THE SEMINOLE TRIBE’S LEGAL BATTLE FOR ONLINE SPORTS BETTING RIGHTS IN FLORIDA

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I. INTRODUCTION

In 2021, the Seminole Tribe of Florida (“Seminole Tribe”) and the State of Florida formed and entered into a gaming compact, granting the Seminole Tribe nearly exclusive rights to operate specified Class III games on its sovereign land within Florida’s geographic boundaries. A key provision of the Gaming Compact of 2021 (“2021 Compact”) allowed the Seminole Tribe to offer sports betting to anyone “within the state using a mobile or other electronic device.” Sports bettors do not have to be on the Seminole land when placing a wager, as long as the computer servers or other devices controlling betting operations are on said land. Although the 2021 Compact granted increased gaming power to the Seminole Tribe, received support from Florida, and approval from the United States Department of the Interior, a district court found it violated IGRA.

Multiple non-tribal casino operators sued Secretary of the Interior Deb Haaland for improperly authorizing the 2021 Compact. The non-tribal casino operators argued that the 2021 Compact directly violated the Indian Gaming Regulatory Act (“IGRA”). IGRA requires Indian tribes to enter into gaming compacts with states where their territory is located for the operation of Class III gaming. Sports betting is a Class III gaming activity which falls under IGRA’s

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2. Id.
3. Id.
6. Id.
compact provision. The non-tribal casino operators sought summary judgment from the district court to invalidate the 2021 Compact and prohibit the Seminole Tribe from accepting sports bets from bettors outside tribal land. The non-tribal casino operators argued that IGRA only allows a gaming compact to govern Class III activities on tribal land, not on land controlled solely by the state. Because the 2021 Compact grants the Seminole Tribe online sports betting rights throughout Florida, it was Secretary Haaland’s duty to reject its terms. The district court ruled in favor of the non-tribal casino operators and the federal government appealed the decision. The Seminole Tribe itself was not a party to the lawsuit because the non-casino operators did not want the Seminole Tribe to assert sovereign immunity and have the case dismissed. Despite the Seminole Tribe’s efforts to join as an indispensable party, the district court ruled the federal government could adequately represent Seminole interests. The non-tribal casino operators and federal government have submitted briefs and are preparing their respective appellate arguments.

This article examines the Seminole Tribe’s 2021 Compact and its relation to IGRA and argues that the federal government will likely lose on appeal. The first section of this article focuses on the history of the Seminole Tribe to provide overall context. The second section discusses the Seminole Tribe’s experience in the gaming industry and how it became one of the largest casino operators in the world. The third section focuses on the 2021 Compact and the specific provisions at issue in the lawsuit. The fourth section addresses the lawsuit itself and each side’s competing legal arguments both at the district court level and on appeal. The final section covers potential courses of action for the Seminole Tribe moving forward if the federal government loses on appeal.

II. HISTORY OF THE SEMINOLE TRIBE OF FLORIDA

The Tribes originated through a mixing and blending of towns, cultures, and lifestyles in the southeastern United States. In the 1500s, the Spanish conquered the Seminole Tribe’s region with use of brutal force, stripping tribal

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8 25 U.S.C. § 2703(8) (“The term ‘class III gaming’ means all forms of gaming that are not class I gaming or class II gaming.”).
9 W. Flagler Assocs., 573 F. Supp. 3d at 263.
10 Id. at 273.
11 Id.
12 Id. at 263.
13 Id. at 266.
14 W. Flagler Assocs., 573 F. Supp. 3d at 269.
ancestors of life, culture, and sovereignty. The natives—who the Spanish could not control—were called “cimarrones” and later “Seminoles” by the English and Americans. Leading up to the 19th century, the Seminoles had established towns, farms, and pastureland across Northern and Central Florida. As these small communities began to thrive, indigenous people from southern states like Georgia and Alabama migrated to Florida and helped establish trade relations with the Spanish colonizers. Together, the amalgamation of people from different groups and tribes developed a unique economy and culture in the Florida region.

However, President Andrew Jackson, noticing the farming and trade success, viewed Florida as ripe for the taking and invaded Seminole land in the early 19th century. From that point on, the United States government consistently attempted to drive Seminoles off of their land and remove them to Indian Territory in Oklahoma. Fighting broke out after many Seminoles decided not to follow the United States government’s directions, resulting in mass casualties of natives. Those who were captured or surrendered were sent to Indian Territory during the Trail of Tears. A few hundred settlers evaded capture, staying in Florida and forming the communities that would eventually become the Seminole Tribe of modern day.

In the late 1950s, the United States “threatened to eliminate the Seminole reservations in a policy called Termination.” However, the Seminoles successfully resisted the attack by adopting a democratic and constitutional form of government. The new government structure united the different Seminole communities living on the various reservations across the state, and established the “federally recognized Seminole Tribe of Florida.”

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17 Id.
18 Id.
19 Id.
21 William S. Pollitzer et al., The Seminole Indians of Florida: Morphology and Serology, 32 AM. J. PHYS. ANTHROP. 65.
22 See generally id.
23 Id. at 66;
25 Id.
26 Id.
27 Frank & Morris, supra note 20.
28 Seminole History, supra note 23.
29 Id.
The Seminole Tribe of Florida maintained sovereignty with the move eventually leading to a stronger tribal economy. The Seminole Tribe began selling tobacco products in the 1970s and benefitted from the revenue and excise tax collected. Even today, the Seminole Tribe utilizes the substantial revenue it receives from tobacco sales to improve living conditions for members. Legal success against challenges related to the establishment of gaming on tribal land by the Seminole Tribe paved the way for a multitude of other tribes to operate gaming as well. Today, a majority of Seminole members “are afforded modern housing and health care,” and the Seminole Tribe is dedicated to “spending over $1 million each year on education.”

