

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

KALSHIEX LLC,

Plaintiff,

vs.

WILLIAM ORGEN, in his official capacity as
Chairman of the Tennessee Sports Wagering
Council; MARY BETH THOMAS, in her official
capacity as the executive director of the Tennessee
Sports Wagering Council; TENNESSEE SPORTS
WAGERING COUNCIL; and JONATHAN
SKRMETTI in his official capacity as Attorney
General of Tennessee,

Defendants.

Case No.: _____

**COMPLAINT FOR PERMANENT
INJUNCTION AND DECLARATORY
RELIEF**

INTRODUCTION

1. This action challenges the State of Tennessee’s intrusion into the federal government’s exclusive authority to regulate derivatives trading on exchanges overseen by the Commodity Futures Trading Commission (“CFTC”). 7 U.S.C. § 2(a)(1)(A). Plaintiff KalshiEX LLC (“Kalshi”) believes the Attorney General of Tennessee (the “Tennessee AG”) will imminently bring an enforcement action against Kalshi on behalf of the Tennessee Sports Wagering Council (“SWC”) with the intent to prevent Kalshi from offering event contracts for trading on its federally regulated exchange. Defendants have repeatedly represented that they believe Kalshi is operating unlawfully under the Tennessee Sports Gaming Act, and stated that Kalshi must have a license issued by the SWC to offer sports-event contracts in the state. And when Kalshi informed representatives of the Tennessee AG that it believed Tennessee was preparing to take action against Kalshi, and asked those same representatives to confirm if Kalshi’s

belief was incorrect, the Tennessee AG declined to do so. On January 9, 2026, the SWC sent Kalshi a cease-and-desist letter demanding that Kalshi “cease offering sports events contracts to customers in Tennessee *immediately*.”

2. Tennessee’s intent to regulate Kalshi intrudes upon the federal regulatory framework that Congress established for regulating derivatives on designated exchanges. The state’s efforts to regulate Kalshi are both field-preempted and conflict-preempted. This Court should therefore issue both a preliminary and a permanent injunction, as well as declaratory relief.

3. Kalshi is a federally designated derivatives exchange, subject to the CFTC’s exclusive jurisdiction. It offers consumers the chance to trade in many types of event contracts, including, as relevant here, sports-event contracts. These contracts are subject to exclusive federal oversight, and—critically—they are *lawful* under federal law.

4. Commodity futures regulation has long been under the exclusive purview of the federal government. In 1936, Congress passed the Commodity Exchange Act (“CEA”), which enacted a federal regulatory framework for derivatives. In 1974, Congress established a federal agency called the CFTC to oversee it.

5. The text, purposes, and statutory history of the CEA leave no question that Congress sought to preempt state regulation of derivatives on exchanges overseen by the CFTC, known as “designated contract markets” or “DCMs.” The text of the statute gives the CFTC “exclusive jurisdiction” over trading on federally regulated exchanges. 7 U.S.C. § 2(a)(1)(A). During the drafting process of the 1974 amendments to the CEA, Congress deleted a provision that would have granted states concurrent jurisdiction over futures trading. *See* 120 Cong. Rec. 30464 (1974) (statements of Sens. Curtis and Talmadge). One of Congress’s avowed goals in creating the CFTC was to avoid the “chaos” that would result from subjecting exchanges to a

patchwork of 50 different—and potentially conflicting—state laws. *Commodity Futures Trading Commission Act: Hearings Before the S. Comm. on Agriculture & Forestry on S. 2485, S. 2578, S. 2837, and H.R. 13113*, 93d Cong. 685 (1974) (hereinafter “Senate Hearings”) (statement of Sen. Clark). As the conference report to the 1974 amendments explained, they were designed to “preempt the field insofar as futures regulation is concerned.” H.R. Rep. No. 93-1383, at 35 (1974) (Conf. Rep.). And the statute gives the CFTC comprehensive authority over regulated exchanges, including the authority to approve or reject certain categories of event contracts as against the public interest.

6. For that reason, courts have easily found state laws preempted in similar contexts. *See, e.g., Am. Agric. Movement, Inc. v. Bd. of Trade of Chicago*, 977 F.2d 1147, 1156 (7th Cir. 1992), *abrogated on other grounds by Time Warner Cable v. Doyle*, 66 F.3d 867 (7th Cir. 1995); *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 563-64 (6th Cir. 1998). The CFTC itself agrees. It recently informed the U.S. Court of Appeals for the D.C. Circuit that, “*due to federal preemption, event contracts never violate state law* when they are traded on a DCM” like Kalshi. Appellant Br. *27, *KalshiEx LLC v. CFTC*, 119 F.4th 48 (D.C. Cir. 2024) (emphasis added).

7. Commentators have likewise concluded with no difficulty that the CEA “resulted in the preemption of all other would-be regulators at every level of government.” Philip F. Johnson, *The Commodity Futures Trading Commission Act: Preemption as Public Policy*, 29 Vand. L. Rev. 1, 2 (1976). And commentators have specifically recognized that “the CEA preempts state bucket-shop laws and other anti-gambling legislation.” Kevin T. Van Wart, *Preemption and the Commodity Exchange Act*, 58 Chi.-Kent L. Rev. 657, 721 (1982).

8. In April 2025, a federal court in the District of New Jersey granted Kalshi’s preliminary injunction to prevent similar state overreach. The court enjoined state officials from

attempting to prohibit Kalshi's event contracts, explaining that it was "persuaded [] Kalshi's sports-related event contracts fall within the CFTC's exclusive jurisdiction" and "at the very least field preemption applies" to prevent states from regulating trading on DCMs like Kalshi. *KalshiEX LLC v. Flaherty*, No. 25-cv-02152-ESK-MJS, 2025 WL 1218313, at *6 (D.N.J. Apr. 28, 2025). Moreover, the court recognized that even the "express preemption provisions" of 7 U.S.C. § 16 "do[] not foreclose implied preemption elsewhere within the CEA." *Id.* at *5. *But see KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667 (D. Md. 2025); *KalshiEX, LLC v. Hendrick*, No. 2:25-cv-00575, 2025 WL 3286282 (D. Nev. Nov. 24, 2025).

9. The district court in New Jersey also found that Kalshi faced irreparable harm because:

the prospect of facing civil or criminal enforcement or complying and compromising the integrity of its contracts imperils the reputation Kalshi has cultivated over several years . . . at minimum—Kalshi has identified harms to its reputation and goodwill that are both likely without injunctive relief and not able to be remedied following trial.

Flaherty, 2025 WL 1218313, at *7 (describing the circumstances as a "Hobson's choice" for Kalshi where "leaving it subject to state enforcement or obligating it to shift its business practices [are] consequences that are not cleanly undone").

10. In ruling for Kalshi, the district court in New Jersey emphasized that even if Kalshi's contracts were "unlawful" under federal law "that would subject Kalshi to the review of the CFTC—not state regulators." *Flaherty*, 2025 WL 1218313, at *5.

11. An enforcement action by the Tennessee AG designed to prohibit Kalshi from offering contracts that federal law permits would intrude on the comprehensive federal scheme for regulating designated exchanges. Kalshi is a federally designated and approved derivatives exchange, subject to the CFTC's exclusive jurisdiction. It offers consumers the chance to invest

in many types of event contracts, including, as relevant here, sports-event contracts. These contracts are subject to extensive oversight by the CFTC, and—critically—they are *lawful* under federal law. The CFTC has the authority to initiate the review of, and under certain circumstances bar the trading of, contracts listed on Kalshi’s federally regulated exchange. But the CFTC has declined to do so, instead allowing Kalshi to offer its sports-event contracts for trade on its exchange.

