IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MONTERRA MF, LLC, et al., *Plaintiffs*, v. DEB HAALAND, in her official capacity as Secretary of the United States Department of The Interior, et al., *Federal Defendants.*	Civil Action No. 1:21-cv-02513-DLF

FEDERAL DEFENDANTS' MOTION TO TRANSFER VENUE OR IN THE ALTERNATIVE, STAY THIS PROCEEDING

Deb Haaland, in her official capacity as Secretary of the Interior, and the United States Department of the Interior ("Federal Defendants"), by and through their undersigned counsel, hereby respectfully move the Court to transfer this case to the United States District Court for the Northern District of Florida pursuant to 28 U.S.C. § 1404(a). Pursuant to Local Civil Rule 7(m), undersigned counsel has conferred with Plaintiffs' counsel concerning transfer; Plaintiffs intend to oppose this motion. The grounds for this motion are set forth in the accompanying Memorandum of Points and Authorities.

Respectfully submitted this 15th day of October, 2021.

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MEMORANDUM IN SUPPORT OF
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INTRODUCTION

Monterra MF, Ltd et al. ("Plaintiffs") filed this suit against Deb Haaland, in her official capacity as Secretary of the Interior ("Secretary"), and the United States Department of the Interior ("Interior") (together, "Federal Defendants"), seeking judicial review, pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-06 ("APA"), of the approval by operation of law ("deemed approval"), of a 2021 gaming compact ("Compact" or "Florida-Seminole Compact") entered into between the Seminole Tribe of Florida ("Tribe") and the State of Florida ("State"). Plaintiffs allege that the Secretary was required to disapprove the Florida-Seminole Compact because, they assert, it violates the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-21 ("IGRA"); the Wire Act of 1961, 18 U.S.C. §§ 1801 *et seq*. ("Wire Act"), the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. §§ 5361 *et seq*. ("UIGEA"); and Article X, Section 30 of the State of Florida's Constitution ("Fla. Const. amend 3"), ECF 1 at 3-4 (¶¶ 3-4), 34-38 (¶¶ 109-26) ("Compl."). Plaintiffs seek not only an order setting aside Federal Defendants' deemed approval of the Compact, but a declaration that the Compact, Florida Statute § 285.710 ("State Implementing Law"), and other state laws violate IGRA and the State of Florida's Constitution. Compl. at 39.

This case should be transferred to the District Court for the Northern District of Florida pursuant to 28 U.S.C. § 1404(a) because the claims and relief Plaintiffs seek in this case substantially overlap with claims and relief sought by another group of plaintiffs against the Governor of the State of Florida and the Secretary of the Florida Department of Business and Professional Regulation in Florida. *See West Flagler Assoc., Ltd. v. DeSantis*, No. 4:21-CV-00270 (N.D. Fla.) ("*DeSantis* Suit"). In the event the Court does not transfer the case, the Court should nevertheless stay the case pending resolution of the parallel *DeSantis* Suit. Plaintiffs in

that suit are also challenging the Florida-Seminole Compact and the State Implementing Law under legal theories that mirror Plaintiffs' argument here. These duplicative proceedings pose risk not only of wasting judicial time and resources, but of presenting inconsistent, contradictory, and confusing judicial determinations as to many of the legal issues presented in these cases. Further, because the Florida-Seminole Compact governs tribal gaming only in Florida, this case involves issues of local controversy that outweigh any connection that this case may have with the District of Columbia. And not only is Plaintiffs' home forum Florida, but the compacting parties—the Seminole Tribe of Florida and the State of Florida—are also located in Florida. For all these reasons and the reasons set forth below, the interests of justice and judicial economy counsel in favor of having this case transferred to the Northern District of Florida, or in the alternative, staying this case pending a decision in the *DeSantis* Suit to avoid the risk of inconsistent rulings between the cases. Federal Defendants thus respectfully requests that the Court grant this motion.[1]

STATUTORY AND REGULATORY BACKGROUND

IGRA "creates a framework for regulating gaming activity on Indian lands." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 785 (2014). In enacting IGRA, Congress sought to establish a system that would balance the competing interests of tribal and state governments. On the one hand, IGRA aims "to provide a statutory basis for the operation of gaming by Indian

[1] Federal Defendants recognize that the "court has leeway 'to choose among threshold grounds for denying audience to a case on the merits.'" *Lab. Corp. of Am. Holdings v. NLRB*, 942 F. Supp. 2d 1, 3 (D.D.C. 2013) (quoting *Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007)). Because the Court must be assured of its jurisdiction to proceed in this case, Federal Defendants contend that it should address that issue first, which means resolving *Federal Defendants' Motion to Dismiss* (filed concurrently herewith) and the Tribe's *Motion to Dismiss*, *see* ECF 31-4, to confirm that it may proceed forward, or in the alternative transfer, *see NLRB*, 942 F. Supp. at 3, before reaching the merits of Plaintiffs' claims..

tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1); *Confederated Tribes of the Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552, 557 (D.C. Cir. 2016) ("[T]he whole point of the IGRA is to 'provide a statutory basis for the operation of gaming by Indian tribes as means of promoting tribal economic development, self-sufficiency, and strong tribal governments.'") (quoting *Diamond Game Enters. v. Reno*, 230 F.3d 365, 366-67 (D.C. Cir. 2000)). On the other hand, the statute contemplates a regulatory and supervisory role for the states and the federal government to prevent the infiltration of "organized crime and other corrupting influences." 25 U.S.C. § 2702(2).[2]

IGRA divides gaming into three classes. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 48 (1996). The third of these—Class III gaming—is implicated here and includes casino-like games such as blackjack, roulette and slot machines. *See Bay Mills Indian Cmty.*, 572 U.S. at 786. Class III gaming can occur on Indian lands only if "conducted in conformance with" an approved tribal-state compact "entered into by the Indian tribe and the State," 25 U.S.C. § 2710(d), or pursuant to procedures issued by the Secretary, *id.* at § 2710(d)(7). "The rationale for the compact system is that 'there is no adequate Federal regulatory system in place for Class III gaming, nor do tribes have such systems for the regulation of Class III gaming currently in place,' and thus 'a logical choice is to make use of existing State regulatory systems' through a negotiated compact." *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, 1549 (10th Cir. 1997) (quoting S. Rep. No. 100-446, at 13-14, reprinted in 1988 U.S.C.C.A.N. 3071, 3083-84).

[2] Congress passed IGRA in response to the Supreme Court's decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 221-222 (1987), which had held that states lacked regulatory authority over gaming on Indian lands. *See Bay Mills Indian Cmty.*, 572 U.S. at 794.

IGRA provides no role for the federal government in the compact negotiation process between tribes and states. The Secretary holds authority to approve or, for limited reasons, disapprove a compact to which the state and the tribe do agree. 25 U.S.C. § 2710(d)(8)(A)-(B). Congress also directed, however, that "[i]f the Secretary does not approve or disapprove a compact . . . before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of [IGRA]." *Id.* § 2710(d)(8)(C). Compacts approved by the Secretary, or deemed approved by operation of statute when the Secretary does not act, become effective after the Secretary publishes notice in the *Federal Register*. *See id.* § 2710(d)(3)(B), (d)(8)(D).

FACTUAL AND PROCEDURAL BACKGROUND

On June 21, 2021, the State and the Tribe submitted the Compact to the Secretary, together with a tribal resolution and state certification, as required by 25 C.F.R. § 293.8. ECF 1-5 at 1 n.1. This submission commenced the statutorily-defined forty-five day review period allowed under IGRA. 25 U.S.C. § 2710(d)(8). The State and the Tribe further submitted a copy of a state statute that ratified and approved the Compact, the State Implementing Law. ECF 1-5 at 1 n.1. The Secretary took no action on the Compact within the forty-five day review period (*i.e.*, on or before August 5, 2021), and thus, by operation of law, the Compact was deemed approved, "but only to the extent the compact is consistent with" IGRA. *Id.*; 25 U.S.C. § 2710(d)(8)(C). Thereafter, and as required by the statute, 25 U.S.C. § 2710(d)(8)(D), the Secretary published notice of the deemed approval in the *Federal Register* on August 11, 2021. *See Indian Gaming; Approval by Operation of Law of Tribal-State Class III Gaming Compact in the State of Florida*, 86 Fed. Reg. 44,037, 44,037 (Aug. 11, 2021) ("The Secretary took no action

on the Compact between the Tribe and the State. Therefore, the Compact is considered to have been approved, but only to the extent it is consistent with IGRA.").

Plaintiffs—all of whom are located in, registered in, do business in, own property in, or are "longtime residents" of Florida, Compl. at 7-10 (¶¶ 22-30)—filed this suit on September 27, 2021 against Federal Defendants. Plaintiffs assert that the Federal Defendants' deemed approval of the Compact was unlawful under the APA because the Compact, State Implementing Law, and other state laws regarding the Compact, are allegedly contrary to IGRA, the Wire Act of 1961, 18 U.S.C. §§ 1801 *et seq*. ("Wire Act"), the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. §§ 5361 *et seq*. ("UIGEA"), and Amendment 3 of Florida's Constitution. Compl. at 3-4, (¶¶ 3-4), 34-35 (¶ 109). Plaintiffs specifically allege that the Compact and State Implementation Law violates IGRA because it allows the Tribe to offer games that purportedly "are not and have never been lawful in Florida." *Id.* at 6 (¶ 15), 23 (¶ 72), 26 (¶ 80), 36 (¶¶ 116-18). Plaintiffs also argue that the Compact violates IGRA because the online sports betting provisions of the Compact purportedly allows for "off-reservation" gaming. *Id*. at 23-24 (¶¶ 73-74), 35-36 (¶ 113). Plaintiffs further contend that the sports betting provisions of the Florida-Seminole Compact, State Implementing Law, and other state laws regarding the Compact violate the Wire Act and the UIGEA. *Id.* at 37-38 (¶¶ 122-25). Plaintiffs not only seek an order setting aside the deemed approval, but further request an order declaring that the Compact, State Implementing Law, and other state laws violate IGRA, the Wire Act, the UIGEA, and Amendment 3 of Florida's Constitution. *Id.* at 39 (¶ 139).