III. THE SEMINOLE TRIBE OF FLORIDA’S RISE IN THE GAMING INDUSTRY

A. The Seminole Tribe’s Leadership Role in the Development of Tribal Gaming

The Seminole Tribe’s role as a powerful player in the gaming industry dates back to the 1970s when it, along with various other tribes around the country, opened bingo halls as a way to generate revenue. The native governments’ independent gaming operations raised concern among the states, including California and Florida, who believed tribes did not possess the authority to “conduct gaming independently of state regulation.” The Supreme Court took up the issue of tribal gaming authority in *California v. Cabazon Band of Mission Indians*, siding with the tribes by ruling they had inherent authority to regulate their own gaming operations, as long as the state they are located in had legalized some form of gaming.

The holding was a major win for tribes and their overall sovereignty and ability to develop industries to maintain economic self-sufficiency. *Cabazon* prompted discussions in Congress regarding the best way to regulate Indian gaming moving forward as tribal sovereignty was limited primarily by federal,
not state, regulations. The Johnson Act statutorily prohibited the manufacturing, sale, and usage of slot machines or any other machine related to gambling “within Indian Country.” The Cabazon ruling forced the federal government to reevaluate the strict limits on tribal gaming, and the debate culminated in 1988 with the passage of IGRA, which is the current framework used by tribes when constructing and establishing gaming operations on their land.

Since 1988, the gaming industry on tribal lands has exploded, despite high levels of hesitation from a majority tribes prior to 2000. By the turn of the century, “fears of the negative effects on the Indian way of life [with regard to gaming] were no longer as apparent.” Of the $63.3 billion wagered in the United States at casinos, lotteries, racetracks, and bingo halls, $12.8 billion was via Indian casinos. This growth only continued in 2005, where Indian gaming increased at a rate three times higher than non-tribal gaming in the United States. The growth led to decreased rates of poverty and displacement among participating tribes and increased revenue tribes use to fund enrichment programs in their communities. From 2005 to 2019, gross gaming revenue for native tribes rose from $22.6 billion to $34.6 billion, a real value increase of 53%. However, like most industries, Indian gaming experienced a massive reduction in gross revenue in 2020 due to the COVID-19 pandemic. Gross gaming revenue dropped back down to $27.8 billion, which is approximately the same as 2012. However, in 2021, Tribal gaming revenue reached approximately $39 billion, surpassing pre-pandemic numbers. The speed and magnitude of the economic recovery for tribal gaming demonstrates the prominent role tribes play in the United States gaming industry. Furthermore, the immense revenue from gaming highlights tribal reliance on gaming revenue to maintain their sovereignty. The Seminole Tribe in particular has risen to the top of the gaming industry.

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37 National Indian Gaming History, supra note 34.
41 Id.
42 Id.
43 Id.
44 Id.
46 Id.
47 Id.
industry and used earnings to provide increased resources and opportunities for its people.49

The Seminole Tribe’s journey to prominence in the global gaming industry began in 1979 when its first bingo hall opened.50 After only one year of operation, the hall’s revenue hit $1 million per month, attracting attention from the local Florida government.51 Broward County’s Sheriff, Robert Butterworth, threatened to shut down the bingo hall in an attempt to regulate and limit its operational capabilities.52 He argued that enforcement of Florida statutes permitting bingo games was criminal and prohibitory in nature, allowing him to arrest violators.53 The Seminole Tribe countered his antagonistic position in a lawsuit arguing the statutes were civil and regulatory in nature, and therefore Florida governmental entities did not possess the jurisdictional authority to criminally enforce the statutes on tribal land.54 The United States Court of Appeals agreed with the Seminole Tribe and held that the law under which Florida sought to regulate bingo on Indian land was of civil, not criminal, nature.55 Therefore, state and local governments could not arrest and prosecute Seminole members for their participation in the operation of the bingo hall.56 Furthermore, the ruling furthered the standard under Public Law 280 that state jurisdictions do not have general civil regulatory power over tribes.57 Public Law 280 limits state jurisdiction to criminal laws that are prohibitory, as opposed to regulatory, to manifest greater tribal sovereignty.58 The Seminole Tribe’s victory over Sheriff Butterworth expanded tribal sovereignty and set important precedent for the Supreme Court in California v. Cabazon Band of Mission Indians.59 The passage of IGRA began a new era of gaming for the Seminole Tribe and was another steppingstone towards establishing the gaming powerhouse it is today.

51 Id. at 264.
52 Id.
54 Id. at 311–12.
55 Id.
56 Id.
57 Id. at 313; see Bryan v. Itasca County, 426 U.S. 373, 387 (1976); see also William Wood, The (Potential) Legal History of Indian Gaming, 63 ARIZ. L. REV. 969, 1015 (2021).
B. Seminole Gaming Under IGRA

IGRA statutorily solidified the United States government’s position on the proper level of autonomy tribes enjoy with regard to gaming. The Seminole Tribe utilized IGRA’s expansion of its rights to diversify the types of games offered to tribal and non-tribal patrons alike. The provisions of the Act split the various types of gaming offered to the public into three distinct sections each with different implementation requirements.

1. Different Classes of Gaming Under IGRA and Their Requirements

IGRA divides gaming for Indian tribes into three classes that each establish different rights and provisions. Class I games are those of social and traditional nature, played during tribal ceremonies and celebrations. Examples include casual, home poker games and wagering on horse races on tribal holidays. IGRA grants tribes the exclusive right to regulate Class I gaming. States do not have the right to supersede tribal laws relating to Class I gaming with their own, more restrictive requirements.

Class II gaming covers bingo, lotteries, and other games similar to bingo. These types of games are often run by the tribes for a commercial benefit at a location somewhere on tribal land. Class II gaming also include card games that do not have a banker, like poker. These games must “be played in conformity with any state laws or regulations regarding hours of operation and pot limits.”

There are two primary requirements the tribes must follow to operate Class II gaming. First, the state in which Class II gaming is located must permit “such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law).” Second, the Indian tribe’s governing body must adopt an ordinance or resolution for the Class II activities it wishes to operate.