12. Yet, even though Kalshi’s contracts are subject to the CFTC’s exclusive jurisdiction, Defendants have made clear that they (mistakenly) believe the contracts are instead subject to—and unlawful under—Tennessee’s Sports Gaming Act. SWC has said as much in a letter it sent to the CFTC in which it claimed that sports-event contracts of the nature Kalshi offers “violate[] the Act” and requested that the CFTC “not permit the offering of” such contracts. Ex. 1 at 2. And Defendant Skrmetti, in his official capacity as Tennessee’s Attorney General and on behalf of the State of Tennessee, has signed multiple amicus briefs that claim Kalshi is violating comparable state laws by offering sports-event contracts. Ex. 2 at 28; Ex. 3 at 37. The briefs argue that states, not the CFTC, have sole power to regulate Kalshi’s sports-event contracts. Ex. 2 at 13-16; Ex. 3 at 17-25. The Tennessee Sports Gaming Act contemplates civil sanctions for unlawful gaming transactions—which Defendants posit Kalshi’s sports-event contracts are. The threat of enforcement is heightened by the fact that Defendants have refused to provide Kalshi with assurances of non-enforcement, despite Kalshi’s endeavors to initiate dialogue to assuage any of the state’s concerns. *See* Ex. 5 at 1.

13. Defendants’ conduct leaves no doubt that Defendants intend to seek enforcement against Kalshi unless Kalshi stops offering its sports-event contracts—which, again, are offered for trade on its federally regulated exchange without objection from the CFTC—in Tennessee. In

doing so, Defendants would seek to subject Kalshi to the patchwork of state regulation that Congress created the CFTC to prevent, and to interfere with the CFTC's exclusive authority to regulate derivatives trading on the exchanges it oversees.

14. Defendants' anticipated actions are preempted under the Supremacy Clause of the U.S. Constitution—both because Congress has expressly and impliedly occupied the field of regulating futures trading on CFTC-approved exchanges, and because Defendants' acts would squarely conflict with federal law. Kalshi is entitled to declaratory and injunctive relief to prevent Tennessee authorities from enforcing their preempted state laws against Kalshi.

15. Defendants' anticipated actions threaten immediate and irreparable harm, not just to Kalshi but to its customers and commercial counterparties. Shutting down Kalshi's ability to offer event contracts in Tennessee would threaten Kalshi's viability and require devising complex technological solutions whose feasibility is entirely untested and unclear. It would also impair Kalshi's existing contracts with consumers and business partners, subject Kalshi's users to uncertainty and loss, undermine confidence in the integrity of Kalshi's platform, threaten its prospective business relationships, and jeopardize Kalshi's status as a CFTC-approved exchange. For that reason, Kalshi intends to imminently seek an emergency temporary restraining order and preliminary injunction to avoid the immediate and irreparable harm that would result from Defendants' unlawful acts.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the action arises under the Supremacy Clause of the United States Constitution. The federal question presented is whether Tennessee law is preempted by the CEA, 7 U.S.C. §§ 1 *et seq.*, as applied to Kalshi's event contracts.

17. The Eleventh Amendment imposes no bar to this Court’s jurisdiction in this suit for prospective declaratory and injunctive relief against state officials. The Eleventh Amendment, as construed in *Ex parte Young*, 209 U.S. 123 (1908), “permits a private party to seek prospective injunctive relief against state officials in their official capacity before those officials violate the plaintiff’s federal constitutional or statutory rights.” *Block v. Canepa*, 74 F.4th 400, 406 (6th Cir. 2023).

18. Venue is proper under 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2). The Individual Defendants perform their duties in and thus reside in this District. The SWC is subject to this Court’s personal jurisdiction and thus resides in this district. A substantial part of the events giving rise to the claim occurred in this District.

PARTIES

19. Plaintiff Kalshi is a financial services company with its principal place of business in New York. Kalshi operates a derivatives exchange and prediction market where users can buy and sell financial products known as event contracts. Its exchange market is federally regulated by the CFTC pursuant to the CEA, 7 U.S.C. §§ 1 *et seq.*

20. Defendant William Orgen is sued in his official capacity as Chairman of the SWC.

21. Defendant Mary Beth Thomas is sued in her official capacity as the executive director of the SWC.

22. Defendant Tennessee Sports Wagering Council is sued as the state agency that regulates gaming in the State of Tennessee by overseeing the licensing and registration process for online sports wagering operators, sports wagering vendors, and fantasy sports operators as well as monitoring and enforcing compliance with the Tennessee Sports Gaming Act and its related rules.

As the state's gaming regulator, the SWC has jurisdiction over all persons participating in legal gaming.

23. Defendant Jonathan Skrmetti is sued in his official capacity as Attorney General of Tennessee.

24. Together, defendants William Orgen, Mary Beth Thomas, Tennessee Sports Wagering Council, and Jonathan Skrmetti would be responsible for enforcing any demand for Kalshi to comply with Tennessee state law that is preempted by federal law.

FACTUAL ALLEGATIONS

A. An Event Contract—Like Other Derivatives—Is a Recognized Financial Tool to Mitigate Risk.

25. Derivatives contracts are financial tools used to mitigate risk. Event contracts are a quintessential example of a derivatives contract—they are a type of option. This form of derivatives contract identifies a future event with several possible outcomes, a payment schedule for the outcomes, and an expiration date. Most commonly, event contracts involve a binary question: Every “yes” position has an equal and opposite “no” position. For example, a derivatives contract might center around whether an earthquake will take place in Los Angeles County before December 31, 2026. A purchaser may trade on either the “yes” or the “no” position on the contract. If an earthquake does take place in Los Angeles County before the end of the calendar year, then the “yes” positions would be paid out.

26. Event contracts are traded on an exchange. Traders exchange positions with other traders in the marketplace. Importantly, event contracts do not reflect a “bet” against the “house.” Because traders do not take a position against the exchange itself, traders’ ability to hedge risk requires counterparties willing to assume risk in the hope of seeing a return. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 358 (1982) (“The liquidity of a futures

contract, upon which hedging depends, is directly related to the amount of speculation that takes place.”). Kalshi’s exchange links traders seeking to hedge or seeking returns based on the uncertainty associated with financially significant events.

27. The value of an event contract is determined by market forces. An event contract’s price will fluctuate between the time of its creation and the expiration date in accordance with changing market perceptions about the likelihood of the event’s occurrence. During that period, individuals can buy and sell the contract at its fluctuating prices. The ultimate value of an event contract is determined at its expiration date. If the underlying event occurs, the holder of the “yes” position is entitled to its full value. But if the underlying event does not occur, the holder of the “no” position gets the payment.

28. Traders price event contracts by reference to available information at any given time. If new information comes to light portending an increase in the likelihood of the event’s occurrence, then the event contract’s price will increase. The market prices of event contracts thus reflect probabilistic beliefs about whether the underlying event will occur. Returning to the earthquake example, a “yes” contract that trades at 30 cents reflects that the market believes that there is a 30% chance of an earthquake this year. The 30% figure can be informed by datapoints the market deems significant, such as the time since the last earthquake in the area and the frequency of fault line tremors in preceding months surrounding Los Angeles County.

29. Event contracts are a valuable means to hedge against event-driven volatility. Event contracts reflect real-time risk assessment and thus provide a nuanced and finely tuned opportunity for traders to mitigate their exposure to real-world events in an uncertain market. There is no other financial instrument with the unique capability to capture the risks of an event with potential economic consequences.

30. For example, last year, the real-estate investment firm Arrived stated its intent to utilize Kalshi's event contracts to hedge the risk of a government shutdown impacting its business.¹

31. Sports events can have significant economic consequences for a broad ecosystem of stakeholders. Advertisers, sponsors, television networks, local communities, and state-based sportsbooks all stand to gain or lose substantial sums depending on the outcomes of sports events. Sports-event contracts thus offer these entities opportunities to hedge their exposure. For example, sponsors of a particular team or athlete can use event contracts to hedge against the risk that the team or athlete underperforms. Or operators of fantasy sports platforms and sportsbooks, which take on significant financial risk related to sporting events, can use sports-event contracts to reduce their exposure.