Plaintiffs acknowledge, and indeed they themselves related this suit to related litigation against Florida Governor Ron DeSantis and Julie Brown, Secretary of the Florida Department of Business and Professional Regulation, *see* ECF 9, challenging the Florida-Seminole Compact

pending in the District Court for the Northern District of Florida, *see* Compl. at 32-33 (¶¶ 98-100) (citing *West Flagler Assoc., Ltd. v. DeSantis*, No. 4:21-cv-00270 (N.D. Fla. filed July 2, 2021)) ("*DeSantis* Suit"). The *DeSantis* Suit plaintiffs, like Plaintiffs here, allege that the Florida-Seminole Compact and the State Implementing Law purport to authorize off-reservation sports betting, and thus allegedly violate IGRA. *West Flagler Assoc., Ltd. v. DeSantis*, First Am. Compl., No. 4:21-CV-00270, at 4-5 (¶ 6), 52-54 (¶¶ 160-64) (N.D. Fla. Aug. 17, 2021) ("*DeSantis* Compl."). And, like Plaintiffs here, the *DeSantis* Suit plaintiffs further alleged that the Compact and the State Implementing Law violate the Wire Act and the UIGEA. *DeSantis* Compl. at 4-5 (¶ 6), 58-60 (¶¶ 179-90), 61 (¶ 195), 64-69 (¶¶ 204-16), 69 (¶ 220). To be sure, this suit and the *DeSantis* Suit are not identical. While Plaintiffs here allege that the Compact and State Implementing Law violate the Florida State Constitution, the *DeSantis* Suit plaintiffs assert instead that they violate the United States Constitution. *Id.* at 70-74 (¶¶ 226-39). But, the point remains that these suits raise many of the same issues regarding the same tribal-state compact.

Plaintiffs further acknowledge that there is related litigation pending in this Court, *West Flagler Assoc., Ltd. v. Haaland*, No. 1:21-cv-02192 (D.D.C. filed August 16, 2021), noting that the District of Columbia case "raises many of the same legal issues asserted in the pending federal litigation against the State of Florida," Compl. at 33 (¶ 102). Federal Defendants have already moved to transfer the District of Columbia case to the District Court for the Northern District of Florida due to the localized nature of the controversy and the already-pending *DeSantis* Suit in that district. *West Flagler Assoc., Ltd. v. Haaland*, Federal Defendants' Motion to Transfer Venue or in the Alternative, Stay This Proceeding, No. 1:21-cv-02192 (Oct. 12, 2021). Accordingly, Federal Defendants contend that this suit should be transferred as well.

ARGUMENT

I. Standard of Review

Section 1404(a) of Title 28 of the United States Code ("Section 1404(a)") authorizes the court, "[f]or the convenience of the parties and witnesses," and "in the interest of justice," to "transfer any civil action to any other district or division where it may have been brought." Section 1404(a) facilitates the transfer to a more appropriate federal forum, *see Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964), affording district courts wide discretion to transfer venue "according to an 'individualized, case-by-case consideration of convenience and fairness,'" *Hawksbill Sea Turtle v. FEMA*, 939 F. Supp. 1, 3 (D.D.C. 1996) (quoting *Stewart Org., Inc. v. Ricoh Corp*., 487 U.S. 22, 29 (1988)). The purpose of Section 1404(a) is "to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen*, 376 U.S. at 616 (citing *Continental Grain v. Barge FBL-585*, 364 U.S. 19, 26-27 (1960)) (internal quotations omitted).

In exercising its discretion, a court must first determine whether the action could have been brought in the transferee district. *See S. Utah Wilderness Alliance v. Norton*, 315 F. Supp. 2d 82, 86 (D.D.C. 2004). If this threshold issue is answered in the affirmative, courts then consider the other principal factors—convenience of the parties, convenience of witnesses, and the interest of justice—through a balancing of public and private interests. *See Trout Unlimited v. U.S. Dep't of Agric*., 944 F. Supp. 13, 16 (D.D.C. 1996). The public considerations include: (1) "the transferee forum's familiarity with the governing laws and the pendency of related actions in that forum"; (2) "the local interest in deciding local controversies at home"; and (3) "the relative congestion of the calendars of the potential transferee and transferor courts." *Foote v. Chu*, 858 F. Supp. 2d 116, 123 (D.D.C. 2012) (citing *Ravulapalli v. Napolitano*, 773 F. Supp. 2d

41, 56 (D.D.C. 2011)); *see also Trout Unlimited*, 944 F. Supp. at 16. "The private considerations include: (1) the plaintiff's choice of forum"; (2) "the defendant's choice of forum"; (3) where the claims arose; (4) "convenience of the parties"; (5) "convenience of the witnesses"; and (6) "ease of access to sources of proof." *Trout Unlimited*, 944 F. Supp. at 16.