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60 Fletcher, supra note 53 at 269.
63 Id.
64 Id. at 775; see 25 U.S.C. § 2710(a)(1).
67 Cox, supra note 62.
68 Id.
69 Id.
The ordinance or resolution will be approved by the “Chairman,” so long as the state allows such forms of gaming by any of its residents. The Chairman referred to by IGRA heads the National Indian Gaming Commission (“NIGC”), a body established by IGRA to regulate and support tribal gaming in their generation of gaming revenue. The NIGC oversees Class II gaming, giving the states no role in the process aside from determining the legality of gaming as a whole in its geographic boundaries. The other caveat for Class II gaming requires tribes to use net revenues exclusively for the funding of programs and government operations designed to uplift the community.

The final group of gaming, Class III, encompasses “all forms of gaming that are not Class I gaming or Class II gaming.” These include banked card games found at casinos, slot machines, electronic games of chance, and parimutuel wagering. Sports betting is also considered a Class III game under IGRA. The requirements for a tribe seeking to offer Class III gaming include the two provisions needed for Class II gaming plus the implementation of a “Tribal-State compact entered into by the Indian tribe and the State.”

2. Tribal-State Compact Conditions

IGRA explicitly outlines the steps tribes and states must go through to comply with the compact provisions for Class III gaming. A tribe with jurisdiction over the lands upon which a Class III gaming operation is to be conducted must request the state negotiate the terms of the compact governing the activities. After receiving the request, the state will negotiate with the tribe in good faith and construct provisions agreed upon by both parties. Once the compact is developed and signed off by the tribe and state, the Secretary of the Interior is required to approve the provisions and publish it in the Federal Register. Only after its publication shall the compact be considered in effect and enforceable under state and tribal law.

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78 Cox, supra note 62 at 775.
81 Id.
83 Id.
85 Id.
As for the explicit provisions of the compact, IGRA highlights certain areas in which the parties can negotiate.\(^{86}\) The tribe and state may stipulate which civil or criminal laws are applicable to the enforcement of gaming regulation, and which party has jurisdictional ability to enforce said laws.\(^{87}\) This way, both sides do not become adversarial and clash over the proper processes required for the uniform enforcement of gaming.

IGRA further provides the right for states and tribes to determine a revenue sharing system based on gross gaming revenue.\(^{88}\) A tribe may be required to pay the state to account for costs of regulating gaming as a way to ensure both parties benefit from gaming on tribal land.\(^{89}\) After the passage of IGRA in 1988, the Seminole Tribe used the new law to grow its gaming empire but was met with resistance from Florida.\(^{90}\)

C. The Seminole Tribe’s Fight to Conduct Compact Negotiations with Florida

Although IGRA statutorily bound state governors to conduct good faith negotiations for Class III gaming compacts with tribal leaders, Florida ignored IGRA and refused to participate.\(^{91}\) The Seminole Tribe sued Florida and its governor for violating the good faith requirement of IGRA with regard to certain forms of casino gaming, like blackjack.\(^{92}\) IGRA granted tribes the ability to sue states who acted in bad faith, and the Seminoles took full advantage of the provision as the case made it to the Supreme Court.\(^{93}\) The Court held Congress went beyond its power in allowing tribes to sue states that did not consent to the lawsuit.\(^{94}\) The “Indian Commerce Clause does not grant Congress” the power to strip the states of their sovereign immunity and therefore Section 2710(d)(7) of IGRA was rendered unconstitutional.\(^{95}\) With the path toward obtaining Class III gaming looking bleak, the Seminole Tribe was forced to explore alternative options in an attempt to work around the Supreme Court’s ruling.\(^{96}\)

With no Class III compact negotiation recourse, the Seminole Tribe, possessing Class II electronic bingo machines, began enhancing them with new technology to blur the line between Class II and Class III gaming.\(^{97}\) The move caused gross gaming revenue to continually increase and caught the eye of the

\(^{89}\) Id.
\(^{91}\) Id. at 51.
\(^{92}\) Id.
\(^{93}\) Id.; see 25 U.S.C. § 2710(d)(7).
\(^{94}\) Id. at 47.
\(^{95}\) Id.
\(^{96}\) Fletcher, supra note 53, at 269–71.
\(^{97}\) Id. at 272.
Florida government, who sued in federal court to enjoin the machines.\(^98\) However, the Seminole Tribe was able to dismiss the suit through its sovereign immunity powers.\(^99\) Legal precedent holds that a suit against an Indian tribe is “barred unless the tribe clearly waived its immunity or Congress expressly abrogated that immunity by authorizing the suit.”\(^100\) Neither condition occurred, allowing the Seminole Tribe to legally dismiss the lawsuit.\(^101\) Florida’s lack of ability to assert regulatory power over the enhanced electronic machines led to compact negotiation attempts with the Seminole Tribe for the next fifteen years.\(^102\) In November 2007, Florida Governor Charlie Crist successfully formed a compact with the Seminole Tribe that expanded the types of games offered at casinos.\(^103\) The Florida legislature refused to ratify the compact because the Class III games it permitted, like blackjack and baccarat, were illegal under state law.\(^104\) The Supreme Court of Florida sided with the legislature, holding the governor did not have the right to bind Florida to the compact.\(^105\) The ruling set an important requirement in that the state’s legislature must voice approval for the compact before its ratification.\(^106\)

With yet another hurdle in its path towards Class III gaming rights, the Seminole Tribe went back to the drawing board and resumed negotiations with Florida.\(^107\) After years of deliberation, the Seminole Tribe was able to convince Florida of the joint monetary benefits that would likely accompany a compact.\(^108\) In 2010, the two parties agreed to the compact’s terms and the document received approval from the Secretary of the Interior.\(^109\) The 2010 Gaming Compact not only granted the Seminole Tribe the Class III gaming rights allotted under IGRA but also set the standard for future compact negotiations with Florida.\(^110\)

\(^95\) Fla. v. Seminole Tribe of Fla., 181 F.3d 1237, 1240 (11th Cir. 1999).

\(^96\) Id.

\(^97\) Id. at 1241; see Kiowa Tribe v. Mfg. Techs., Inc., 523 U.S. 751 (1998).

\(^98\) Seminole Tribe of Fla., 181 F.3d at 1242.