32. For example, this past year, the daily fantasy sports platform Underdog Sports stated its intent to use Kalshi as a tool to "hedge against volatility" on its own platform.²

33. Event contracts are also a valuable means of communicating information to the public because contract prices reflect prevailing market opinions and conditions. Prediction markets thus serve as sensitive information-gathering tools that can provide insights for stakeholders—including businesses, individuals, governments, and educational institutions. This is not theoretical. Kalshi has recently announced partnerships with CNN and CNBC, which make

¹ See Ryan Frazier, LINKEDIN (last accessed Jan. 9, 2026), <https://www.linkedin.com/posts/activity-7386091007588749312-rhxN/> [https://perma.cc/CQN6-JK3M]; see also Michael J. de la Merced, *Kalshi, a Prediction Market, Raises \$1 Billion in a New Round*, N.Y. TIMES (Dec. 2, 2025), <https://www.nytimes.com/2025/12/02/business/dealbook/kalshi-prediction-market-billion.html> [https://perma.cc/VUY8-HCDT].

² See Brett Smiley, *Underdog Sports Preparing To Use Kalshi, Prediction Markets For Its Own Risk Management*, YAHOO (Oct. 20, 2025), <https://sports.yahoo.com/article/underdog-sports-preparing-kalshi-prediction-163221401.html> [https://perma.cc/LH6U-Y4TJ].

use of its market data in their reporting.³ And Kalshi has recently launched a platform, Kalshi Research, to share market data with academics and promote research derived from the same.⁴ Data generated through prediction markets can also help to set rates and prices for assets whose value depends on the occurrence or non-occurrence of the underlying event. *See* 7 U.S.C. § 5(a) (derivatives contracts, including event contracts, “are affected with a national public interest by providing” both a means for hedging risk and “disseminating pricing information through trading in liquid, fair and financially secure trading facilities”).

B. Congress Delegated the Power to Regulate Event Contracts That Are Offered by a Regulated Exchange to the CFTC.

34. Futures contracts have long been regulated by the federal government. In 1936, Congress passed the CEA, which provides for federal regulation of all commodities and futures trading activities and requires that all futures and commodity options are traded on organized, regulated exchanges.

35. In 1974, Congress established the CFTC as the federal agency empowered to oversee and regulate exchanges under the CEA. Proponents of the 1974 Act were concerned that the “states . . . might step in to regulate the futures markets themselves,” thus subjecting futures exchanges to “conflicting regulatory demands.” *Am. Agric. Movement*, 977 F.2d at 1156. One Senator remarked that “different State laws would just lead to total chaos.” Senate Hearings at 685 (statement of Sen. Clark). As a solution, the House Committee on Agriculture put “all

³ See James Faris, *Prediction giant Kalshi strikes a new media partnership with CNBC, days after its CNN deal*, Business Insider, <https://www.businessinsider.com/kalshi-cnbc-deal-cnn-data-integration-partnership-2025-12> [https://perma.cc/B5BG-56WP]; R.T. Watson, *Kalshi inks exclusive CNBC deal as prediction markets surge into mainstream media*, The Block, <https://www.theblock.co/post/381415/kalshi-exclusive-cnbc-deal-prediction-markets-surge-mainstream-media> [https://perma.cc/726H-39UH].

⁴ See *Kalshi launches new research arm*, Kalshi News, <https://news.kalshi.com/p/kalshi-launches-research-arm-prediction-markets> [https://perma.cc/MD5J-NGP9].

exchanges and all persons in the industry under the same set of rules and regulations for the protection of all concerned.” H.R. Rep. No. 93-975, at 79 (1974). The Senate reaffirmed the CFTC’s exclusive power by deleting a provision of the CEA that would have preserved the states’ authority over futures trading. *See* 120 Cong. Rec. 30464 (1974) (statements of Sens. Curtis and Talmadge).

36. The public can only trade derivatives on a board of trade that the CFTC has designated as a contract market, or DCM. 7 U.S.C. §§ 2(e), 6(a)(1), 7(a); 17 C.F.R. § 38.3(a). An entity must first submit an application to the CFTC detailing how the entity complies with the Core Principles of the CEA. 17 C.F.R. § 38.3(a)(2). Among other things, the proposed contract market must show that it can and will (1) comply with all CFTC requirements imposed by rule or regulation, (2) establish, monitor, and enforce compliance with the rules, (3) list only contracts that are not readily susceptible to manipulation, (4) have the capacity and responsibility to prevent manipulation, price distortion, and disruptions through market surveillance, compliance, and enforcement, and (5) adopt position limitations for each contract to reduce the threat of market manipulation. 17 C.F.R. §§ 38.100, 38.150, 38.200, 38.250, 38.300. Proposed exchanges must provide detailed information demonstrating their capacity to abide by the CEA. *Id.* § 38.3(a)(2). The CFTC then reviews the application and renders a decision on the purported market’s designation within 180 days of submission. 17 C.F.R. § 38.3(a)(1).

37. Once the CFTC designates an entity as a contract market, the CEA gives the CFTC “exclusive jurisdiction” over the derivatives traded on the market. Those derivatives include “accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an ‘option’, ‘privilege’, ‘indemnity’, ‘bid’, ‘offer’, ‘put’, ‘call’, ‘advance guaranty’, or ‘decline guaranty’), and transactions involving swaps or contracts of sale of

a commodity for future delivery.” 7 U.S.C. § 2(a)(1)(A). This exclusive jurisdiction extends to “event” contracts. *See id.* § 1a(47)(A)(ii), (iv), (vi).

38. Once the CEA designates a board of trade as a DCM, the market is subject to an extensive framework for CFTC oversight. Part 38 of Title 17, Chapter 1 of the Code of Federal Regulations comprehensively regulates DCMs, ensuring that these markets continue to comply with the CEA. Exchanges must meet detailed requirements to maintain their designations as DCMs. 17 C.F.R. pt. 38. Among other things, DCMs must abide by recordkeeping requirements that specify the form, manner, and duration of retention. 17 C.F.R. §§ 38.950, 1.31. DCMs must meet reporting obligations like furnishing daily reports of market data on futures and swaps to the CFTC. *Id.* § 38.450, pt. 16. Part 38 also imposes specific liquidity standards, disciplinary procedures, dispute resolution mechanisms, board of directors requirements, auditing demands, and more.

39. The CEA allows DCMs to list contracts on its exchange without pre-approval from the CFTC. To do so, a DCM self-certifies that a given contract complies with the CEA and CFTC regulations by filing a “written certification” with the CFTC at the time of listing. 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. § 40.2(a). The CFTC may initiate review of any contract under its purview. *See* 7 U.S.C. § 7a-2(c)(2); 17 C.F.R. § 40.2(c). The CFTC also may require a DCM to submit a “written demonstration” that it is “in compliance” with one or more Core Principles at any time. 17 C.F.R. § 38.5(b).

40. Alternatively, exchanges have the option of submitting contracts to the CFTC for approval prior to listing. 7 U.S.C. § 7a-2(c)(4)(A); 17 C.F.R. §§ 40.3(a), 40.11(c). The CFTC “shall approve a new contract” unless the CFTC finds that it would violate the CEA. 7 U.S.C.

§ 7a-2(c)(5)(B). Substantially all contracts listed by DCMs for trading are self-certified by the listing DCMs; it is extremely rare for a DCM to seek CFTC approval of individual contracts.

