

IN THE SUPREME COURT OF FLORIDA

WEST FLAGLER ASSOCIATES, LTD.,
et al.,

Petitioners,

v.

SC2023-1333

RON D. DESANTIS, etc., et al.,

Respondents.

**MOTION TO EXPEDITE CONSIDERATION OF REQUEST FOR
ALL WRITS RELIEF PENDING RESOLUTION OF PETITION FOR
WRIT OF QUO WARRANTO AND SUSPEND THE SPORTS
BETTING PROVISIONS CONTAINED IN
§§ 285.710(13)(B)(7) & 849.142, FLA. STAT.**

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Petitioners, West Flagler Associates, Ltd. (“West Flagler”), Bonita-Fort Myers Corporation d/b/a Springs Poker Room (“Bonita Springs”) and Isadore Havenick (collectively, “Petitioners”), pursuant to Florida Rule of Appellate Procedure 9.030(a)(3), 9.100, and 9.300(d)(10) and article V, section 3(b)(7) of the Florida Constitution,¹ hereby move the Court to expedite the exercise of its all writs jurisdiction to immediately suspend the sports betting provisions of sections 285.710(13)(b)(7) and 849.142 of the Florida Statutes (the “Implementing Law”) pending a final ruling on the Petition for Writ of Quo Warranto (the “Petition”). This exigency has been created by the launch of the Seminole Tribe’s mobile betting application on November 7, 2023, without prior warning. In support of this request for expedited consideration of the “all writs” relief requested in the Petition, Petitioners state:

¹ Pursuant to Florida Rule of Appellate Procedure 9.040(c), to the extent this Court determines that Petitioners have sought an improper remedy or utilized an improper procedural mechanism, Petitioners respectfully request that this Court treat this cause as if the proper remedy had been sought.

I. THE REASON FOR THE EXIGENCY

A. The Seminole Tribe Has Launched Sports Betting Statewide

1. On November 7, 2023, the Seminole Tribe of Florida (the “Tribe”) launched its mobile sports betting application. See App. 6-22. This launch was not previously announced and came as a surprise. On November 1, 2023, the Tribe announced that commencing December 7, 2023, it was commencing the games authorized by the 2021 Compact at its tribal casinos. See App. 3-5. Nowhere did the Tribe mention off-reservation mobile betting, and the widespread understanding was that the references to sports betting were in-person sports betting, which is not the subject of the instant Petition. See App. 3-5. In order to avoid burdening this Court with a request for expedited consideration in the absence of concrete proof that the Tribe was actually about to implement mobile sports betting statewide, Petitioners had desisted from asking the Court to expedite its consideration of the Petition’s request for “all writs” relief.

2. Taking advantage of the distraction created by their carefully crafted announcement on November 1, the Tribe has sought to surprise the Petitioners and this Court by presenting a “fait

accompli” on November 7th. It has indeed taken live bets as of today. See App. 6-22.

3. The only remedy available to prevent disruption of the status quo until the Court rules on the Petition is for the Court to use its “all writs” jurisdiction to immediately suspend the off-reservation sports betting provisions in the Implementing Law that purport to authorize the Tribe to conduct sports betting statewide until the Court has an opportunity to rule on the Petition.

II. PROCEDURAL BACKGROUND

A. The Proceedings Before This Court.

4. On September 25, 2023, Petitioners filed their Petition.²

5. The Petition asks the Court to issue a writ of quo warranto to the Respondents on the grounds that they exceeded their constitutional authority in enacting legislation expanding casino gambling in this state without a citizen’s approval.

6. In addition, the Petition requests that the Court exercise its “all writs” power under article V, section 3(b)(7) of the Florida

² The factual history necessitating a writ of quo warranto is detailed in § IV of the Petition.

Constitution to temporarily suspend the sports betting provisions of the Implementing Law in order to maintain the status quo pending a final ruling in this proceeding. Petition at 61.³

7. On October 16, 2023, *Amicus Curiae*, No Casinos, Inc., filed its *amicus curiae* brief in support of the Petition.

8. Respondents', Ron DeSantis, in his capacity as Governor of Florida, Paul Renner, in his capacity as Speaker of the Florida House of Representatives, and Kathleen Passidomo, in her capacity as President of the Senate (collectively, "Respondents"), response to the Petition is currently due on December 1, 2023.

B. The Proceedings in Federal Court.

9. As detailed in the Petition, in a federal Administrative Procedure Act ("APA") lawsuit known as *W. Flagler Associates, Ltd. et al. v. Haaland*, West Flagler and Bonita Springs challenged the U.S. Secretary of the Interior's Indian Gaming Regulatory Act ("IGRA")

³ As of the date of this motion, the Court has not yet ruled on the Petitioners' request to temporarily suspend the offending provisions of the Implementing Law.

approval of the gaming compact entered into by the State of Florida and the Tribe in 2021 (the “2021 Compact”):

- On November 22, 2021, the United States District Court for the District of Columbia granted summary judgment in favor of West Flagler and Bonita Springs, *W. Flagler Associates, Ltd. et al. v. Haaland*, 573 F. Supp. 3d 260 (D.D.C. 2021) (“*Haaland I*”), thus invalidating the 2021 Compact.
- On June 30, 2023, a panel of the D.C. Circuit Court of Appeals reversed the district court, *W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059 (D.C. Cir. 2023) (“*Haaland II*”), but the reversal was stayed pending a motion for rehearing *en banc*.
- On September 11, 2023, the D.C. Circuit Court of Appeals denied the motion for rehearing *en banc*.