\(^99\) Fla. H.R. v. Crist, 999 So. 2d 601, 605 (Fla. 2008).

\(^100\) Id. at 603.

\(^101\) Id.

\(^102\) Id.

\(^103\) Id. at 616.


\(^105\) Id. at 2.

\(^106\) Id. at 48.

\(^110\) Id. at 3940.
IV. THE 2021 GAMING COMPACT AND RESULTING LEGAL CHALLENGES

A. Exclusivity and Revenue Share Provisions

In 2021, the parties reached an agreement for an updated compact to expand the Seminole Tribe’s Class III gaming rights and rework the percentage of gaming revenue owed to the state. The 2021 Compact provides the Seminole 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.” Under the 2021 Compact, covered games include slot machines, raffles and drawings, table games, fantasy sports contests, and sports betting. The reason Florida granted near exclusivity of Class III gaming to the Seminole Tribe likely stems from the large percentage of revenue it takes from the Seminole Tribe’s gaming operations.

The 2021 Compact divides revenue shares into three different categories: (1) net winnings from slots, raffles, and drawings; (2) net winnings from table games; and (3) net winnings from sports betting. The payment structure follows an incremental tier system where, as the Seminole Tribe’s revenue increases, the percentage paid does as well. For example, with regard to table games, net revenue from $0–1B requires a 15% payment to the state, $1–1.5B requires a 17.5% payment, 22.5% for $1.5–2B, and 25% for everything above $2B. The agreement guarantees Florida at least $2.5B for the first five years of the 2021 Compact’s life. The 2021 Compact included new provisions relating to sports betting rights not present in the 2010 Compact. Prior to the 2021 Compact, nobody in Florida had sports betting rights.

112 Id. at 54.
113 Id. at 4.
114 See id. at 45–54.
116 See id.
117 Id.
118 Id.
119 See 2021 Compact, supra note 111 at 18.
120 See CBS Sports Staff, U.S. Sports Betting: Here’s Where All Fifty States Currently Stand on Legalizing Online Sports Gambling Sites, CBS SPORTS (Aug. 16, 2023, 1:53...
B. The Seminole Tribe’s Sports Betting Rights Under the 2021 Compact

1. Overview of the Sports Betting Industry

The 2021 Compact allowed the Seminole Tribe to offer odds and accept wagers on sport or athletic events, expanding the scope of its Class III gaming rights. The decision to include sports betting as a covered game was likely a reflection of the growth of sports betting as an industry in the United States. The sports betting industry now generates billions of dollars in revenue and supplies states with tax funding.

Wagering on sports has a long and turbulent history in the United States. It was often viewed in a negative light due to ties with organized crime and, prior to 1992, only Nevada had legal sports gambling. In 1992, President George H.W. Bush signed the Professional and Amateur Sports Protection Act (“PASPA”), prohibiting sports betting in states that did not allow it at the time. Certain states objected to PASPA and viewed it as an unconstitutional restriction of their sovereignty. New Jersey, a state looking to legalize sports betting, filed a federal lawsuit against the NCAA, claiming PASPA violated the Tenth Amendment. The Supreme Court granted certiorari over the case and ruled in favor of New Jersey. The Court stated PASPA controls the way in which state governments are forced to regulate their citizens and is therefore unconstitutional. Congress has the ability to “regulate sports betting directly, but if it elects not to do so, each State is free to act on its own.” The ruling opened the flood gates for states to allow sports betting and many jumped at the chance because of a desire for tax revenue. Prior to the Supreme Court ruling PASPA unconstitutional, Indian tribes were not involved with sports betting, but

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121 2021 Compact, supra note 111 at 14.
122 See Jeff Tracy, America’s Five-Year Sports Betting Cash Chase, AXIOS (May 14, 2023), https://www.axios.com/2023/05/14/sports-betting-online-gambling-supreme-court.
123 Id.
127 Murphy, 138 U.S. at 1472.
128 Id. at 1485.
129 Id. at 148485.
130 See Bonesteel, supra note 124.
the decision allowed tribes to “exercise their sovereign authority to legalize sports wagering” on tribal land.¹³¹

Currently, thirty-five (35) states and the District of Columbia offer sports betting in retail locations, via mobile devices, or a combination of the two.¹³² The rise in states offering sports wagering caused a boom in gross gaming revenue overall.¹³³ In 2021, Americans “waged a record $57.22 billion on sports, up 165% from 2020.”¹³⁴ Of the over $57 billion wagered, sports books received $4.29 billion in revenue, showing the industry’s strength and lure for future states to legalize sports betting.¹³⁵ Because of Florida’s large economy, its attempt to allow sports betting through the 2021 Compact would surely have added to the overall gaming revenue generated nationally.

2. Provisions of the 2021 Compact Relating to Sports Betting

However, just as quickly as sports betting was legalized in Florida, it was forced to a halt. Non-tribal casino operators believed the sports betting provisions in the 2021 Compact violated IGRA and a federal district court agreed with their claim.¹³⁶ A closer look into the language of the 2021 Compact highlights its statutory limitations.

The 2021 Compact’s addition of sports betting to Class III covered games was in the best interest of both parties. For the Seminole Tribe, the law expanded its power of exclusivity and control over Florida’s gaming industry and the associated revenue potential.¹³⁷ For Florida, sports betting provided another sector of gaming it could include in the revenue sharing formula to collect more money to fund state governmental programs.¹³⁸ The 2021 Compact

¹³⁴ Id.
¹³⁵ Id.
¹³⁷ 2021 Compact, supra note 114 at 54.
¹³⁸ See id. at 56.
stated all sports betting must be done “exclusively by and through one or more
sports books conducted and operated by the Seminole Tribe or its approved
management contractor.” 139 Furthermore, the Seminole Tribe was able to offer
sports wagering to users of electronic devices not physically present in the sports
book. 140