41. The CEA's enforcement process rounds out the comprehensive federal framework that regulates futures derivatives sold on DCMs. The CEA gives the CFTC discretion as to how to police and enforce violations of the CEA for DCMs. The CFTC includes an Enforcement Division, which may initiate investigations and, with the approval of a majority of the CFTC, pursue enforcement actions in federal court or administrative proceedings. If the Division concludes that there has been a violation of the CEA, it may recommend to the Commission that it seek a wide range of enforcement measures, including (1) civil monetary penalties, (2) restitution, (3) disgorgement, (4) suspension, denial, revocation, or restriction of registration and trading privileges, and (5) injunctions or cease-and-desist orders. *See* CFTC Division of Enforcement, Enforcement Manual (May 20, 2020), <https://www.cftc.gov/media/1966> [<https://perma.cc/2AFV-2KHK>], at § 3.3. If the Division suspects that an entity has engaged in criminal violations, the Division may also refer the matter to the Department of Justice or the appropriate state authority for prosecution. *Id.*

42. The CFTC regulates derivatives that reference physical commodities like “wheat, cotton, rice, corn, oats.” 7 U.S.C. § 1a(9) The CFTC also regulates derivatives on “excluded commodit[ies]” like interest rates, other financial instruments, economic indices, risk metrics, and—as particularly relevant here—events, which the CEA defines as any “occurrence, extent of an occurrence, or contingency” that is “beyond the control of the parties to the relevant contract” and “associated with” economic consequences. *Id.* § 1a(19)(iv); *see* 7 U.S.C. § 1a(9).

43. In 2010, Congress amended the CEA to add “swaps” to the CFTC's exclusive jurisdiction and to define event contracts as a type of swap. *See id.* § 1a(47)(A)(ii), (iv), (vi); *see*

KalshiEX LLC v. CFTC, No. 23-3257, 2024 WL 4164694, at *2-3 (D.D.C. Sept. 12, 2024). “Event contracts” are “agreements, contracts, transactions, or swaps in excluded commodities.” 7 U.S.C. § 7a-2(c)(5)(C)(i).

44. The CFTC has also recognized that “event contracts,” including contracts on “the outcome of particular entertainment events,” “can be designed to exhibit the attributes of either options or futures contracts.” *Concept Release*, 73 Fed. Reg. 25,669, 25,669-70 (May 7, 2008). An “occurrence”-based futures contract or option results in a payment based on a specified occurrence or extent of an occurrence—for example, the occurrence or severity of a hurricane. Where event contracts pay out based on financially significant occurrences, they are “of the character of” futures and options, as understood by derivatives markets. *See id.* § 1a(36) (defining “option”).

45. Also, in 2010, Congress amended the CEA to add a “Special Rule” governing event contracts. Congress provided that the CFTC “may”—but need not—conclude that event contracts are “contrary to the public interest” if they “involve” an “activity that is unlawful under any Federal or State law,” “terrorism,” “assassination,” “war,” “gaming,” or “other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C).

C. After an Extensive Regulatory Process, the CFTC Registered Kalshi as a Contract Market That Operates Under Federal Law.

46. Kalshi is a CFTC-regulated exchange and prediction market where users can trade on the outcome of real-world events. In 2020, the CFTC unanimously designated Kalshi as a contract market, affirming that its platform complied with the CEA. Since then, Kalshi has been fully regulated as a financial exchange under federal law, alongside entities like the Chicago Mercantile Exchange and the Intercontinental Exchange.

47. Kalshi specializes in event contracts, offering a secure and federally approved exchange where individual, retail, and institutional participants can hedge their risks on event-based outcomes.

48. Kalshi offers many kinds of event contracts related to an array of substantive areas like climate, technology, health, crypto, popular culture, and economics. For example, Kalshi's platform currently allows users to trade on whether India will meet its 2030 climate goals, or whether the market share for electric vehicles will be above 50% in 2030. Kalshi offers contracts on the outcomes of Supreme Court decisions, congressional votes, weather events, technological benchmarks, markers of cultural influence, and Federal Reserve interest rate decisions.

49. Among its menu of event contracts, Kalshi offers sports-event contracts. On January 22, 2025, Kalshi self-certified, pursuant to section 7a-2(c)(1) of the CEA, the first of a number of sports contracts that are now available on its exchange. Those certifications contain extensive information, including in confidential appendices not available to the public, for the CFTC's review. Kalshi's sports-related contracts allow users to place positions on, for example, which teams will advance in the NCAA College Basketball Tournaments or who will win the U.S. Open Golf Championship.

50. Shortly after Kalshi self-certified its first sports-event contracts, the CFTC requested that Kalshi submit a "Demonstration of Compliance" with the CEA pursuant to 17 C.F.R. § 38.5(b). A Demonstration of Compliance is "a written demonstration, containing supporting data, information and documents" that a DCM is required to file upon request from the CFTC to explain how the DCM "is in compliance with one or more core principles as specified in the request." 17 C.F.R. § 38.5(b). Kalshi responded with lengthy memoranda detailing the

listing's compliance with applicable rules and regulations and the CFTC's jurisdiction over sports-event contracts traded on DCMs.

51. The CFTC took no further action and has since allowed thousands of Kalshi's sports-event contracts to be listed, traded, and closed, with no hint that the agency views these contracts as falling outside of its jurisdiction. Had the CFTC deemed Kalshi's contracts impermissible, it would have had the responsibility to "object[]" to the contracts. 7 U.S.C. § 7a-2(c)(3)(B)(ii). But it did not. Unless and until the CFTC takes action on Kalshi's sports-event contracts—all of which have been self-certified under the CEA—they are authorized under federal law. *Id.* § 7a-2(c)(5).

D. The Tennessee Sports Wagering Council's Statements Concerning Sports-Event Contracts.

52. On April 14, 2025, the SWC sent the CFTC a letter claiming that "sports event contracts currently being offered in Tennessee by Commodity Futures Trading Commission (CFTC) regulated entities," such as Kalshi's sports-event contracts, "are being offered in violation of Tennessee law and regulations." Ex. 1 at 1. SWC asked that the CFTC "not permit"—*i.e.*, decertify—these sports event contracts. *Id.* at 2.

53. SWC claimed that Kalshi's sports-event contracts constitute unlawful sports wagering under the Tennessee Sports Gaming Act because Kalshi "accepts a sum of money risked on the outcome of a sporting event without a valid license issued by the SWC." *Id.* at 2.

54. SWC further contended that Kalshi's sports-event contracts "are not compliant" with protections "mandated by the Tennessee Legislature" and permitting them would be a failure to "respect the policy decisions" of the Legislature. *Id.* Per SWC, these protections range broadly from age restrictions on users to anti-money laundering controls. *Id.*

55. Violations of the Tennessee Sports Gaming Act and the state regulations that SWC cited in the letter contain civil penalties of up to \$50,000 per transaction. Tenn. Code Ann. § 4-49-129; Tenn. Comp. R. & Regs. 1350-02-.03. Millions of transactions have taken place in the thousands of contracts offered on Kalshi's exchange. As such, SWC's suggestion that each of Kalshi's sports-event contracts is an unlawful transaction is tantamount to threatening Kalshi with astronomical penalties that, if effectuated, would devastate its business.

56. On June 17, 2025 and December 22, 2025, Defendant Skrmetti signed amicus briefs in the United States Court of Appeals for the Third Circuit and the Fourth Circuit, respectively. Ex. 2 at 28; Ex. 3 at 37. In the June 2025 amicus brief, Defendant Skrmetti, on behalf of the State of Tennessee, assumed "absent preemption" that Kalshi's sports-event contracts would constitute regulated sports betting under the Tennessee Sports Gaming Act. Ex. 2 at 3. In the December 2025 amicus brief, Defendant Skrmetti similarly argued that Kalshi's event contracts constituted "sports betting" that is subject to the Tennessee Sports Gaming Act, among other states' gambling laws. Ex. 3 at 1.

57. This marks a significant shift from the SWC's position in its April 2025 letter to the CFTC that acknowledged the CFTC's jurisdiction over Kalshi's event contracts. Far from "ask[ing]" the CFTC to "respect the policy decisions made by the Tennessee Legislature and not permit the offering of sports event contracts," Ex. 1 at 2, the December 2025 amicus brief asserts that states, and not the CFTC, have the sole power to regulate Kalshi's sports-event contracts as a form of sports betting. Ex. 3 at 17-25.

