betting under the Constitution “*is amended, without action by the Legislature, by an initiative pursuant to Article XI, § 3*” (*i.e.* by a citizens’ initiative petition) then the Tribe’s sports betting revenue share will “exclud[e] Net Win from Sports Betting.” (Pet. App. 59). By recognizing that it is the voters, not the Legislature, who could torpedo the Tribe’s exclusivity guarantee under the Compact, the Respondents were forced to create a legal fiction to support the provisions in the Compact that “deem” sports betting to be on Indian lands. The fact that elected officials would contract a

---

<sup>5</sup> “Net Win” is defined as the total receipts from the play of all Covered Games less any prize payouts and free play or promotional credits issued by the Tribe. (See Pet. App. 15) (Compact, Part III, ¶ T).

work-around the Florida Constitution, rather than respect what article X, section 30 requires, is inimical to their duty and oath to “support, protect and defend” the Constitution of the United States “and of the State of Florida.” See Art. II, § 5(b), Fla. Const. (Oath of Office). The Compact and statutes that perpetuate and endorse the notion that “Indian lands” exist wherever a mobile phone with a gambling app exists is a blatant attempt to legislate in an area that is, in fact, outside the authority of the Governor or the Legislature. This Court has once shut down such meddling, when the Governor overstepped and violated the separation of powers principle, see *Crist*, 999 So. 2d 601, *supra*, and should do so again here.

No Florida Court has ever recognized the “hub and spoke” model that Respondents posit. Nor should this Court. If accepted, that fiction would set precedent dramatically extending the Legislature’s authority to decide casino gambling issues in Florida and eliminate voters’ vested authority under this State’s Constitution. By extension, it would threaten to upend the voters’ control of any casino gambling initiatives, opening the door to full online casino gambling, if cleverly drafted by the Legislature to fit under the “hub and spoke” model. And despite Respondents’ attempt to argue that off-

reservation sports betting is gambling on Tribal lands under their “hub and spoke” model, the exclusivity provisions under the Compact show the Legislature’s cards on where it truly intends sports betting to take place. That is, the Tribe is given *statewide* exclusivity for sports betting; not just exclusivity on tribal lands.

This Court should squarely hold that what has occurred, and what might occur in the future to expand gambling further based on a legal fiction, does and would violate article X, section 30.

**B. A reminder of the public policy factors that motivated voters to pass Amendment 3.**

The conclusions provided herein, that voters—not the Legislature—“shall” have the exclusive right to decide whether to authorize casino gambling under amendment X, section 30, are not new or novel. They are consistent with the discourse and issues litigated in the court of public opinion in passing Amendment 3. In 2018, multi-million-dollar campaign efforts by the opposition to Amendment 3 provided the voters considerable context about how the amendment would limit the Legislature’s authority on casino

gambling and the effect that would have as to sports gambling.<sup>6</sup> The intent of the voters in passing Amendment 3 was informed by these campaign statements which create a record of what the voters understood the amendment would do: give them control of casino gambling in Florida, including sports betting. And despite heavy opposition campaigns by sports gambling and pari-mutuel interests, Florida's citizens were motivated by compelling public policy factors in passing Amendment 3.

It is nothing new that gambling, with certain exceptions, is against Florida's public policy. This is codified in this State's laws, holding gambling, with certain exceptions, to be a crime in Florida. *See generally*, Fla. Stat. Ch. 849; *see also*, *In re Titan Cruise Lines*, 353 B.R. 919, 924 (M.D. Fla. 2006) ("The State of Florida has a stringent public policy against the enforcement of gambling debts that is well established in the decisional law of its courts. Numerous decisions of Florida Appellate Courts have held that a gambling

---

<sup>6</sup> See Ballotpedia, *Florida Amendment 3, Voter Approval of Casino Gambling Initiative* (2018), [https://ballotpedia.org/Florida\\_Amendment\\_3,\\_Voter\\_Approval\\_of\\_Casino\\_Gambling\\_Initiative\\_\(2018\)#Campaign\\_finance](https://ballotpedia.org/Florida_Amendment_3,_Voter_Approval_of_Casino_Gambling_Initiative_(2018)#Campaign_finance) (relevant information included in "Campaigns for and against Amendment 3," and "Arguments").

obligation, even if valid in the state where it was created, cannot be enforced in Florida because it would be against the established public policy of this state.”).

First, Florida is not the only state that gives voters the authority to approve—or disapprove—the expansion of gambling. In passing article X, section 30, Florida’s voters followed a pattern of other states across America that provide voters with authority to decide whether to expand gambling. When Amendment 3 was approved in 2018, 26 other states across America where 60.5% of the US population resides, required voter approval to expand certain forms of gambling.<sup>7</sup> These requirements for voter approval are likely rooted in a clear understanding that gambling presents unique social consequences that voters should have the opportunity to weigh and decide.