There were two primary requirements for the use of electronic devices
to place sports wagers. First, the device had to be located within the geographic
boundaries of Florida. 141 The wager need not be placed on Seminole land and
can be made with location services determining the device is anywhere in
Florida. 142 The second requirement is that the servers responsible for posting,
accepting, and paying out wagers be located on the Seminole land. 143 So long as
the Seminole Tribe complies with the two requirements for sports betting, it is
acting within the scope of its rights and may continue operation. 144 It may not
accept wagers from patrons located in other states or place servers on non-
Seminole land. 145

The 2021 Compact was approved by Florida Governor Ron DeSantis
and Chairman Marcellus W. Osceola, Jr. of the Tribal Council. 146 From there, it
was signed by the Florida legislature and approved by default by Secretary of the
Interior Deb Haaland. 147 In compliance with IGRA, Secretary Haaland published
the notice of approval in the Federal Register and the 2021 Compact took effect
in August 2021. 148

Under the 2021 Compact, the location of a sports bet is considered to be
on tribal land when the server used to execute the bet is on tribal land. 149 This
reasoning makes sports betting rights valuable to the Seminole Tribe, as it is able
to capture a larger market share. If patrons were only able to place legal online
sports bets using the Seminole Tribe’s system from tribal land, the number of
bets placed would likely be much smaller. Bettors would have to travel to
Seminole land, place their bet, and then either stay or come back at a later point
to collect any winnings. Such a process is quite laborious and dissuades bettors
from taking part in the action. Being able to place online sports bets from the
comfort of a home, bar, or sporting event creates much larger opportunities for
revenue for both the Seminole Tribe and Florida. However, because this is a
novel system under a tribe-state gaming compact, its legality was challenged as
a violation of IGRA.

139 Id. at 15.
140 Id.
141 Id.
142 2021 Compact, supra note 114 at 54.
143 Id.
144 Id. at 20.
145 Id. at 20–21.
146 Id. at 74.
148 Id. at 265.
149 Id. at 264–265.
V. SECRETARY HAA LAND SUED OVER 2021 COMPACT’S SPORTS BETTING PROVISIONS

A. Overview of the Lawsuits

Shortly after passage of the 2021 Compact, non-tribal casino operators sued Secretary Haaland in federal district court, arguing her approval of the 2021 Compact violated IGRA because the 2021 Compact allows Class III gaming on non-tribal land.\textsuperscript{150} The casino operators asked the court to reverse the Secretary’s approval pursuant to the Administrative Procedure Act (“APA”).\textsuperscript{151} Secretary Haaland was sued in two separate lawsuits by different non-tribal casino operators for her default approval of the 2021 Compact.\textsuperscript{152} She received the compact on June 21, 2021, but took no action to approve or deny its contents within forty-five days.\textsuperscript{153} The expiration of the forty-five day period resulted in an approval by default under IGRA.\textsuperscript{154} Following her no-action decision, the Secretary wrote a letter the Seminole Tribe would be within its rights under IGRA to allow online sports betting to those not located on Seminole land.\textsuperscript{155} She reasoned because IGRA allowed states and tribes to negotiate proper allocation of criminal and civil jurisdiction, it would be unfair to stop tribes from expanding and modernizing their gaming offerings.\textsuperscript{156} Her only stipulation was the sports betting could not occur from devices used on other tribes’ land, as that would violate the jurisdictional rights of those other tribes under IGRA.\textsuperscript{157} The green light from the Secretary prompted the Seminole Tribe to launch online sports betting on November 1, 2021.\textsuperscript{158}

The first lawsuit against Secretary Haaland was filed on August 16, 2021 by West Flagler Associates and Bonita-Fort Myers Corporation who owned retail casinos in Florida.\textsuperscript{159} To establish standing, the casino operators claimed state-wide sports betting exclusively run by the Seminole Tribe would result in an unfair loss in business revenue.\textsuperscript{156} The second lawsuit was filed by Monterra MF and co-plaintiffs who either lived, worked, owned property, or opposed the expansion of gambling in Florida.\textsuperscript{161} To establish standing, these plaintiffs alleged expanding Florida gaming will “increase neighborhood traffic, increase

\textsuperscript{150} Id. at 265.
\textsuperscript{151} Id. at 263.
\textsuperscript{153} Id. at 265.
\textsuperscript{154} 25 U.S.C. § 2710(d)(8).
\textsuperscript{155} W. Flagler Assocs., 573 F. Supp. 3d at 265.
\textsuperscript{156} Id.; see 25 U.S.C. § 2710(d)(3)(c)(i);(ii).
\textsuperscript{159} Id.
\textsuperscript{160} Id.
\textsuperscript{161} Id. at 266.
criminal activity, and reduce their property values.”\textsuperscript{162} The plaintiffs in both lawsuits argued the 2021 Compact’s sports betting provisions violate IGRA because they “authorize [C]lass III gambling outside of Indian lands.”\textsuperscript{163} They believe the attempt to classify server location as the betting location illegally grants the Seminole Tribe state-wide sports betting rights, as it allows people to place bets from anywhere within Florida.\textsuperscript{164}

Both sets of plaintiffs filed motions for summary judgment that were met by motions to dismiss from the Secretary.\textsuperscript{165} When the Seminole Tribe’s sports betting platform officially launched on November 1, 2021, the D.C. Federal District Court combined the lawsuits and proceeded with the case as \textit{West Flagler Associates v. Haaland}.\textsuperscript{166}

B. The Court Rules in Favor of West Flagler Associates

The key issue in the lawsuit was whether IGRA allows tribe-state gaming compacts to grant rights for Class III gaming operations off of tribal land. The district court concluded the answer was a resounding “no” and that Secretary Haaland acted in violation of APA by approving the 2021 Compact.\textsuperscript{167} To justify its holding, the district court cited a combination of IGRA statutory language and legal precedent from previous decisions interpreting IGRA.