58. The CFTC took no action in response to that letter and instead has, in an exercise of its exclusive jurisdiction, permitted Kalshi to offer sports-event contracts for trade on its

exchange. As a result, Kalshi now understands Defendants intend to take matters into their own hands.

E. Defendants Refuse to Provide Assurances of Non-Enforcement and Issue a Cease-And-Desist Letter to Kalshi.

59. Kalshi has endeavored in good faith to reach an accommodation with Tennessee. Over the past several months, Kalshi's counsel has attempted to discuss the matter with the Tennessee AG, to no avail. Most recently, after Defendant Skrmetti signed the December 2025 amicus brief, the undersigned counsel called the Tennessee AG's Office (and left a voicemail) on December 30, 2025 and sent follow-up emails on December 31, 2025 and January 6, 2026. Ex. 4 at 1; Ex. 5 at 2. In its correspondence, Kalshi expressed its understanding that Tennessee was contemplating an action regarding Kalshi's sports-event contracts and offered to have a dialogue with the Attorney General's Office, much like it has with authorities in numerous other states. Ex. 5 at 2. Kalshi also asked that, in the event Kalshi's understanding was mistaken, the Tennessee Attorney General's Office confirm that it is not considering bringing an action against Kalshi. *Id.*

60. A representative from the Tennessee Attorney General's Office responded to Kalshi's January 6, 2026 email later that day. *Id.* at 1. That email acknowledged Kalshi's concerns (and that other of Kalshi's counsel had previously reached out regarding the same issue), but declined to address Kalshi's request that the Office confirm that it is not anticipating bringing an enforcement action against Kalshi. *Id.* The representative would not even commit to meeting with Kalshi to discuss Kalshi's sports-event contracts. *Id.*

61. On January 9, 2026 the SWC sent Kalshi a "Demand to Cease and Desist Offering Sports Event Contracts in Tennessee." See Ex. 6 (the "Cease-and-Desist Letter"). The Cease-and-Desist Letter demands that Kalshi "cease offering sports events contracts to customers in Tennessee *immediately*" and threatens (1) to impose monetary fines against Kalshi, (2) that the

SWC may seek injunctive relief against Kalshi, and (3) that the SWC will refer Kalshi to law enforcement if Kalshi does not comply with the SWC's unlawful demand. *Id.* at 2-3.

62. Kalshi has no option but to seek judicial relief. SWC's letter and the amicus briefs suggest that Defendants believe Kalshi's sports-event contracts in Tennessee violate the Tennessee Sports Gaming Act and that Kalshi may be immediately subjected to action by the SWC. Ex. 1 at 2. Absent any assurances of non-enforcement—and in light of the Cease-and-Desist Letter and Defendants' public statements—Kalshi (and its users) face a threat of irreparable harm, leaving Kalshi with no choice to protect its commercial interests and those of its users except to bring this suit.

63. Immediately following the filing of this complaint, Kalshi intends to inform the Tennessee AG of its filing, and Kalshi's intent to seek preliminary relief.

REQUISITES FOR RELIEF

64. As a result of Defendants' threatened conduct described above, there is an imminent threat that Defendants will take action, including, but not limited to, the enforcement of preempted state law threatened by Defendants' statements, will violate the Supremacy Clause of the U.S. Constitution, and will subject Kalshi and its customers to irreparable harm.

65. An actual and substantial controversy exists between Plaintiff and Defendants as to their respective legal rights and duties. Defendants' conduct alleged herein, including threats to Kalshi, has already and will continue to result in irreparable injury to Plaintiff, including but not limited to economic hardship and impairment of existing contractual relationships.

66. Plaintiff has no plain, speedy, or adequate remedy at law to address the wrongs described herein. Plaintiff therefore seeks declaratory and injunctive relief restraining Defendants

from enforcing Tennessee law that interferes with the operation and function of Plaintiff's futures market described herein.

COUNT I

(Supremacy Clause—Preemption by Commodity Exchange Act)

67. Plaintiff incorporates all prior paragraphs by reference.

68. The Supremacy Clause, Article VI, Clause 2, of the U.S. Constitution, provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

69. The Supremacy Clause mandates that federal law preempt state law in any field over which Congress has expressly or impliedly reserved exclusive authority to the federal government, or where state law conflicts or interferes with federal law.

70. Congress explicitly gave the CFTC “exclusive jurisdiction” to regulate futures trading on approved exchanges. 7 U.S.C. § 2(a)(1)(A). Without a unified approach to futures regulation, Congress feared that fragmented and uncoordinated state regulation would lead to “total chaos.” Senate Hearings, at 685 (statement of Sen. Clark). Having analyzed the text, purpose, and history of the CEA, courts nationwide have agreed that Congress intended to preempt state law in futures trading on CFTC-regulated exchanges. *See, e.g., Am. Agric. Movement*, 977 F.2d at 1156; *Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980) (Friendly, J.); *Jones v. B.C. Christopher & Co.*, 466 F. Supp. 213, 220 (D. Kan. 1979); *Hofmayer v. Dean Witter & Co.*, 459 F. Supp. 733, 737 (N.D. Cal. 1978).

71. In threatening to enforce Tenn. Code Ann. §§ 4-49-101 *et seq.*, and any rules adopted thereunder against Kalshi, Defendants are impermissibly intruding on the CFTC’s exclusive authority to regulate futures trading on CFTC-regulated exchanges. Indeed, federal law authorizes the CFTC to “determine” whether event contracts involving “gaming” should be restricted as “contrary to the public interest,” 7 U.S.C. § 7a-2(c)(5)(C)(i)—authority that is completely incompatible with parallel state regulation of the same putative subject matter. Because federal law occupies the entire field of regulating trading on designated contract markets, Defendants’ threatened actions are both expressly and impliedly field-preempted under the Supremacy Clause.

72. In addition, Defendants’ threatened actions conflict with federal law and policy. Defendants seek to ban event contracts that federal law and the CFTC have authorized (and to subject the website on which such contracts are offered to abatement), which would plainly frustrate the CFTC’s exclusive authority to regulate its designated exchanges. In addition, complying with Defendants’ demand to immediately cease offering event contracts in Tennessee or face enforcement could conflict with the federal law governing DCMs, and would thus imperil Kalshi’s CFTC approval. For that reason, the threatened actions are conflict-preempted under the Supremacy Clause.

73. Defendants may not enforce Tennessee’s gambling laws against Kalshi because Kalshi is a federally regulated exchange that operates under the exclusive oversight of the CFTC and its enabling statute, the CEA, 7 U.S.C. §§ 1 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kalshi requests that judgment be entered in its favor and against Defendants as follows:

1. Enter a judgment declaring that Tenn. Code Ann. §§ 4-49-101 *et seq.*, any rules adopted thereunder, and any other Tennessee law that is used in a manner to effectively regulate Plaintiff's designated contract market violates the Supremacy Clause of the United States Constitution as applied to Plaintiff, and a declaratory judgment under 28 U.S.C. §§ 2201-2202 saying the same;
2. Enter both a preliminary and permanent injunction prohibiting Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Tenn. Code Ann. §§ 4-49-101 *et seq.*, any rules adopted thereunder, or any other Tennessee law that attempts to effectively regulate Plaintiff's exchange, against Plaintiff;
3. Enter both a preliminary and permanent injunction prohibiting Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Tenn. Code Ann. §§ 4-49-101 *et seq.*, any rules adopted thereunder, or any other Tennessee law that attempts to effectively regulate Plaintiff's designated contract market, or from threatening Plaintiff's business partners with the loss of their gaming licenses in Tennessee on account of their dealings with Plaintiff.
4. Any other relief within this Court's discretion that it deems just and proper.