Gambling presents unique social consequences, especially here, where casino gambling would be available to anyone in Florida with a cell phone or internet access. These include the risk of official or private influence; increased gambling addiction; the difficulty of

---

<sup>7</sup> Unpublished data compiled by No Casinos, Inc. when Amendment 3 was on the ballot in 2018.



policing underage participation of online sports betting; and the Tribe, rather than the State, having the power to regulate and enforce statewide online sports betting under the Compact and Implementing Law.

Indeed, one of the most influential studies of online gambling in the world found that 86% of gross online gambling profits were extracted from 5% of gamblers: those already addicted or at serious risk of addiction.<sup>8</sup> Further, the type of sports betting proposed under the Compact and Implementing law is not akin to the gambling activity that is allowed in Florida under existing exceptions to the more generalized prohibitions. It authorizes not only sports betting in the traditional sense of wagers on outcomes and margins of victory of sporting events, but also includes new forms of “in-play” betting, which a growing body of government and scholarly studies document is highly addictive, particularly for boys and young men.<sup>9</sup> According

---

<sup>8</sup> See Nat. Cen. for Social Research, *Exploring Online Patterns of Play* (March 9, 2021), [https://www.begambleaware.org/sites/default/files/2021-03/PoP\\_Interim%20Report\\_Short\\_Final.pdf](https://www.begambleaware.org/sites/default/files/2021-03/PoP_Interim%20Report_Short_Final.pdf).

<sup>9</sup> See NIH, *Who Makes In-Play Bets? Investigating the Demographics, Psychological Characteristics, and Gambling-Related Harms of In-Play Sports Bettors* (June 19, 2023), <https://pubmed.ncbi.nlm.nih.gov/37335776/>.

to a June 2023 study by the National Institute of Health, “[i]n-play sports bettors reported higher problem gambling severity, endorsed greater gambling-related harms across several domains, and reported greater mental health and substance use difficulties compared to single-event and traditional sports bettors.” *Id.* The decision to authorize mobile sports betting will impact the citizens of Florida, which augments the importance for voters to retain the exclusive right to decide this issue.

Studies consistently show that the younger people start betting, the more likely they are to become addicted to gambling.<sup>10</sup> In Florida, permitting minors to gamble is a criminal offense punishable of a felony of the third degree. *See* § 849.04, Fla. Stat. Currently, because only in-person casino gambling is permitted in Florida, enforcement of the laws designed to exclude minors is feasible. However, if sports betting were to be allowed online, studies have shown that enforcement of age-based restrictions is far more difficult. For

---

<sup>10</sup> *See* New York Council on Problem Gambling, *The Dangers of Youth Gambling Addiction*, [https://knowtheodds.org/wp-content/uploads/2013/05/NYCPG\\_ebook\\_YouthGambling\\_052114.pdf](https://knowtheodds.org/wp-content/uploads/2013/05/NYCPG_ebook_YouthGambling_052114.pdf).

example, in the United Kingdom, where online sports betting is currently legal for ages 18 and over, researchers have found that more than half of 16-year-olds have gambling apps on their smartphones—two years before they are legally allowed to place bets.<sup>11</sup> The social risks associated with this unprecedented expansion of gambling in our State are a powerful policy reason not to allow an end-run around the Florida Constitution; the people reserved the expansion of gambling to themselves, and this Court should ensure that that right is protected.

Lastly, tribal gambling—which would include online sports betting under the Compact and Implementing Law—is not regulated by the State, only by the Tribe’s own Gaming Commission. See Compact, Part III (“The Tribe, the Commission,<sup>12</sup> and the SCA,<sup>13</sup> to the

---

<sup>11</sup> See Daily Mail, *Shocking Toll of Gambling Adverts on Children: Two in Three Teenagers Say They Feel Bombarded by Betting Firms* (Jan. 28, 2018), <https://www.dailymail.co.uk/news/article-5323373/Two-three-teenagers-feel-bombarded-betting-firms.html>.

<sup>12</sup> As defined in Part III of the Compact (Pet. App. 7), “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 the Compact.

<sup>13</sup> As defined in Part III of the Compact (Pet. App. 23, ¶ EE), “SCA” means the state agency designated by the Florida Legislature that

extent authorized by the Compact, shall be responsible for regulating activities pursuant to the Compact.”). Under the Compact, the Tribe’s Commission is the regulator of the Facilities and the State’s SCA is provided only certain limited rights to monitor the Tribe’s conduct. *Id.* at Part VIII (Titled: State Monitoring of Compact) (Pet. App. 41). Specifically, the Compact provides that the SCA is permitted to perform *one* annual review of the Tribe’s compliance audit for sports betting. *Id.* at Part VIII(C)(3)(c) (Pet. App. 44).

