

Florida Commercial Gaming Operators Continue Their Legal Battle Over Challenges to Florida Seminole Gaming Compact



Client Alert

By Hon. Carol E. Heckman (Ret.)

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On February 8, 2024, West Flagler Associates filed a *cert* petition seeking Supreme Court review of the District of Columbia's Circuit Court decision upholding Florida's gaming compact with the Seminole Tribe of Florida. That compact grants exclusive rights to the Seminole Tribe to conduct internet sports betting within the State of Florida.

This case is very important to sports betting generally and to Indian gaming in particular. First, the Seminole compact granted exclusive privileges on a state-wide basis to a tribal entity. This is under fierce attack by commercial operators, and the ultimate resolution of this case will set the path for future exclusive arrangements. Second, the idea that a state and an Indian tribe can define the location where gaming occurs is also an important principle with implications for other states' sports betting compacts. In New York for example, the State, through legislation, has taken the opposite path, defining the location of all sports betting to occur at commercial casinos, thereby allowing commercial casinos to accept wagers placed on Indian lands, and sharply restricting the participation by Indian casinos. The final resolution of these issues will certainly have important implications for gaming compacts nationwide.

The *cert* petition identifies three issues on which it seeks Supreme Court review:

1. Whether the Indian Gaming Regulatory Act (“IGRA”) authorizes the approval of a compact that purports to allow for an online sports gambling monopoly throughout the state and off Indian lands.
2. Whether an IGRA compact violates the Unlawful Internet Gambling Enforcement Act if it provides for internet sports betting that is unlawful where many of the bets are placed.
3. Whether the secretary’s approval of a tribal-state compact violates equal protection principles where it provides a specific tribe with a monopoly on online sports gaming off tribal lands, while state law makes that conduct a felony for everyone else.

The background of the case is as follows. Under the amended gaming compact in Florida, bets that were initiated outside of Indian lands and received by Seminole servers on Indian land were deemed to take place on Indian land. The Compact was submitted to the Secretary of Interior for approval in accordance with IGRA. After Secretary Haaland did not take action to approve or reject the Compact within 45 days, it was deemed approved as a matter of law under IGRA.

West Flagler Associates, a South Florida commercial casino, promptly challenged the Compact in state and federal court. The federal court action was brought in the District Court of Washington, D.C. West Flagler argued that the approval violated IGRA because the Compact authorized Class III gaming outside of Indian lands.

The federal district court held that the Compact language deeming bets placed off-reservation to occur on Indian lands impermissibly exceeded the scope of IGRA. The court invalidated the Compact and enjoined its sports betting provisions.

The case then proceeded on appeal to the United States Court of Appeals in the District of Columbia. The Court of Appeals reversed the District Court decision, finding that IGRA did not prohibit a gaming compact from including provisions on state law issues, such as granting exclusivity to a particular Indian tribe to handle sports betting statewide. The Court of Appeals authorized the reinstatement of the Seminole/Florida online sports betting service.

Following victory in the federal Court of Appeals, the sports betting was reinstated. In October of 2023, West Flagler requested the Supreme Court to stay the Court of Appeals decision pending filing a *cert* petition. That request was denied. However, in the denial, the Supreme Court tipped its hand that it was very interested in reviewing the equal protection issue pending before the Florida Supreme Court.

In December of 2023, Justice Roberts, Chief Judge of the Supreme Court, granted an extension of time to West Flagler to file a *cert* petition, which West Flagler requested on the basis that they were waiting for a final ruling from the Florida Supreme Court on the equal protection issue. It would appear likely that the Supreme Court will grant the petition, given its comments in denying the stay request.

If you have any questions regarding the new rule, contact Indian Law team co-leader Carol E. Heckman (heckman@lippes.com), or any member of our [Indian Law Practice Team](#).

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