DATED: January 9, 2026.

Respectfully submitted,

/s/ Britt K. Latham

Britt K. Latham

Robert E. Cooper, Jr.

Courtney A. Hunter

BASS, BERRY & SIMS PLC

21 Platform Way South, Suite 3500

Nashville, Tennessee 37203

Telephone: (615) 742-6200

Facsimile: (615) 742-6293

blatham@bassberry.com

bob.cooper@bassberry.com

courtney.hunter@bassberry.com

and

Neal Katyal (*pro hac vice* forthcoming)

Joshua B. Sterling (*pro hac vice* forthcoming)

William E. Havemann (*pro hac vice* forthcoming)

MILBANK LLP

1101 New York Avenue NW

Washington D.C. 20005

Telephone: 202-835-7500

Facsimile: 202-263-7586

Grant R. Mainland (*pro hac vice* forthcoming)

Andrew L. Porter (*pro hac vice* forthcoming)

Nicole D. Valente (*pro hac vice* forthcoming)

MILBANK LLP

55 Hudson Yards

New York, NY 10001

Telephone: 212-530-5000

Facsimile: 212-530-5219

Attorneys for Plaintiff KalshiEX LLC

EXHIBIT 1



Tennessee

Sports Wagering Council

312 Rosa Parks Avenue, 8th Floor
Nashville, Tennessee 37243

April 14, 2025

Commodity Futures Trading Commission
Acting Chair Caroline Pham

Via email to PublicRoundtables@CFTC.gov

RE: Prediction Markets Roundtable

Dear Acting Chair Pham:

The Tennessee Sports Wagering Council (SWC) is the regulator of sports wagering in the State of Tennessee and is responsible for enforcing and supervising compliance with the laws and rules relating to wagering on sporting events in this state¹. In Tennessee, it is a taxable privilege to offer sports wagering pursuant to a license issued in accordance with the Tennessee Sports Gaming Act (the Act)².

We are writing to express our concerns with the sports event contracts currently being offered in Tennessee by Commodity Futures Trading Commission (CFTC) regulated entities. We believe that these sports event contracts are Wagers under the Act and are being offered in violation of Tennessee law and regulations. The sports event contracts give consumers the option to purchase contracts corresponding to one of two outcomes of an event. In a sporting event context, a consumer is purchasing a contract that reflects which team they believe will win or lose the matchup. The ultimate result is money being won or lost based on the outcome of a game.

In Tennessee, “Interactive sports wagering” means “placing a wager on a sporting event via the internet, a mobile device, or other telecommunications platform”³. Interactive sports wagering may only be offered in Tennessee pursuant to a license issued by the SWC⁴. The Act defines “Sporting event” as “any professional sporting or athletic event, including motorsports and e-sports, any collegiate sporting or athletic event, or any Olympic sporting or athletic event

¹ Tenn. Code Ann. § 4-49-106(a).

² Tenn. Code Ann. § 4-49-104(a).

³ Tenn. Code Ann. § 4-49-102(14).

⁴ Tenn. Code Ann. § 4-49-117.

sanctioned by a national or international organization or association. ‘Sporting event’ does not include horse racing”⁵. The Act further defines “Wager” as “a sum of money that is risked by a bettor on the unknown outcome of one (1) or more sporting events, including, but not limited to, the form of fixed-odds betting, a future bet, live betting, a money line bet, pari-mutuel betting, parlay bet, pools, proposition bet, spread bet, or in any other form or manner as authorized by rule promulgated by the council”⁶. Therefore, a person or entity that accepts a sum of money risked on the outcome of a sporting event without a valid license issued by the SWC violates the Act.

Additionally, the Tennessee Legislature has put in place many requirements of its sports betting Licensees in order to protect those who choose to wager in our state. Among other protections, individuals under the age of twenty-one are not permitted to wager in Tennessee.⁷ The Act also lists persons or categories of persons who are ineligible to place a wager in Tennessee⁸ and contains responsible gaming requirements, including that licensees allow bettors to restrict themselves from placing wagers⁹. The Act prevents the use of credit cards to wager and does not allow funding an account with cryptocurrency¹⁰. The SWC regulations do not permit kiosks for the purpose of bettors establishing or accessing their wagering accounts at any physical location in Tennessee¹¹. The Act and SWC rules contain specific anti-money laundering controls¹². The Act does not permit wagering on injuries, penalties, or the actions of individual collegiate athletes, and does not permit in-game proposition bets on collegiate teams¹³. The CFTC regulated entities currently offering these sports events contracts are not compliant with these protections (or many others) mandated by the Tennessee Legislature.

As the Commission reviews these sports events contracts, we ask that you respect the policy decisions made by the Tennessee Legislature and not permit the offering of sports events contracts. We appreciate the opportunity to comment and are happy to answer any questions. If you need any additional information, please contact me at mary.beth.thomas@tn.gov.

Sincerely,



Mary Beth Thomas
Executive Director

CC: Billy Orgel
Chair, Tennessee Sports Wagering Council

⁵ Tenn. Code Ann. § 4-49-102(33).

⁶ Tenn. Code Ann. § 4-49-102(39).

⁷ Tenn. Code Ann. § 4-49-118(a); Tenn. Code Ann. § 4-49-102(19).

⁸ Tenn. Code Ann. § 4-49-112.

⁹ Tenn. Code Ann. § 4-49-119.

¹⁰ Tenn. Code Ann. §§ 4-49-118, 4-49-125(f).

¹¹ Tenn. Comp. R. & Regs. 1350-01-.03(6).

¹² Tenn. Code Ann. § 4-49-110; Tenn. Comp. R. & Regs. 1350-03-.08.

¹³ Tenn. Code Ann. § 4-49-114.

EXHIBIT 2

No. 25-1922

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

KALSHIEX LLC,
Plaintiff-Appellee,

v.

MARY JO FLAHERTY, ET AL.,
Defendants-Appellants.

On Appeal from the Judgment of the United States
District Court for the District of New Jersey
(Dist. Ct. No. 24-cv-4037)

**BRIEF OF *AMICI CURIAE* OF NEVADA, OHIO, 32 OTHER STATES,
DISTRICT OF COLUMBIA, AND NORTHERN MARIANA ISLANDS
SUPPORTING APPELLANTS**

AARON D. FORD
Nevada Attorney General

HEIDI PARRY STERN
Nevada Solicitor General
JESSICA E. WHELAN
Chief Deputy Solicitor General
Office of the Nevada
Attorney General
1 State of Nevada Way, Suite 100
Las Vegas, NV 89119
702.486.3420
jwhelan@ag.nv.gov

*Counsel for Amicus Curiae
State of Nevada*

DAVE YOST
Ohio Attorney General

T. ELLIOT GAISER*
Ohio Solicitor General
**Counsel of Record*
ZACHERY P. KELLER
Deputy Solicitor General
30 E. Broad St., 17th Fl.
Columbus, Ohio 43215
614.466.8980
thomas.gaiser@ohioago.gov

*Counsel for Amicus Curiae
State of Ohio*

Additional counsel listed after signature block

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION AND STATEMENT OF <i>AMICI</i> INTEREST	1
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. When Congress preempts the States from exercising their traditional authority, it does so clearly, not obscurely.	6
II. The States have traditionally regulated gambling.	8
III. Kalshi’s contrary position would leave sports betting largely unregulated and endanger the States’ citizens.	14
A. Recognizing an events-contract loophole to state gaming laws would have far-reaching consequences.	16
B. Existing federal regulation is an insufficient substitute for the States’ robust gaming regulations.	22
CONCLUSION	25
ADDITIONAL COUNSEL	27
CERTIFICATE OF COMPLIANCE.....	29
CERTIFICATE OF IDENTICAL COMPLIANCE OF BRIEF	30
CERTIFICATE OF VIRUS SCAN	31
CERTIFICATE OF COUNSEL.....	32
CERTIFICATE OF SERVICE.....	33

