

Why Seminole Tribe Sports Betting Ruling Is A Net Positive

By **Daniel McGinn** (July 24, 2023)

The U.S. Court of Appeals for the District of Columbia Circuit released its opinion in *West Flagler Associates Ltd. v. Debra Haaland* on June 30, affirming federal approval of the most recent gaming compact between the Seminole Tribe of Florida and the state of Florida.

The tribe and Gov. Ron DeSantis came to an agreement on the terms of a new compact in 2021 under the Indian Gaming Regulatory Act. The compact was provided to the U.S. Department of the Interior for the required federal approval.



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The department took no action on the compact for 45 days, allowing it to be deemed approved under the provisions of IGRA on Aug. 11, 2021. West Flagler and others challenged the department's lack of action.

West Flagler is an entity that, at the time of the filing of this lawsuit, did business within Florida as Magic City Casino. Bonita-Fort Myers Corp., a co-plaintiff, does business within Florida as the Bonita Springs Poker Room, and is currently operated by West Flagler. Each facility is a licensed parimutuel operator within Florida.

During the course of this litigation, the parimutuel licenses associated with Magic City Casino were purchased by PCI Gaming Authority. PCI is operated by the Poarch Creek Band of Mission Indians, a tribe located in Alabama that previously contributed \$2 million to a failed initiative to bring nontribal Las Vegas style casinos to Florida.

West Flagler prevailed at the U.S. District Court for the District of Columbia level in a lawsuit that named only Haaland, who is U.S. Interior Secretary,[1] as a defendant, where the district court denied the tribe's attempt to intervene and determined that the compact violated IGRA by "authorizing gaming off Indian lands."

Moreover, while West Flagler sought only to strike down the provisions of the compact related to online sports betting, the district court invalidated the compact in its entirety. The case before the D.C. Circuit was a consolidation of multiple appeals.

The D.C. Circuit found in favor of Haaland, ruling that the secretary did not violate the Administrative Procedure Act by choosing not to act and thereby allowing the 2021 Seminole Tribe compact to go into effect by operation of law.

Primarily, the D.C. Circuit noted that while an IGRA-based gaming compact can only legally authorize a tribe to conduct gaming on its own lands, IGRA itself does not prohibit a gaming compact from touching on other topics, including those activities that occur outside of tribal lands.

In fact, the court noted, IGRA expressly contemplates that a compact will do so when the activity is directly related to gaming. Remarking that contractual provisions such as the terms of the compact should be interpreted to be lawful, if possible, the court found that the compact can be interpreted in a manner compliant with IGRA's requirements.

The compact addresses covered games on tribal land, including sports wagering, and authorizes such conduct consistent with IGRA. The language at issue, which discusses wagers made by players located within Florida using an electronic device being deemed to

take place at the location of the tribe's servers, was not an authorization according to the court.

Rather, the court reasoned, the language demonstrated an agreement between the state and the tribe as to where each considers the gaming activity to occur.

As IGRA does not regulate or restrict any activity outside of tribal lands, the sports betting provisions, read together, met IGRA's requirements. The compact only authorizes operating a sportsbook and taking wagers on the tribe's own land, and the discussion of wagers made via electronic devices is directly related to the authorized gaming.

Thus, the entirety of the sports betting language is compliant with IGRA and was not required to be rejected by the secretary. The court noted that for West Flagler's argument to be successful, the court would have to add the term "only" to the requirement that the compact govern gaming on Indian lands, which is an impermissible practice for a court to undertake.

The court also found the remaining challenges to the compact to be meritless. West Flagler's contention that an IGRA compact has the force of federal law with preemptive power was unsupported by any precedent.

West Flagler's Wire Act claims failed as a matter of law for multiple reasons: the compact expressly required strict compliance with the Wire Act, IGRA does not require the secretary to disapprove a compact based on hypothetical violations of federal law contingent on the implementation of the compact and the intent of would-be bettors, and because the compact does not authorize wagers placed off tribal land.

West Flagler's Unlawful Internet Gambling Enforcement Act claim fails for similar reasons, since the compact itself does not facially violate UIGEA even though future hypothetical situations could give rise to a UIGEA claim.

Finally, as to West Flagler's equal protection challenge, the court held that even if the compact authorized all the activity discussed within its text, the compact would survive rational basis review.

Notably and understandably, the D.C. Circuit did not address whether it is lawful for a patron of the tribe to place bets from nontribal land within Florida.

Noting that the district court erred by reading the compact to independently authorize such activity rather than only that which occurs on tribal land, the D.C. Circuit recognized that this issue was not before the court and that the permissibility of such wagers was likely a state court question.

At the state level, the compact in its entirety is codified into law pursuant to Section 285.710(3)(b) of the Florida Statutes. Class III gaming is recognized in Section 285.710(13)(b), which specifically declares that games and gaming activities "authorized under this subsection and conducted pursuant to a gaming compact ratified and approved under subsection (3) do not violate the laws of this state."

Thus, the compact would have the benefit of being presumed to be constitutional under Florida precedent.

Furthermore, the nature of the compact appears to shield it from its most likely challenge, presumably brought under Article X, Section 30, of the Florida Constitution.

This article, titled Voter Control of Gambling and put into place through a citizen's initiative in 2016, functions as an attempt to restrict the expansion of casino gaming throughout Florida by making citizens' initiatives the exclusive method of authorizing such gaming.

However, paragraph (c) of the section reads as follows:

Nothing herein shall be deemed to limit the right of the Legislature to exercise its authority through general law to restrict, regulate, or tax any gaming or gambling activities. In addition, nothing herein shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA.

Here, the compact was negotiated and approved pursuant to IGRA. Further, the compact, as general law codified within the Florida Statutes, is a permissible method for the Florida Legislature to regulate gaming activities.

Thus, the sports betting provisions shall go into effect without the need for a citizen's initiative petition.

Finally, because the decision keeps the compact in effect, the tribe's motion to intervene was denied.

Florida can now receive the benefit of the \$2.5 billion revenue share pledged to the state over the course of the first five years of the compact term, as well as the additional revenue sharing provisions based on future gaming revenue.

Additionally, tribal facilities are permitted to expand their gaming offerings by becoming the exclusive operators of craps and roulette games within Florida.

Most notably, sports betting will be available across the state, so long as the activities adhere to the terms of the compact regarding how the betting is offered or marketed, and how revenue is shared.

Overall, the ruling is a net positive for individuals who wish to legally wager on sports within Florida, and a boon to the tribe as it further expands its offerings while maintaining exclusivity within the state.

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Disclosure: Dean Mead is counsel to the Seminole Tribe of Florida, but not in the litigation discussed.

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[1] In her official capacity as Secretary of the Interior.