A plaintiff's choice of forum is normally entitled to deference, and the party seeking to transfer venue bears the burden of showing that the transfer is proper. *Trout Unlimited*, 944 F. Supp. at 16. That deference and burden, however, are substantially diminished where the plaintiff's chosen forum has only an attenuated connection to the controversy, while the plaintiff and subject matter of the action have a substantial connection with the proposed transferee forum. *DeLoach v. Phillip Morris Cos*., 132 F. Supp. 2d 22, 24-25 (D.D.C. 2000); *Trout Unlimited*, 944 F. Supp. at 17 (defendant's necessary showing is "lessened" when plaintiff's choice of forum "has no factual nexus to the case," where "plaintiffs have substantial ties" to transferee forum, and where the "subject matter of the lawsuit is connected to that state"); *New Hope Power v. United States Army Corp. of Eng.*, 724 F. Supp. 2d 90, 95 (D.D.C. 2010) (explaining that deference to plaintiffs' choice of forum is diminished where the "chosen forum is not plaintiff's home forum," and that deference is "further weakened" when "there is an insubstantial factual nexus between the case and the plaintiff's chosen form"). The Court should rule on a motion to transfer prior to ruling on issues raised in a motion for summary judgment, to ensure the transferee court has an opportunity to adjudicate the case. *E.g.*, *United States v. Swift & Co*., 158 F. Supp. 551, 560 (D.D.C. 1958).

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Air Line Pilots Ass'n v. Miller*, 523 U.S. 866, 879 n.6 (1998) (quoting

Landis v. N. Am. Co., 299 U.S. 248, 254-55 (1936)). In exercising its sound discretion, the Court must "'weigh competing interests and maintain an even balance' between the court's interests in judicial economy and any possible hardship to the parties." *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 732–33 (D.C. Cir. 2012) (internal citations omitted) (quoting *Landis*, 299 U.S. at 254–55). The proponent of the stay bears the burden of demonstrating the need for the stay, and the factors courts consider are "(1) harm to the nonmoving party if a stay does issue; (2) the moving party's need for a stay—that is, the harm to the moving party if a stay does not issue; and (3) whether a stay would promote efficient use of the court's resources." *Ctr. for Biol. Div. v. Ross*, 419 F. Supp. 3d 16, 20 (D.D.C. 2019).

II. The Court Should Transfer this Suit to the Northern District of Florida

As set forth below, Federal Defendants' motion to transfer readily meets the venue transfer standard under Section 1404(a). Plaintiffs' suit could have been brought in the Northern District of Florida, and the parallel pending action in that court, paired with the local nature of the controversy, counsel in favor of such a transfer. None of the other applicable factors demand a different conclusion, and thus the Court should transfer this case.

A. Plaintiffs Could have Brought This Case in the Northern District of Florida

The "threshold consideration" in determining the appropriateness of transfer under Section 1404(a) is whether the action "might have been brought" before the transferee district. *See Van Dusen*, 376 U.S. at 616 (transfer power is expressly limited by the clause restricting transfer to those districts in which the action "might have been brought").

Here, because Plaintiffs base their claims on federal question jurisdiction over which all federal district courts have subject matter jurisdiction, *see* 28 U.S.C. § 1331; Compl. at 7 (¶ 18), this Court need only consider whether venue is proper in the Northern District of Florida. *See*

Martin-Trigona v. Meister, 668 F. Supp. 1, 4 (D.D.C. 1987). A civil action against a federal government agency or official may be heard in any district where a defendant resides, where the plaintiff resides, or where "a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(e). The events that ultimately gave rise to this claim—the negotiating and entering of the Compact by the State of Florida and the Seminole Tribe of Florida, as well as the enactment of the state legislation to which Plaintiffs object—occurred within the Northern District of Florida, where the Florida Governor's and the Florida Department of Business and Professional Regulation's offices are located, *see DeSantis*. Compl. at 11-12 (¶ 26), and where the Florida state capitol is located. While Interior, which is located in the District of Columbia, published the Compact's statutory deemed approval in the *Federal Register*, such a ministerial act does not wed this case to the United States District Court for the District of Columbia.

Plainly, this civil action against Interior and the Secretary involves events that occurred in Florida, and the suit presumes that implementation of the Compact in that state will cause Plaintiffs' injury. Compl. at 7-10 (¶¶ 22-30), 12-13 (¶ 33), 34 (¶ 107), 38-40 (¶ 133). Plaintiffs are Florida companies owning property in Florida, *id.* at 7-8 (¶ 22), 9-10 (¶¶ 26-29), companies registered to do business in Florida, *id.* at 9-10 (¶¶ 26-29), "longtime residents" with business interests in Florida, *id*. at 8-9 (¶¶ 23-25), and a Florida non-profit opposed to gaming "expansion" in the state, *id.* at 10 (¶ 30). Given the limited connection between the issues raised by Plaintiffs in this suit and the District of Columbia—and the presence of a countervailing connection between Plaintiffs and Florida—and the strong public interest in having issues of local concern to Florida citizens resolved in a Florida district court, this matter should be

transferred. Thus, the proper venue for this suit is the United States District Court for the Northern District of Florida. 28 U.S.C. § 1391(e).

