

## Florida-Seminole Sports Betting Gaming Compact Passes Legislature, but Court Challenges Are Expected

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On May 19, 2021, the Florida legislature approved a 30-year deal granting the Seminole Indian Tribe (Tribe) exclusive rights to operate sports betting in the state. While the Tribal Gaming Compact received bipartisan support in the legislature and will bring considerable revenue to the state, it will most certainly face legal challenges by gambling opponents on state and federal levels.

The compact—essentially an agreement between the Tribe and the State of Florida—was created under the Indian Gaming Regulatory Act (IGRA), a federal law governing agreements between states and Indian tribes authorizing gambling on Indian lands. Under IGRA, any gambling allowed via a compact must take place *on an Indian reservation*. But the Florida-Seminole Gaming Compact specifically allows sports bets to be placed electronically via mobile devices by users located anywhere in Florida, regardless of whether the user is physically located on an Indian reservation or off-site, with the caveat that bets will be processed by computer servers located on the Indian reservation.

As discussed in more detail below, language within Florida-Seminole Gaming Compact permitting betting by users regardless of geographic location presents two potential avenues for challenging the compact: (1) the compact violates voter control provisions in Florida's Constitution; and (2) the compact is not authorized by IGRA.

### The Voter Control of Gambling Amendment

Florida's Constitutional Amendment 3 requires voter approval to expand gambling within the state. However, this voter-approval requirement does not apply to IGRA compacts with Indian tribes "for the conduct of casino gambling on tribal lands."<sup>[1]</sup> Thus, if the proposed expanded gambling occurs solely on an Indian reservation, Florida voters have no say in it.

Opponents of the compact—most notably an anti-gambling group called No Casinos—argue the compact violates the Florida Constitution because the compact allows mobile betting. Under the compact, bets may be placed from *anywhere* in the state by anyone with a mobile device and are processed by computer servers located on Indian land. Since the person placing the bet is not physically located on tribal land, opponents of the compact argue the compact expands gambling *off tribal land*, which, unless voted upon by the citizens of Florida, violates the Florida Constitution.

Supporters of the compact argue the location of the person placing the bet is irrelevant and instead, the location of the computer servers accepting the bet is the critical data point. Because the computer servers are located on Indian land, supporters of it believe the compact falls squarely within IGRA and is exempt from Florida's voter-approval requirement.

### The Indian Gaming Regulatory Act

The State of Florida and the Seminole Tribe will argue the compact is an authorized under IGRA because the bets—even those placed via mobile devices from anywhere in Florida—are legally placed on tribal land due to the location of the computer servers.

The United States Court of Appeals for the Ninth Circuit disagreed with this position when addressing a similar issue involving internet bets on bingo in *California v. Lipal Nation of Santa Ysabel*, 898 F.3d 960 (9th Cir. 2018). In that case, the Indian tribe offered internet bingo to citizens of California—where gambling is illegal—via servers located on the tribe’s land. The tribe argued that since the servers receiving the bets were located on the Indian reservation, the gambling occurred solely on tribal land and thus was permitted under IGRA and not subject to the California law prohibiting gambling. The court disagreed, finding the players’ decision to bet and the initiation of bets was gambling activity that clearly took place on California soil and not exclusively on Indian land, thereby placing the activity outside of IGRA protection.

The Ninth Circuit’s decision is not binding on the courts in which the Florida-Seminole Gaming Compact may be challenged, but Florida state and federal courts may take the *lipal* case into consideration in making their decisions. Additionally, those courts might consider proposed federal legislation on this issue: House Bill 5502, entitled “Removing Federal Barriers to Offering of Mobile Sports Wagers on Indian Lands Act.” If enacted, that bill will deem an off-reservation bet made to a server on an Indian reservation as made on Indian land for purposes of IGRA. The existence of the bill suggests clarification is needed on this issue.

The compact is now before the Department of Interior for consideration. If approved, the compact will go into effect on October 15, 2021, likely followed by litigation contesting its legality. Even if the mobile sports betting portion of the compact is struck down, the remainder of the compact may remain in force, giving the Tribe exclusive rights to in-person sports betting in Florida until 2051.

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[1] Fla. Const. art. X, § 30.

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