IGRA authorizes Secretary Haaland to approve compacts that govern gaming operations on Indian lands.\textsuperscript{168} Therefore, she possesses no authority to validate compacts that extend off Indian land. IGRA repeatedly uses the words “Indian lands” when articulating the jurisdictional rights tribes and states possess when negotiating Class III gaming provisions.\textsuperscript{169} Nowhere in the statutory language does it grant the compacts the authority to regulate gaming in any other

\begin{itemize}
\item \textsuperscript{162} \textit{Id.}
\item \textsuperscript{163} \textit{W. Flagler Assocs. v. Haaland, 573 F. Supp. 3d 260, 265 (D.D.C. 2021); see 25 U.S.C. § 2710(d)(1)(A).}
\item \textsuperscript{164} \textit{W. Flagler Assocs., 573 F. Supp. 3d at 273.}
\item \textsuperscript{165} \textit{Id. at 266.}
\item \textsuperscript{166} \textit{Id. at 263 n.1.}
\item \textsuperscript{167} \textit{Id. at 275.}
\item \textsuperscript{168} 25 U.S.C. § 2710(d)(8)(A).
\item \textsuperscript{169} See 25 U.S.C. § 2710(d)(1) (“Class III gaming activities shall be lawful on Indian Lands only if such activities are…); 25 U.S.C. § 2710(d)(2)(A) (“ If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.”); 25 U.S.C. § 2710(d)(2)(D)(i) (“The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.”).}
\end{itemize}
The Supreme Court affirmed this IGRA statutory standard by holding everything “in IGRA affords tools (for either state or federal officials) to regulate gaming on Indian lands, and nowhere else.” This precedent helps show why the district court in this case found that Florida and the Seminole Tribe violated IGRA with regard to sports betting off of Seminole land. The district court stated, “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.” The district court did not look to other industries or sectors when evaluating whether a server location can become a bet location. Instead, it focused primarily on how past courts interpreted IGRA and Congress’ intent when passing it.

Although the district court took issue with Florida and the Seminole Tribe’s compact language, West Flagler and co-plaintiffs needed to prove Secretary Haaland violated her duty to uphold IGRA in order to be victorious. To evaluate this issue, the West Flagler court cited to a previous D.C. Circuit Court case, Amador County v. Salazar. Amador County held IGRA places “an obligation on the Secretary of the Interior to affirmatively disapprove any compact” that goes against IGRA’s terms. Furthermore, IGRA states approval by silence from the Secretary of the Interior will only enact the portions of the compact that are consistent with the act itself. Therefore, it is a direct duty of the Secretary to expressly “reject any gaming compact that authorizes gaming at any other location” not on Seminole land.

Proportionally, Seminole land makes up a small part of Florida, creating the opportunity for a large number of sports bets to come from outside Seminole land. Enlarging the radius for a Seminole sports book was in both the Seminole Tribe and Florida’s best interest because it created an expanded consumer base to potentially increase their respective portions of gross gaming revenue. Despite the economic benefit the 2021 Compact would provide, the court found it impossible to look past the “fiction” regarding bet location to validate Haaland’s decision to approve the 2021 Compact. Bay Mills is cited by the court again to support this conclusion. In Bay Mills, the Bay Mills Indian Community tried to allow Class III gaming at a casino operated by a tribe but located on state owned land. The Supreme Court ruled it was unable to operate their casino off tribal

172 W. Flagler Assocs., 573 F. Supp. 3d at 273; 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.”).
173 W. Flagler Assocs., 573 F. Supp. 3d at 273 (citing Amador Cnty., Cal. v. Salazar, 640 F.3d 373 (D.C. Cir. 2011)).
174 Salazar, 640 F.3d at 382.
175 Id. at 382; see 25 U.S.C. § 2710(d)(8)(C).
177 Id.
land even while the administrative actions related to Class III gaming would stay on tribal land because “the stuff involved in playing [C]lass III games” would not. Applying this standard to West Flagler, the computer betting servers are administrative, while the bets themselves are Class III games. Therefore, the Seminole Tribe and Florida are unable to include state-wide sports betting in the 2021 Compact, and Secretary Haaland should have affirmatively acted to stop its codification.

The D.C. Circuit Court ultimately decided the appropriate remedy was to vacate the 2021 Compact. The APA governed the decision, which asks courts to hold unlawful and set aside agency action that is “not in accordance with law.” The agency action in question is the Secretary’s default approval of the 2021 Compact because without it, online sports betting would not have been allowed. Therefore, the approval was set aside and West Flagler’s motion for summary judgment was granted. Class III gaming in Florida reverted back to the 2010 Compact, and any further online sports betting in Florida would violate federal law. The Seminole Tribe subsequently took its gaming platform offline and it has remained offline while the case is in the appeal process.

VI. THE FEDERAL GOVERNMENT APPEALS THE DISTRICT COURT’S RULING

Unhappy with the district court’s decision in West Flagler, the federal government appealed and filed its opening brief in the D.C. Circuit of Appeals on August 17, 2022. West Flagler filed its response on October 3, 2022, and both sides are preparing for oral arguments at the time of this writing. This section identifies both parties’ appellate arguments and begins to assess their relative strength.

179 Id. at 792.
180 W. Flagler Assocs., 573 F. Supp. 3d at 274.
181 Id. at 274–75.
182 Id. at 276.
185 Id.
186 Id.
A. The Federal Government’s Argument to Reverse the District Court’s Decision

In her appellate brief, Secretary Haaland argued she “acted lawfully in exercising the option to abstain.”\textsuperscript{189} The federal government asserts the 2021 Compact does not violate IGRA because IGRA only places conditions on Class III gaming on Indian lands, not state land.\textsuperscript{190} Therefore, IGRA does not govern the conditions on which a tribe and a state agree to conduct Class III gaming on state land.\textsuperscript{191} The Secretary states the issue at hand is a matter for the state government in their power to regulate sports betting and does not require her approval.\textsuperscript{192} Haaland claims the district court erred because the 2021 Compact “does not impermissibly ‘authorize’ gaming outside Indian lands.”\textsuperscript{193} The “legality of any non-Indian land activities discussed in a compact is instead a matter of state law.”\textsuperscript{194} If Florida state courts ultimately conclude that Class III gaming is not allowed by tribes off of tribal land, then that part of the compact will be struck down.\textsuperscript{195} The Secretary argues it is not her duty to predict what state courts will say, which aligns with the autonomy states possess with regard to gaming regulation.\textsuperscript{196}