B. The Interests of Justice Weigh Overwhelmingly in Favor of Transfer to the Northern District of Florida, Where a Parallel Proceeding is Already Pending

Transfer of this action to the Northern District of Florida will advance the interests of justice by, *inter alia*, preventing unnecessary expense to the public and duplicative use of judicial resources. *Continental Grain Co.*, 364 U.S. at 26. Because the public and private interest factors weigh, on balance, in favor of transfer, the Court should transfer the case.

i. The Public Interest Factors Support Transfer

When evaluating a request to transfer venue, the public considerations include: (1) "the transferee forum's familiarity with the governing laws and the pendency of related actions in that forum"; (2) "the local interest in deciding local controversies at home"; and (3) "the relative congestion of the calendars of the potential transferee and transferor courts." *Foote*, 858 F. Supp. 2d at 123 (citing *Ravulapalli*, 773 F. Supp. 2d at 56).

"In the case of parallel litigation in two federal district courts, the 'general principle is to avoid duplicative litigation.'" *Handy v. Shaw, Bransford, Veilleux & Roth*, 325 F.3d 346, 349-50 (D.C. Cir. 2003) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *see also Wash. Metro. Area Transit Auth. v. Ragonese*, 617 F.2d 828, 830 (D.C. Cir. 1980) (noting, in context of the first-to-file rule, that "[c]onsiderations of comity and orderly administration of justice dictate that two courts of equal authority should not hear the same case simultaneously"). In *Continental Grain Co.*, the Supreme Court explained that "[t]o permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was

designed to prevent." 364 U.S. at 26; *see also Villa v. Salazar*, 933 F. Supp. 2d 50, 56 (D.D.C. 2013) (noting that a parallel proceeding in another federal district court was "paramount" to a Section 1404(a) analysis, and transferring where the proceeding in the other district court was first-filed and was "further along" than the D.D.C. case); *Barham v. UBS Fin. Servs.*, 496 F. Supp. 2d 174, 180 (D.D.C. 2007) ("[T]he most significant factor weighing in favor of transferring [a] case is the presence of closely related litigation in the [transferee court]."); *Holland v. A.T. Massey Coal*, 360 F. Supp. 2d 72, 77 (D.D.C. 2004) (an "ongoing case dealing with similar issues in another jurisdiction weighs very heavily in favor of transfer under § 1404(a)").[3]

Transferring to another district where there is a closely-related proceeding already pending not only saves the judiciary's time and resources, it also serves to "avoid inconsistent findings and . . . provide[s] for a single, coherent, consistent judgment." *Barham*, 496 F. Supp. 2d at 180 (quoting *Prof'l Ass'n Travel Serv. v. Arrow Air, Inc.*, 597 F. Supp. 475, 477 (D.D.C. 1984)); *see also Reiffin v. Microsoft Corp.*, 104 F. Supp. 2d 48, 58, 58 n.19 (D.D.C. 2000) ("the compelling public interest in avoiding duplicative proceedings (and potentially inconsistent judgments) warrants transfer of venue" and further pointing out that "[t]he fact that another court has been the site of a related action is so strong a public-interest factor that this court has transferred venue *sua sponte*").

In this case and the *DeSantis* Suit, both sets of plaintiffs allege that the Compact and State Implementing Law violate IGRA, the Wire Act, and the UIGEA. *Compare* Compl. at 23-24

[3] The Court can compare the cases cited above and the case at hand to *Forest Cnty. Potawatomi Community v. United States*, 169 F. Supp. 3d 114, 119 (D.D.C. 2016), where there was no parallel proceeding in the defendant's proposed transferee forum and the Court denied transfer pursuant Section 1404(a).

(¶¶ 73-74), 35-36 (¶ 113), 37 (¶¶ 122-23) *with DeSantis* Compl. at 3-5 (¶¶ 3-6). These duplicative proceedings counsel in favor of transfer or in the alternative, a stay to avoid waste of time and judicial resources and to prevent inconsistent, contradictory, and confusing judgments that could unnecessarily lead to conflicting determinations of law. As it stands, two federal courts are poised to rule, as part of separate proceedings, on parallel challenges to the same Compact and State Implementing Law with overlapping requests for relief, when in both cases, serious questions about the Court's jurisdiction and the viability of Plaintiffs' claims have been raised. *See West Flagler Assoc., Ltd. v. DeSantis*, Limited Intervenor Seminole Tribe of Florida's Motion to Dismiss for Failure to Join an Indispensable Party, No. 4:21-cv-00270 (Aug. 31, 2021); *West Flagler Assoc., Ltd. v. DeSantis*, State Defendants' Motion to Dismiss for Failure to State a Claim; Motion to Dismiss for Lack of Jurisdiction, No. 4:21-cv-00270 (Aug. 31, 2021). This Court should thus avoid the potential for inconsistent rulings on any of the issues presented to both courts regarding the same tribal-state compact and either transfer this case, or stay this case pending the resolution of the *DeSantis* Suit. Either approach would help this Court, among other things, avoid the further waste of judicial resources.