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ah Sin v. Wittman</i> , 198 U.S. 500 (1905).....	4, 9, 13
<i>Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n</i> , 576 U.S. 787 (2015).....	25
<i>Bond v. United States</i> , 572 U.S. 844 (2014).....	<i>passim</i>
<i>Booth v. Illinois</i> , 184 U.S. 425 (1902).....	13
<i>CSX Transp. v. Easterwood</i> , 507 U.S. 658 (1993).....	4, 8
<i>EEOC v. Arabian Am. Oil Co.</i> , 499 U.S. 244 (1991).....	5
<i>Fin. Oversight & Mgmt. Bd. v. Centro de Periodismo Investigativo, Inc.</i> , 598 U.S. 339 (2023).....	7
<i>Helton v. Hunt</i> , 330 F.3d 242 (4th Cir. 2003).....	9
<i>Kansas v. Garcia</i> , 589 U.S. 191 (2020).....	5
<i>Mills-Jennings of Ohio, Inc. v. Department of Liquor Control</i> , 70 Ohio St. 2d 95 (1982)	10, 11
<i>Murphy v. NCAA</i> , 584 U.S. 453 (2018).....	1, 10, 12
<i>Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.</i> , 595 U.S. 109 (2022).....	6

<i>Rousso v. State</i> , 170 Wn. 2d 70 (2010)	9
<i>West Virginia v. EPA</i> , 597 U.S. 697 (2022).....	7
<i>Whitman v. Am. Trucking Ass'ns</i> , 531 U.S. 457 (2001).....	4, 6

Statutes, Rules, and Constitutional Provisions

U.S. Const. amend. X	7
U.S. Const. art. VI, cl. 2	5
Ohio Const. art. XV, §6	12
17 C.F.R. §38.100–.1200.....	22
17 C.F.R. §38.700	22
17 C.F.R. §38.750	22
17 C.F.R. §38.850	22
17 C.F.R. §38.1150	22
7 U.S.C. §2	2, 3
7 U.S.C. §7	2, 24
Nev. Gaming Comm'n Reg. 22.010	19
Nev. Gaming Comm'n Reg. 22.080	19
Nev. Gaming Comm'n Reg. 22.1205	20
Nev. Gaming Comm'n Reg. 22.121	20
Nev. Gaming Comm'n Reg. 5.170	19
Nev. Gaming Comm'n Regs. 22.060-.063.....	19
Nev. Rev. Stat. ch. 462	13

Nev. Rev. Stat. ch. 463	13
Nev. Rev. Stat. ch. 463B.....	13
Nev. Rev. Stat. ch. 465	13
Nev. Rev. Stat. §129.010	21
Nev. Rev. Stat. §463.0129	19
Nev. Rev. Stat. §463.170	19, 23, 24
Nev. Rev. Stat. §463.220	24
Nev. Rev. Stat. §463.318	24
Nev. Rev. Stat. §463.350	21
Nev. Rev. Stat. §§463.362–.3668.....	19
Nev. Rev. Stat. §463.530	19
Nev. Rev. Stat. §463.5735	19
Nev. Rev. Stat. §§465.092–.094.....	19
Ohio Rev. Code §3109.01.....	21
Ohio Rev. Code §§3769.01–.28	13
Ohio Rev. Code §§3772.01-.99.....	13
Ohio Rev. Code §§3775.01-.99.....	13
Ohio Rev. Code §3775.02.....	20
Ohio Rev. Code §3775.03.....	20
Ohio Rev. Code §3775.09.....	20
Ohio Rev. Code §3775.13.....	21
Ohio Rev. Code §3775.99.....	21

Other Authorities

Charita M. Goshay, <i>Ohio offers Voluntary Exclusion List for problem gamblers as calls to helpline rise</i> , Canton Repository (Sept. 2, 2024).....	17
Dusting Gouker, <i>Ten Times Kalshi Said People Could Bet On Things</i> , Event Horizon.....	1, 15, 16
Erin Gottsacker, <i>A statewide telehealth service is changing the game for Ohioans with gambling addictions</i> , The Ohio Newsroom (Nov. 18, 2024).....	17
Felix Frankfurter, <i>Some Reflections on the Reading of Statutes</i> , 47 Colum. L. Rev. 527 (1947)	6
George G. Fenich, <i>A Chronology of (Legal) Gaming in the U.S.</i> , 3 UNLV Gaming Rsch & Rev. J. 65 (1996)	9, 10
<i>History of Gaming in Nevada</i> , Nevada Resort Association.....	10, 11
Jennifer Carleton et al., <i>Nevada in The Gambling Law Review</i> (Carl Rohsler ed. 2016)	12
Kalshi Member Agreement (Dec. 13, 2024)	21
Kalshi Website, Help Center: Trading; Fees	15
Kalshi Website, Sports: Baseball	14
Kalshi Website, Sports: Football.....	14
Katie Mogg & Aria Bendix, <i>Gambling addiction hotlines say volume is up and callers are younger as online sports betting booms</i> , NBC News (April 5, 2024).....	18, 20
Kelly Kennedy, <i>'I didn't care who was playing': Has the legalization of sports betting impacted problem gambling in Ohio?</i> , Cleveland 19 News (July 18, 2024).....	17

Lia Nower, et al., <i>The Prevalence of Online and Land-Based Gambling in New Jersey</i> , Rutgers University: Center for Gambling Studies (2023)	18
Matt Stone, <i>Risk of Gambling Addiction Up 30%</i> (Feb. 16, 2025).....	17
Nat'l Gambling Impact Study Comm'n, Final Report (1999).....	13, 17, 18
<i>Ohio Gambling Survey 2022</i> , Ohio Casino Control Commission.....	18
Randi Richardson, <i>Online gambling has fueled an industry boom that threatens public health, commission finds</i> , NBC News (Oct. 24, 2024)	12, 17
Robert D. Faiss & Gregory R. Gemignani, <i>Nevada Gaming Statutes: The Evolution and History</i> , University of Nevada: The Center for Gaming Research (2011)	11

INTRODUCTION AND STATEMENT OF *AMICI* INTEREST

“Americans have never been of one mind about gambling.” *Murphy v. NCAA*, 584 U.S. 453, 458 (2018). But this country’s system of government is well equipped for such disagreement. Under our federalist approach, States act as laboratories of democracy for solving complex problems and serving the needs of a diverse citizenry. As a result, the States have long experimented with different approaches to gambling, as their citizens’ “attitudes have swung back and forth” on the topic. *Id.*

Stripping away the semantics, this case most directly concerns gambling on sports. In 2018, the Supreme Court held that Congress could not bar the States from authorizing sports betting. *Id.* at 458, 480. Most States have since legalized the practice. In these States—and even in other States that have not legalized sports betting, like California and Texas—companies such as Kalshi now offer online sports betting through events contracts on the futures marketplace. Kalshi itself has called what it does “sports betting.” Dusting Gouker, *Ten Times Kalshi Said People Could Bet On Things*, Event Horizon, <https://nexteventhorizon.substack.com/p/ten-times-kalshi-said-people-could> (last accessed June 16, 2025); *see below* 16 (advertisement). Even so, Kalshi makes a

bold legal claim: it says that the States have no power to regulate its conduct, regardless of whether these so-called events contracts qualify as sports betting under state law. According to Kalshi, Congress—through obscure language within a special rule in the Commodity Exchange Act—subtly preempted the States from exercising authority over sports betting when that betting is offered through a so-called events contract.