In her appellate brief, the Secretary did not claim that the location of servers on tribal land automatically made every bet placed within Florida’s boundaries on Indian land.\textsuperscript{197} In fact, she agreed with West Flagler and co-plaintiffs that sports betting transactions under the 2021 Compact “involve some gaming activities that take place outside Indian lands.”\textsuperscript{198} However, she argues “IGRA permits compacts to include agreements on ‘any other subject’...provided that it is ‘directly related to the operation of gaming on Indian lands.”\textsuperscript{199} Because determining who may make lawful wagers through the Seminole Tribe’s sports book is directly related to operation of the sports book, Secretary Haaland asserts that the sports betting provisions do not violate IGRA.\textsuperscript{200}

The federal government is attempting to side-step responsibility by establishing error in the district court’s application of IGRA. Under IGRA, the tribal-state compact may include provisions relating to “the allocation of criminal

\textsuperscript{189} Opening Brief for Federal Appellants, supra note 191, at *15.

\textsuperscript{190} Id.

\textsuperscript{191} Id.

\textsuperscript{192} Id.

\textsuperscript{193} Id. at *16.

\textsuperscript{194} Opening Brief for Federal Appellants, supra note 191, at *16.

\textsuperscript{195} See generally id.

\textsuperscript{196} Id.

\textsuperscript{197} Id. at *24.

\textsuperscript{198} Id.

\textsuperscript{199} Opening Brief for Federal Appellants, supra note 191 (citing 25 U.S.C. § 2710(d)(3)(C)(vii)).

\textsuperscript{200} Id. at *24–25.
and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations.”\(^{201}\) Therefore, Florida and the Seminole Tribe are able to assign each other jurisdictional rights for Class III gaming under the compact. Haaland reasons that because jurisdiction over sports betting on non-tribal land is usually regulated by the state, IGRA allows the state to reallocate its jurisdiction over that aspect of gaming to the tribe.\(^{202}\)

B. West Flagler’s Argument to Uphold the District Court’s Ruling

West Flagler’s argument for the D.C. Circuit Court to uphold the district court’s ruling is two-fold. First, it reiterates that Secretary Haaland violated the APA with her approval of the 2021 Compact.\(^{203}\) Second, West Flagler argues for the Seminole Tribe’s exclusion from the lawsuit because they are not an indispensable party.\(^{204}\)

West Flagler’s first argument depends on the characterization of sports betting as a hub and spoke model that the Seminole Tribe and Florida attempted to implement through the 2021 Compact.\(^{205}\) The hub is the location of the server on tribal land and the spokes are the many mobile devices that connect to the server to place bets.\(^{206}\) The federal government failed to provide any examples showing previous approval of this model under IGRA, so the Appellees argue Secretary Haaland violated her duty under the APA by approving the act.\(^{207}\) However, a bigger fear for West Flagler and its co-plaintiffs is the potential impact of the Seminole Tribe joining as a party to the lawsuit.\(^{208}\)

The Seminole Tribe is attempting to join as an indispensable party to the case.\(^{209}\) In matters regarding the APA review in the court of appeals, the only required party is the federal agency whose action is under review.”\(^{210}\) To date, there has been no categorical rule established to exempt APA challenges from Rule 19 of the Federal Rules of Civil Procedure, which requires a party to join a lawsuit if the court cannot “accord complete relief among existing parties.”\(^{211}\) In APA litigation, the government agency on trial is said to properly represent the parties which encompass the overall claim.\(^{212}\) West Flagler claims the government is adequately able to act on its own accord for the Seminole Tribe


\(^{202}\) Opening Brief for Federal Appellants, supra note 191, at *29.

\(^{203}\) Brief of Appellees, at *1, West Flagler Assoc. v. Haaland (2022) (No. 21-5625), WL 5482500.

\(^{204}\) Id. at *42.

\(^{205}\) Id. at *6.

\(^{206}\) Id.

\(^{207}\) Id. at *19; see 25 U.S.C. § 2710(d)(8).


\(^{209}\) Id. at 266.

\(^{210}\) See Hoopa Valley Tribe v. FERC, 913 F.3d 1099, 110203 (D.C. Cir. 2019).


\(^{212}\) Brief of Appellees, supra note 207, at *43.
and have a binding decision. West Flagler further argues ruling the Seminole Tribe an indispensable party would result in a lack of administrative holdings moving forward. If the Seminole Tribe joins the lawsuit, it would likely move for dismissal based on their sovereign immunity power. Congress enacted the APA to waive portions of the federal government’s sovereign immunity power. Allowing another sovereign to act adversely to the APA would contradict public policy.

Somewhat ironically, the Secretary also does not want the Seminole Tribe to join as a party in the case for similar reasons. Furthermore, both Secretary Haaland and West Flagler believe the issue related to sports betting itself is a massive topic and needs judicial review. To allow the Seminole Tribe to dismiss the case under its sovereign power would strip the rest of the country the opportunity to learn from the ruling moving forward.

VII. A DIFFICULT ROAD AHEAD FOR SEMINOLE ONLINE SPORTS BETTING RIGHTS

The argument from West Flagler and its co-plaintiffs is much stronger than that of Secretary Haaland and the federal government, making a reversal on appeal unlikely. Both case law and statutory interpretation of the “Indian Lands” requirement favor rejecting the hub and spoke model for sports betting.

A. IGRA Language for the Indian Lands Requirement Favors West Flagler

The Indian lands requirement regarding gaming compacts is found in Sections 2710(d)(3)(A)–(B) of IGRA. Beginning with Section 2710(d)(3)(A), IGRA specifies a compact is to be negotiated by any “Indian tribe having jurisdiction over the Indian lands upon which a Class III gaming activity is being conducted, or is to be conducted.” This language immediately sets out the fact that compacts are only to concern Class III gaming on tribal land, and not that of the state. The federal government does not contend this point and even agrees with it, claiming Class III gaming off of tribal land is a concern of state regulation, not IGRA.