Further, while "[f]ederal district courts have equal familiarity with . . . federal laws," including the APA, *Center for Env't Sci., Accuracy, & Reliability v. Nat'l Park Serv.*, 75 F. Supp. 3d 353, 358 (D.D.C. 2014), it is not assumed that federal courts are equally familiar with issues implicating state law, *see Trout Unlimited*, 944 F. Supp. at 19 (noting that the interests of justice favored transfer where the case "deal[t] directly with federal statutes and regulations," but could also "involve the interpretation of Colorado law," of which the district court in Colorado was "more familiar"). Plaintiffs have placed the question of whether the Compact, State Implementing Law and other state laws are unconstitutional *under the Florida Constitution*

before this Court, without, to our knowledge, notifying the State of such challenge. Compl. at 3 (¶ 3), 25 (¶ 78), 30 (¶ 93), 36 (¶¶ 114-19), 37 (¶ 121), 38 (¶ 130), 39 (¶¶ 136, 138-39). Plus, while Plaintiffs ask the Court to find that the Compact and the State Implementing Law violate IGRA, the Wire Act, and the UIGEA, any determination of unlawfulness under these statutes would require, in part, a finding that the Compact and the State Implementing Law violate Florida state law. *Id.* at 4 (¶ 4), 23 (¶ 72), 36 (¶¶ 117-10), 39 (¶¶ 136, 138-39). Plaintiffs real qualms seem to be directed at Florida state officials, *see id*. at 22 (¶ 67), 25 (¶ 78), 26-27 (¶ 80), and Plaintiffs concede that adjudication of the merits of their complaint requires analysis of Florida state laws, *id.* at 33 (¶ 103). Notwithstanding the serious concerns associated with a private party asking a federal court to opine on matters of state law, including asking the Court to issue a ruling that state legislation violates that state's constitution, the District Court for the Northern District of Florida is nevertheless better situated to handle issues directly challenging Florida state law, if the case were to proceed to the merits, than is a court in the District of Columbia. For all these reasons, the first public interest factor weighs strongly in favor of transfer.

As to the second public interest factor, the interests of justice are promoted when a localized controversy is resolved in the region it impacts. *E.g.*, *Alabama v. U.S. Army Corps of Eng'rs*, 304 F. Supp. 3d 56, 67 (D.D.C. 2018) ("'interest in having local controversies decided at home' is preeminent" (quoting *Western Watersheds Project v. Pool*, 942 F. Supp. 2d 93, 97 (D.D.C. 2013))); *Western Watersheds Project*, 942 F. Supp. 2d at 102 ("[A] court's analysis of the local interest factor depends on whether the decision will directly affect citizens of the transferee district . . . ."); *Citizen Advocates for Responsible Expansion, Inc. v. Dole*, 561 F. Supp. 1238, 1239 (D.D.C. 1983) (transferring case where controversy affected community of the

transferee court and where plaintiffs had "strong ties" to transferee forum). This includes when a challenged federal action (or inaction) has localized implications. *See, e.g.*, *Western Watersheds Project*, 942 F. Supp. 2d at 102 ("localized controversy" rationale applies "to controversies requiring judicial review of an administrative decision" (citations omitted)); *Dole*, 561 F. Supp. at 1240. Plaintiffs' claims are presented in this suit as an APA challenge stemming from the deemed approval of the Florida-Seminole Compact, but the implementation of such Compact—which is the source of Plaintiffs' purported injury—will occur entirely within Florida. The gaming operations contemplated by the Compact and the State Implementing Law are in Florida, and Plaintiffs' objection to the Compact—speculation that their properties will be affected by "increasing neighborhood traffic, increasing neighborhood congestion, increasing criminal activity, reducing open spaces, and reducing property values," Compl. at 34 (¶ 107)—deal directly with Plaintiffs' businesses and properties in Florida, *see, e.g.*, *Alabama*, 304 F. Supp. 3d at 67 (granting motion to transfer because, *inter alia*, "local governments, local economies, local recreational opportunities" were affected by the controversy).[4]

[4] Any argument opposing transfer due to "national importance" of the issues Plaintiffs presented in this suit would be meritless. First, even if this Court could rule on the merits of Plaintiffs' claims—and it cannot for the reasons set forth in *Federal Defendants' Motion to Dismiss*, ECF 35—such ruling would pertain to the Florida-Seminole Compact, and thus only gaming in Florida. *See, e.g.*, *Alabama*, 304 F. Supp. 3d at 68 (rejecting "national policy" and national importance arguments, and transferring the case, where there were local impacts within the transferee forum and there was no countervailing strong connection to the District of Columbia); *Alaska Wilderness League v. Jewell*, 99 F. Supp. 3d 112, 117-18 (D.D.C. 2015) (explaining, in an APA case, that "there is no 'blanket rule that national policy cases should be brought' in the District of Columbia," and "such controversies, instead, must undergo the usual 'case-by-case determination' mandated by the transfer statute," (quoting *Starnes v. McGuire*, 512 F.2d 918, 928 (D.C. Cir. 1974)), and refuting national importance arguments where controversy would "most directly" affect the state where the transferee court was located); *Gulf Restoration Network v. Jewell*, 87 F. Supp. 3d 303, 316 (D.D.C. 2015) (in case regarding restoration efforts after the Deepwater Horizon oil spill, the Court transferred the case to the Southern District of