Petition at 30-31. Importantly, the D.C. Circuit Court of Appeals found that the 2021 Compact “‘authorizes’ only the Tribe’s activity on its own lands, that is operating the sports book and receiving the wagers” and not placing wagers off tribal lands. *Id.* at 1066.

10. Following the filing of the Petition, Chief Justice John Roberts recalled and stayed the D.C. Circuit Court of Appeals’ mandate on October 12, 2023, pending a forthcoming application by West Flagler and Bonita Springs to the U.S. Supreme Court for a writ of certiorari. Order, Oct. 12, 2023, *West Flagler Assoc. Ltd., et al. v. Haaland, et al.*, U.S. Supreme Court Case No. 23A315.

11. On October 25, 2023, the U.S. Supreme Court lifted its stay. Order, Oct. 25, 2023, *West Flagler Assoc. Ltd., et al. v. Haaland, et al.*, U.S. Supreme Court Case No. 23A315. In the order lifting the stay, Justice Kavanaugh stated that:

I agree that the stay application should be denied in light of the D. C. Circuit’s pronouncement that the compact between Florida and the Seminole Tribe authorizes the Tribe to conduct only on-reservation gaming operations, and not off-reservation gaming operations. If the compact authorized the Tribe to conduct off-reservation gaming operations, either directly or by deeming off-reservation gaming operations to somehow be on-reservation, then the compact would likely violate the Indian Gaming Regulatory Act, as the District Court explained.

To the extent that a separate Florida statute (as distinct from the compact) authorizes the Seminole Tribe—and only the Seminole Tribe—to conduct certain off-reservation gaming operations in Florida, the state law raises serious equal protection issues. But the state law’s constitutionality is not squarely presented in this application, and the Florida Supreme Court is in any event currently considering state-law issues related to the Tribe’s potential off-reservation gaming operations.

Id. (internal citations omitted). See Notice of Supplemental Authority, filed October 26, 2023.

C. The Tribe’s Sports Betting Operations.

12. Up until October 25, 2023, the 2021 Compact was void under *Haaland I* and the Tribe was not permitted to conduct *any* sports betting operations under the Implementing Law.

13. The Tribe has now commenced its statewide mobile sports betting operations under the flawed premise that the 2021 Compact permits it to accept bets wagered from off its tribal lands.⁴ App. 6-22.

14. This motion immediately followed.

III. ARGUMENT

A. The Court is Authorized Under its “All Writs” Power to Enter All Writs Necessary to Maintain the Status Quo.

Article V, section 3(b)(7) of the Florida Constitution grants the Florida Supreme Court the power to issue “all writs necessary to complete the exercise of its jurisdiction.” As the Court has explained, the “all writs” power “is not an independent basis for jurisdiction, [but the] Court may utilize the constitutional all writs provision as a means of preserving jurisdiction that has already been

⁴ Except for a brief and tentative time, the Tribe did not operate its off-reservation sports betting while the federal APA action was pending.

invoked or protecting jurisdiction that likely will be invoked in the future.” *League of Women Voters of Fla. v. Data Targeting, Inc.*, 140 So. 3d 510, 513 (Fla. 2014) (quotation marks and emphasis omitted). Thus, the Court is authorized to use its “all writs” power to “preserve the status quo and protect the Court’s ability to completely exercise jurisdiction at a future time.” *Id.* (citing *Petit v. Adams*, 211 So. 2d 565, 566 (Fla. 1968)); *Roberts v. Brown*, 43 So. 3d 673, 684 (Fla. 2010) (precluding any future action).

In *Amends. to Fla. Rule of Crim. Proc. 3.853(d)(1)(A) (Postconviction DNA Testing)*, 857 So. 2d 190 (Fla. 2003), for example, this Court used its “all writs” power to suspend Rule 3.853(d)(1)(A) of the Florida Rules of Criminal Procedure and “held in abeyance” the statutory deadline contained in section 925.11(1)(b) of the Florida Statutes in order to maintain the status quo. The Court noted that without exercising its “all writs” power to suspend those laws, the Court’s consideration of the challenge before it would preclude the Court from the “complete exercise” of its jurisdiction. *Id.*

The Court has exercised its “all writs” power to preserve the status quo even when it was uncertain whether it would grant any final relief. *See, e.g., Petit*, 211 So. 2d at 568 (initially directing the

respondent under its “all writs” authority to “refrain” from certain action to protect the Court’s “complete exercise of jurisdiction,” but then denying the underlying writ of mandamus because the Court “did not have jurisdiction ... to entertain these proceedings”); *see also Monroe Ed. Ass’n v. Clerk, Dist. Ct. of Appeal, Third Dist.*, 299 So. 2d 1, 3 (Fla. 1974) (explaining that “certain cases present extraordinary circumstances involving great public interest where emergencies and seasonable considerations are involved that require[s]” the Court to exercise its constitutional “all writs” powers).