However, a close reading of IGRA Section 2710(d)(3)(C) shows where the federal government’s argument seemingly falls apart. The Secretary asserts that the Seminole Tribe and Florida are able to divide jurisdiction for Class III
gaming regulation on non-tribal land under IGRA.\textsuperscript{221} However, the language of the act suggests otherwise. The Act explicitly states compact provisions can relate to “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.”\textsuperscript{222} The words “such activity” are most certainly referring back to Section 2710(d)(3)(A), which defines the scope of the compact as “Indian lands upon which a [C]lass III gaming activity is being conducted.”\textsuperscript{223} To define “such activity” as anything else would completely redesign IGRA by putting new words into Congress’ mouth.

Although Section 2710(d)(3)(A) does allow allocation of jurisdiction between the state and tribe, the law is only with respect to “the enforcement of such laws and regulations” mentioned in Section 2710(d)(3)(C)(ii).\textsuperscript{224} Because the latter section has been construed to include only Class III gaming on Indian land, Section 2710(d)(3)(A)(ii) is no different. Therefore, IGRA appears to not allow the state to allocate civil or criminal jurisdiction over state land to a tribe for the regulation of Class III gaming. Allowing the Secretary to reinterpret IGRA and permit jurisdiction shifting between the Seminole Tribe and Florida would go against precedent and result in a violation of her duty.

Past cases interpreting IGRA help verify aforementioned reading and interpretation of the act itself.\textsuperscript{225} Courts have ruled that every phrase or clause in IGRA is expressly included by Congress for a specific and intentional reason and should not be ignored.\textsuperscript{226} The Supreme Court in \textit{Bay Mills} stated parties have “no roving license…to disregard clear language simply on the view that Congress must have intended something broader.”\textsuperscript{227} Based on this standard, Secretary Haaland’s attempt to reinterpret Congress’ intent creates a separation of powers issue. As a representative member of the executive branch, she does not have the authority to unilaterally alter the work of the legislative branch.

As for the Section’s 2710(d)(3) words themselves, courts have ruled that they should all be read and interpreted to have impact.\textsuperscript{228} The Court stated no words “should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.”\textsuperscript{229} Applying this standard to IGRA, the phrase “such activity” in Section 2710(d)(3)(i) must be given a

\begin{thebibliography}{99}
\bibitem{221} Id. at *5.
\bibitem{227} Id. at 794.
\bibitem{228} \textit{Navajo Nation v. Dalley}, 896 F.3d 1196, 1218 (10th Cir. 2018).
\bibitem{229} Id. at 1215.
\end{thebibliography}
meaning that is consistent with the rest of the act. The Secretary’s attempt to redefine the term outside of the scope Congress intended is contrary to legal precedent and, therefore, the jurisdiction shifting attempt will likely fail on appeal.

B. Alternative Paths for Seminole Tribe to Regain Sports Betting Rights

Assuming the district court’s ruling is upheld by the D.C. Circuit Court, the Seminole Tribe and Florida have two options if they would like to further explore the possibility of online sports betting in the state. First, the two parties can amend the 2021 Compact to allow online sports betting only while located on Seminole land. Second, the Florida legislature can legalize sports betting throughout the state and grant near-exclusivity rights to the Seminole Tribe, as it currently does with Class III gaming.

Amending the 2021 Compact would not be difficult for the parties to do, as the only sections that need amendment are the definition of gaming and revenue share associated with gaming. The parties should delete portions of the sports betting definition section allowing sports betting from mobile devices off of tribal land and add a provision limiting the range of bet placement to Seminole land. Once the Seminole Tribe and Florida Governor agree to the specific language, the revised compact should be sent to the Florida legislature for approval. Direct legislative approval works to avoid political and legal roadblocks down the line. As for the revenue share distribution, the two parties will have to negotiate a new revenue split as the gross gaming revenue from sports betting will be far less when limited to wagers solely on Seminole land. Instead of a flat rate, sports betting revenue share should increase incrementally with the associated revenue generated. This way, both sides are inclined to benefit from the deal and invest time in enhancing the business segment moving forward.

The second option, legalizing sports betting throughout Florida and granting the Seminole Tribe near-exclusive rights is much more difficult as it requires larger investments of time and money to legislate the issue. Given that Florida did not make any major legislative moves after PASPA was ruled unconstitutional, it does not appear to be the highest priority of the state legislature. The Seminole Tribe will likely have to spend a great deal of money lobbying the Florida government to either legalize sports betting statutorily or put it on the ballot and have the people decide. This process would not be quick, and the Seminole Tribe must perform a cost-benefit analysis using its own time and resources to determine whether sports betting rights in Florida are more important than the other jurisdictions in which it has gambling rights.

However, if Florida codifies legalized sports betting, the Seminole Tribe can establish a virtual sportsbook platform through its established gaming reputation and be at the forefront of the industry. The move will benefit the state through the revenue sharing provisions of the 2021 Compact. It will be in the Seminole Tribe’s best interests to partner with companies like FanDuel and Draft
Kings to offer a reliable and trustworthy service to gamblers located within the state. These partnerships exist in other states, and the Seminole Tribe and Florida can use these agreements to model their own and profit from the relationship.230

VIII. CONCLUSION

The hub and spoke model of online sports betting established by the 2021 Compact is unlikely to win on appeal in the D.C. Circuit Court as it violates IGRA. The language of IGRA, Supreme Court precedent, and established statutory interpretation of IGRA all suggest online sports betting must remain strictly on Seminole land.

Although this geographical limitation hurts Florida and the Seminole Tribe’s sports betting expansion goals, the story will not end here. The symbiotic relationship the two parties share suggest future action to ensure the next compact will comply with IGRA and increase the Seminole Tribe’s gaming empire. In doing so, Florida will benefit from increases in revenue that it may use to invest back into the state’s programs and infrastructure. The oral arguments for each side in West Flagler will begin shortly. Until then, the Seminole Tribe’s gaming platform remains inactive as it, and the rest of the country, wait anxiously to see what the ruling means for the future of tribal sports betting in the United States.

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