Relatedly, "[c]ourts prefer to resolve cases in the forum where people 'whose rights and interests are in fact most vitally affected by the suit.'" *Western Watersheds Project*, 942 F. Supp. 2d at 102 (quoting *Adams v. Bell*, 711 F.2d 161, 167 n.34 (D.C. Cir. 1983)); *see also S. Cal. Ass'n of Gov'ts v. Kleppe*, 413 F. Supp. 563, 567 (D.D.C. 1976) (granting motion to transfer where challenge to mineral leases "concern[ed] the interest of successful lessees," and where lessees, which were located in the transferee court's state, had a "significant interest in the outcome of th[e] litigation"). The compacting parties are all located in Florida. Plaintiffs are located in Florida. The pendency of the parallel Northern District of Florida case—and the motion for limited to intervention filed by the Tribe in that case—demonstrates that entities located in Florida are interested in the instant controversy. *See Villa*, 933 F. Supp. 2d at 56-57 (pending of parallel suits in transferee court illustrated that parties in transferee court forum had an interest in the matter). The second public interest factor therefore weighs heavily in favor of transfer.

Because of the parallel first-filed suit in the Northern District of Florida, the third public interest factor, relative congestion of the calendars of the potential transferee and transferor courts, is neutral as to transfer.[5] That is, the Northern District of Florida is already reviewing

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Alabama, despite the "significance" of the issues to people "nationwide," in part because citizens in Alabama would be "most vitally affected" by the outcome of the case). *But see Forest Cnty. Potawatomi*, 169 F. Supp. 3d at 118 (denying motion to transfer venue where plaintiffs argued that the Secretary's disapproval of a tribal-state compact potentially called into question other compact approvals and disapprovals). Second, even if the Court determines that this controversy is one of national importance, that in no way mandates that only a court in the District of Columbia can handle the case. *Alaska Wilderness League*, 99 F. Supp. 3d at 118 (questioning assertion that the Court was any more equipped to handle the controversy than the transferee court, and noting that the case was "sufficiently local to merit transfer").

[5] Because the focus is on relative court congestion, the number of cases to be transferred is not, itself, a factor under Section 1404(a).

overlapping challenges to the Compact filed in that district "and will be doing so without regard to whether this Court retains this case." *Id.* at 57.[6]

Transfer to the Northern District of Florida would prevent duplicative litigation, inconsistent rulings, and the waste of judicial time and resources, all while allowing a localized controversy to be resolved in the region it affects. Therefore, the public interest factors weigh heavily in favor of transfer.

ii. The Private Interest Factors Support Transfer

When evaluating a motion to transfer venue, "[t]he private considerations include: (1) the plaintiff's choice of forum"; (2) "the defendant's choice of forum"; (3) where the claims arose; (4) "convenience of the parties"; (5) "convenience of the witnesses"; and (6) "ease of access to sources of proof." *Trout Unlimited*, 944 F. Supp. at 16. On balance, these factors further tip the scale in favor of transfer.

Plaintiffs' choice of forum should receive little, if any, deference here. *See, e.g.*, *Trout Unlimited*, 944 F. Supp. at 17; *New Hope Power*, 724 F. Supp. 2d at 95. The District of Columbia is not Plaintiffs' home forum, as Plaintiffs are all located in, registered in, do business in, own property in, or are "longtime residents" of, Florida, Compl. at 7-10 (¶¶ 22-30). And "[a]

[6] Any reliance Plaintiffs place on *Stand Up for California! v. Dept. of Interior*, 919 F. Supp. 2d 51 (D.D.C. 2013), in opposing the United States' motion to transfer would also be misplaced. There, Interior was about to accept title to land to hold it in trust for an Indian tribe, and plaintiffs sought to enjoin such land transfer. In that context, the Court denied the United States' motion to transfer venue in part because doing so would "deprive the plaintiffs of any opportunity to have their preliminary injunction motion decided before the transfer of land is consummated," since government defendants there "made clear that they w[ould] transfer the [land at issue] into trust [by the set land-transfer date] regardless of whether any court ha[d] yet made a ruling on whether the plaintiffs [were] entitled to preliminary injunctive relief." *Id*. at 65. There is no such exigency here. After the Secretary published notice of the Compact's deemed approval in the *Federal Register*, her work with respect to the Compact was done. There is no further action that the Secretary is required to take with the respect to the Compact under IGRA.