B. The Court Should Use its “All Writs” Power to Immediately and Temporarily Suspend the Sports Betting Provisions of the Implementing Law.

The Petition raises a critical question about the authority of the Executive and Legislative branches to act in contravention of the limits placed upon them by the Florida Constitution. Because the functions of government are affected, this Court has recognized that a quo warranto proceeding is an expedited proceeding. *See Chiles v. Phelps*, 714 So. 2d 453, 457 n.6 (Fla. 1998) (original proceeding in quo warranto appropriate where functions of government affected absent immediate determination by the Court).

However, Respondents' response to the Petition is not due until December 1, 2023. On this briefing schedule, the Court is unlikely to render a final ruling on the Petition until later in 2024. In the meantime, absent an expedited ruling on Petitioners' "all writs" request, the Tribe will apparently continue with its off-reservation sports betting operations in contravention of the Florida Constitution, *see Haaland I, Haaland II*, and Justice Kavanaugh's statement, *supra*, potentially raking in millions of dollars in sports bets that this Court may eventually find were authorized in contravention of the Florida Constitution and derogation of the People's right to decide on the expansion of casino gambling.

More importantly, even if this Court ultimately enforces the citizens' will as expressed in article X, section 30 of the Florida Constitution, Florida's citizenry will be irreparably harmed in the interim since the Tribe's mobile sports betting was ostensibly authorized through Respondent's usurpation of the People's constitutional power; this is true even if this violation only occurs for a short time while a final ruling on the Petition is pending. *See Florida Senate v. Graham*, 412 So. 2d 360, 361 (Fla. 1982) (Court exercised all writs jurisdiction to declare invalid the Governor's call

for legislative session on apportionment to conclude in less than 30 days in order to complete exercise of its constitutional jurisdiction over apportionment). Petitioners (and other non-tribal operators of gaming facilities that cannot offer sports betting) also will suffer additional irreparable harm during this this time since they will lose customers, revenues, and goodwill to the Tribe as a result of the unconstitutional authorization of the Implementing Law.

The extraordinary actions of Respondents to side-step the will of the citizens of Florida and the Florida Constitution, enabling the Tribe's actions, mandates the immediate exercise of the Court's "all writs" power as requested in the Petition. Absent an order suspending the offending provisions of the Implementing Law, the Court will be deprived of its ability to afford complete relief in this proceeding. The damage caused by even a few months of sports betting in violation of the Florida Constitution will be irreparable. The Court's jurisdiction (and the will of the People) must be protected *in toto*. See *Amends. to Fla. Rule of Crim. Proc. 3.853(d)(1)(A) (Postconviction DNA Testing)*, 857 So. 2d at 190; *League of Women Voters of Fla.*, 140 So. 3d at 513; *Petit*, 211 So. 2d at 566; *Roberts*, 43 So. 3d at 684.

On the other hand, no irreparable harm will befall the Respondents if the status quo is maintained. The sports betting provisions of the Implementing Law represent a paradigm shift in Florida’s approach to tribal gaming that is inapposite to article X, section 30 of the Florida Constitution. A temporary suspension of the offending provisions of the Implementing Law—which will ensure the status quo, *i.e.*, no sports betting statewide—will therefore have no impact on the Court’s authority to afford any relief in this proceeding.

IV. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court maintain the status quo and use its “all writs” power to temporarily and immediately suspend the sports betting provisions of the Implementing Law until a final ruling on the Petition is entered by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 7, 2023, a true and accurate copy of the foregoing has been furnished via the E-Portal to: Ryan Newman, General Counsel, Executive Office of the Governor, 400 S. Monroe St., Tallahassee, FL 32399, ryan.newman@eog.myflorida.com, *counsel for Respondent Ron DeSantis, in his capacity as Governor of Florida*; 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 the Respondent Paul Renner, in his capacity as Speaker of the Florida House of Representatives*; Carols Rey, General Counsel, Florida Senate, 302 The Capitol, 404 S. Monroe St., Tallahassee, FL 32399, rey.carlos@flsenate.gov, *counsel for Kathleen Passimodo, in her capacity as President of the Senate*; Ashley Moody, Attorney General, Office of the Attorney General, PL-01 The Capitol, Tallahassee, FL 32399, oag.civil.eserve@myfloridalegal.com; Henry C. Whitaker, Solicitor General, Jeffrey Paul DeSousa, Chief Deputy Solicitor General, Christopher J. Baum, Senior Deputy Solicitor General, Office of the Attorney General, The Capitol, PL-01 Tallahassee,

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