In effect, this means that wherever a citizen engages in online sports betting on their mobile phone, and regardless of how far that might be from Tribal land, the Tribe will still be the governing authority to regulate and enforce that citizen’s conduct. Such a dramatic step, affecting due process rights and general governmental accountability principles, would be a valid consideration for voters under article X, section 30; but Respondents have thrust the situation on them, impermissibly without voter authorization. It doesn’t feel right for them to have done so, and it is not right. This

---

has the authority to carry out the State’s oversight responsibilities under this Compact.

Court should grant the writ, and declare the challenged provisions of the Compact and the Implementing Law to be unconstitutional.

### **CONCLUSION**

Petitioners are correct: Allowing mobile sports betting throughout the State, based on a legal fiction that Tribal servers render the entire State to be Indian land for mobile gambling purposes, undermines this State's public policy, as expressed in article X, section 30, Florida Constitution, to disallow such gambling in Florida absent approval by citizen initiative. This Court should act to preclude the unconstitutional Compact and its implementing statutes from taking effect. Until and unless the *voters* authorize state-wide sports betting, this Court has the discretionary power and, we think, the *duty* to invalidate the Respondents' actions in approving the sports betting provisions of the Compact and in passing implementing statutes. This Court should grant the writ.

Respectfully submitted,

Todd K. Norman  
Florida Bar No. 0062154  
Olivia R. Share  
Florida Bar No. 1010866  
Nelson Mullins  
390 N. Orange Ave., Suite 1400  
Orlando, Florida 32801  
(407) 839-4200  
todd.norman@nelsonmullins.com  
olivia.share@nelsonmullins.com

Beverly A. Pohl  
Florida Bar No. 907250  
Nelson Mullins  
1905 N.W. Corporate Blvd.,  
Suite 310  
Boca Raton, Florida 33431  
(954) 745-5249  
beverly.pohl@nelsonmullins.com

By:           /s/ Beverly A. Pohl            
Beverly A. Pohl

Counsel for *Amicus Curiae*,  
No Casinos, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Brief in Support of Petitioners has been filed through the Florida Statewide e-filing Portal, which will serve all counsel of record and other counsel named below, by e-mail service, this 16th day of October 2023.

Raquel A. Rodriguez  
Sammy Epelbaum  
Hala Sandridge  
Chance Lyman  
Buchanan Ingersoll &  
Rooney PC  
2 S. Biscayne Blvd., Ste. 1500  
Miami, FL 33131  
(305) 347-4080  
raquel.rodriguez@bipc.com  
sammy.epelbaum@bipc.com  
hala.sandridge@bipc.com  
chance.lyman@bipc.com  
Counsel for Petitioners

Christopher J. Baum  
Florida Bar No. 1007882  
Senior Deputy Solicitor  
General  
Office of the Attorney General  
1 SE 3rd Ave., Suite 900  
Miami, FL 33131  
(978) 460-1314  
christopher.baum@  
myfloridalegal.com  
jenna.hodges@  
myfloridalegal.com  
Counsel for Respondents

Ryan Newman  
General Counsel, Executive  
Office of the Governor  
400 S. Monroe St.  
Tallahassee, FL 32399  
ryan.newman@  
eog.myflorida.com  
Counsel for the Governor

David Axelman  
General Counsel  
Office of the General Counsel  
Florida House of  
Representatives  
317 The Capitol # 402  
Tallahassee, FL 32399  
david.axelman@  
myfloridahouse.gov  
Counsel for Respondent Paul  
Renner, as Speaker

Carlos Rey  
General Counsel  
Florida Senate  
302 The Capitol  
404 S. Monroe St.  
Tallahassee, FL 32399  
rey.carlos@flsenate.gov  
Counsel for Kathleen Passimodo,  
as President of the Senate

Ashley Moody  
Attorney General  
Office of the Attorney General  
PL-01 The Capitol  
Tallahassee, FL 32399  
oag.civil.eserve@  
myflorida.legal.com

Todd K. Norman  
Olivia R. Share  
Nelson Mullins  
390 N. Orange Ave., Suite 1400  
Orlando, Florida 32801  
(407) 839-4200  
todd.norman@  
nelsonmullins.com  
olivia.share@nelsonmullins.com  
katherine.reynolds@  
nelsonmullins.com  
Counsel for No Casinos, Inc.

Beverly A. Pohl  
Nelson Mullins  
1905 NW Corporate Blvd.,  
Suite 310  
Boca Raton, Florida 33431  
(954) 745-5249  
beverly.pohl@  
nelsonmullins.com  
bpohllawyer@icloud.com  
Counsel for No Casinos, Inc.

/s/ Beverly A. Pohl

Beverly A. Pohl



**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this amicus curiae brief complies with the font and word count limit requirements of Fla. R. App. P. 9.370(b) and Fla. R. App. P. 9.210, in that the brief contains 4,888 words (fewer than 5,000) (excluding those sections that need not be counted, per Fla. R. App. P. 9.045), and is prepared in Bookman Old Style 14-point font.

*/s/ Beverly A. Pohl*

BEVERLY A. POHL