plaintiff seeking to sue federal defendants in Washington, D.C. must [ ] demonstrate some substantial personalized involvement by a member of the Washington, D.C. agency before the court can conclude that there are meaningful ties to the District of Columbia." *Western Watershed Project*, 942 F. Supp. 2d at 98 (internal citations and quotations omitted). "[M]ere involvement on the part of federal agencies, or some federal officials who are located in Washington D.C. is not determinative" in establishing a sufficient nexus to the District of Columbia to weigh against transfer. *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 25-26 (D.D.C. 2002). The District of Columbia has only an attenuated connection, at most, to the Florida-Seminole Compact. The Secretary's ministerial act of publishing notice of the deemed approval of the Compact in the *Federal Register* provides no factual nexus to the District of Columbia or its residents. *See, e.g.*, *Alaska Wilderness League*, 99 F. Supp. 3d at 119-20 (transferring case after explaining that in cases brought under the APA, "courts generally focus on where the decisionmaking process occurred to determine where the claims arose," and noting that the "material decisions in th[e] case" came from officials not in Washington, but in Alaska); *Stockbridge–Munsee Cmty. v. United States*, 593 F. Supp. 2d 44, 47 (D.D.C. 2009) (transferring case and refraining from deferring to the plaintiffs' choice of forum despite the fact that "the administrative action at issue in th[e] case arose in Washington," since the "only real connection" the lawsuit had to Washington was that the agency regulating the administrative process at issue was headquartered there). Meanwhile, the Compact has meaningful ties to Florida: it governs tribal gaming in Florida, *see* 25 U.S.C. § 2710(d)(1)(C), and will implicate the interests of businesses and the public in Florida. Plus, while Plaintiffs seek relief against Federal Defendants, Plaintiffs' Complaint makes clear that a substantial number of the issues they take with the Compact stem from actions taken by Florida state officials. *See* Compl. at 22 (¶ 67), 25

(¶ 78), 26-27 (¶ 80) ("[T]he State of Florida attempted to shield sweeping gambling expansion from public review by burying it in a new Compact with the Seminole Tribe."). Thus, the first private interest factor does not counsel against transfer.

The remaining relevant private interest factors weigh in favor of transfer.[7] Federal Defendants' choice of forum—the Northern District of Florida—"must be accorded some weight," since the impacts of the controversy will be most acutely felt in that forum. *See Gulf Restoration Network*, 87 F. Supp. 3d at 313 (quoting *Nat'l Wildlife Fed'n v. Harvey*, 437 F. Supp. 2d 42, 48 (D.D.C. 2006)) (defendant's choice of forum given "some weight" where "the defendant presents legitimate reasons for preferring to litigate the case in the transferee district"). Plaintiffs are all located in Florida, and thus will not be inconvenienced by transfer to the Northern District of Florida. Additionally, the compacting parties—the Seminole Tribe of Florida and the State of Florida—are located in Florida. The Tribe has already moved for limited intervention in the *DeSantis* Suit. And, again, while the Secretary and Interior are located in the District of Columbia, this consideration is "overshadowed" by the fact that the key documents at issue here—the Compact and the State Implementing Law—were created through a culmination of decisions that were made and carried out in Florida. *See Center for Env't Sci.*, 75 F. Supp. 3d at 357. Therefore, any of the relevant private interest factors weigh in favor of

[7] The fifth and sixth factors—convenience for witnesses and access to sources of proof, respectively—should not be implicated here because any judicial review of the merits that could occur would have to be done consistent with the APA, *i.e.*, resolved based on the administrative record provided by Interior. Assuming, *arguendo*, that the issues raised in the Complaint were not to be resolved in such manner, witnesses would likely reside in Florida, since that is where the Compact was entered into, where the Compact will be implemented by the Tribe and the State, and where Plaintiffs will purportedly be harmed.

transfer to the Northern District of Florida, where a parallel, first-filed suit challenging the same Compact is already pending.

CONCLUSION

The factors relevant to evaluating whether to transfer venue pursuant to Section 1404(a) overwhelmingly weigh in favor of transferring this action to the Northern District of Florida, where a parallel, first-filed challenge to the same Compact and State Implementing Law is currently pending and where Plaintiffs could have filed suit against Federal Defendants. As reflected in Plaintiffs' own complaint, the impacts of implementation of the Compact and the State Implementing Law will be felt in Florida, where not only all of the Plaintiffs are located, but where the parties to the Compact are also located. If this case is not transferred, or at a minimum stayed pending resolution of the *DeSantis* Suit, there will be two courts evaluating substantially similar challenges to the same Compact and State Implementing Law. The existence of these overlapping suits in the Northern District of Florida and this Court unnecessarily risks fragmented and potentially inconsistent resolution of many of the legal questions posed by Plaintiffs' claims. Such outcome would be antithetical to the very interests of justice that the transfer statute was designed to protect.

Further, this litigation is in its early stages. This Court has the discretion to transfer the case, regardless of Plaintiffs' interest in seeking this Court's review of its claims. Moreover, the Northern District of Florida court is well-equipped to handle this suit, as it is already hearing the parallel suit challenging the same Compact, but also because Plaintiffs' Complaint includes allegations requiring findings related to Florida state law, and further seeks a declaration that *Florida state legislation violates the Florida Constitution.*

For the foregoing reasons, Federal Defendants respectfully request that this action be transferred to the United States District Court for the Northern District of Florida, or in the alternative, stayed pending resolution of the first-filed *DeSantis* Suit, so that the Court avoids the risk of wasting judicial time and resources and further avoids the possibility of inconsistent, contradictory, or confusing judicial rulings on the numerous legal issues raised in these cases.

Respectfully submitted this 15th day of October, 2021.

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CERTIFICATE OF SERVICE

I, Hillary K. Hoffman, hereby certify that on October 15, 2021, I caused the foregoing FEDERAL DEFENDANTS' MOTION TO TRANSFER VENUE OR IN THE ALTERNATIVE, STAY THIS PROCEEDING to be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ *Hillary K. Hoffman*
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