If that sounds farfetched, that is because it is. When Congress removes the States’ historic police powers, it does not whisper in the dark of night. Rather, courts expect Congress to speak clear as day when it intends a dramatic shift in our country’s traditional balance of power. *See Bond v. United States*, 572 U.S. 844, 857–59 (2014). This federalism canon proves quite significant here. Nothing in the Commodity Exchange Act’s language clearly signals that Congress was trying to strip the States of their traditional power to regulate sports gambling. Indeed, several parts of the statutory scheme overtly recognize the continued application of state law. *See, e.g.*, 7 U.S.C. §§2(a)(1)(A), 7a-2(c)(5)(C)(i)(I). It follows that the Commodity Exchange Act does not accomplish the broad preemptive coup that Kalshi envisions.

For these and other reasons, the *amici* States are interested in this case. Accepting Kalshi’s position would wrongly upset our country’s traditional division of power. Beyond that, eliminating the States’ ability to regulate online sports betting would pose very serious risks to the States’ citizens. Online sports betting, while convenient and entertaining for many, comes with life-altering consequences for some. Thus, depriving the States of the power to regulate naturally increases the dangers to a vulnerable population of citizens. Because no federal law requires that potentially devastating result, the *amici* States urge reversal.

SUMMARY OF ARGUMENT

The *amici* States agree with New Jersey that the Commodity Exchange Act does not preempt States from regulating sports betting via events contracts. The preemption analysis in this case implicates several underlying issues—including whether sports-events contracts even qualify as “swaps” under federal law. *See* 7 U.S.C. §2(a)(1)(A). The *amici* States leave those finer details to the parties. The *amici* States also assume that absent preemption Kalshi’s events contracts would otherwise qualify as regulated (or illegal) sports betting under many if not most States’ laws. With those assumptions in place, this brief focuses on how

this country's federalist structure should inform the Court's preemption analysis here.

I. When lawmakers intend major changes to the existing state of the law, they do not obscure that intent. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). That holds true when Congress intends to make major changes to this nation's traditional division of power. Courts expect Congress to speak clearly if it intends to shift the States' historic powers to the federal government. *Bond*, 572 U.S. at 857–59. It follows that, absent clear language from Congress, courts should hesitate to read federal law as preempting an area of traditional state power. *See CSX Transp. v. Easterwood*, 507 U.S. 658, 664 (1993).

II. That principle matters a great deal to the preemption analysis in this case. As the Supreme Court has long recognized, the regulation of gambling forms a part of the States' traditional police powers. *Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905). Thus, for centuries, the States have been regulating gambling, including sports betting. This Court should not upset that traditional balance absent a clear directive from Congress. And—as the New Jersey defendants explain in this case—the Commodity Exchange Act offers no such clear directive.

III. The negative ramifications of Kalshi’s aggressive position are just another sign that the company is wrong. Millions of Americans struggle with gambling problems. Those struggles have only increased as modern technology has made gambling more convenient. Against those realities, state-gambling regulations play an important role in protecting vulnerable individuals across this country. And federal regulations, geared toward the futures marketplace, provide cold comfort in the absence of state protections.

ARGUMENT

Under the Supremacy Clause, federal law constitutes “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. It follows that, when Congress acts within the boundaries of its enumerated powers, it may choose to preempt state law through federal statutes. Such preemption can take different forms: federal statutes sometimes preempt state law expressly; other times they preempt by implication. *Kansas v. Garcia*, 589 U.S. 191, 202–03 (2020). But no matter the form, preemption turns on the text of federal law. *Id.* at 202. And to give statutory text a “fair reading,” courts must remain aware that “Congress legislates against the backdrop” of certain presumptions. *Bond*, 572 U.S. at 857 (quoting *EEOC v. Arabian*

Am. Oil Co., 499 U.S. 244, 248 (1991)); see Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947).

Keeping that last notion in mind, this brief unfolds in three parts. *First*, the *amici* States stress a backdrop canon—arising from this country’s federalist structure—that should inform the Court’s analysis. *Second*, the *amici* States explain why that canon applies with full force to the States’ regulation of gambling. *Third*, and finally, the *amici* States highlight the considerable downsides of removing the States’ ability to regulate online sports betting.

I. When Congress preempts the States from exercising their traditional authority, it does so clearly, not obscurely.

Congress, as the saying goes, does not “hide elephants in mouseholes.” *Whitman*, 531 U.S. at 468. Thus, when Congress seeks to change the “fundamental” nature of existing law, it does not use “vague terms or ancillary provisions.” *Id.* Textual arguments that suggest otherwise “ultimately founder.” *See id.*

This no-elephants-in-mouseholes principle has several context-specific applications. For example, the “major questions doctrine” teaches that if Congress “wishes to assign to an executive agency decisions of vast economic and political significance,” it must “speak clearly.” *Nat’l Fed’n of*

Indep. Bus. v. Dep't of Lab., 595 U.S. 109, 122 (2022) (Gorsuch, J., concurring) (quotation omitted). Likewise, to abrogate a government body's sovereign immunity, "Congress must use unmistakable language." *Fin. Oversight & Mgmt. Bd. v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 342 (2023). And "absent a clear statement from Congress," courts stick with the default assumption that federal statutes are inapplicable outside the United States. *Bond*, 572 U.S. at 857; *see also West Virginia v. EPA*, 597 U.S. 697, 736 (2022) (Gorsuch, J., concurring) (discussing these and other "clear-statement rules" that "help courts act as faithful agents of the Constitution" (quotation omitted)).

The federalism canon offers another example of this principle at work. This canon stems from "basic principles of federalism embodied in the Constitution." *Bond*, 572 U.S. at 859. As every schoolchild learns, the Constitution gives the federal government "only limited powers; the States and the people retain the remainder." *Id.* at 854; *see* U.S. Const. amend. X. That setup leaves the States with considerable police powers that they exercise for the public good. *Bond*, 572 U.S. at 854. Congress, for its part, legislates against this default ordering of sovereign authority. *Id.* at 857–58. Against that "backdrop," any statute that displaces or

limits a significant amount of state power constitutes a major change. *See id.* (quotation omitted). And one expects Congress to speak clearly when effecting a major change to the existing order. Adding all this up, the following rule emerges: absent a “clear statement,” courts should not assume that Congress intends “a significant change in the sensitive relation between” the federal and state governments in an area of “traditional state authority.” *Id.* at 858–59 (quotation omitted).

This federalism canon applies with particular force to preemption. Preemption, by its nature, triggers the “sensitive relation between federal and state” authority. *Id.* (quotation omitted). Courts thus need “to be certain of Congress’ intent before finding that federal law overrides the usual constitutional balance of federal and state powers.” *Id.* at 858 (quotation omitted). And courts should be especially “reluctant to find” preemption when “interpreting a federal statute pertaining to a subject traditionally governed by state law.” *Easterwood*, 507 U.S. at 664.

II. The States have traditionally regulated gambling.

The question remains whether the regulation of sports gambling triggers the federalism canon. It certainly does. As mentioned already, the States’ reserved powers include police powers, which refer to the States’

“broad authority to enact legislation for the public good.” *Bond*, 572 U.S. at 854. Given the dangers of gambling (more on that to come, *below* 16–18), the regulation of gambling fits neatly “within the police powers of a State.” *Ah Sin*, 198 U.S. at 505–06; *see also Helton v. Hunt*, 330 F.3d 242, 246 (4th Cir. 2003) (“[B]ecause the regulation of lotteries, betting, poker, and other games of chance touch all of the above aspects of the quality of life of state citizens the regulation of gambling lies at the heart of the state’s police power.” (quotation omitted)); *Rousso v. State*, 170 Wn. 2d 70, 82 (2010) (noting various “societal ills” associated with gambling, including “gambling addiction” and “underage gambling”). Unsurprisingly, therefore, the States have a lengthy history of gambling regulation.

Gambling has a long track record in this country, and its regulation dates back to well before the founding. On their way to the Americas, sailors on Columbus’s ships played games of chance to help pass the time. *See* George G. Fenich, *A Chronology of (Legal) Gaming in the U.S.*, 3 UNLV Gaming Rsch & Rev. J. 65, 66 (1996). But, at least as early as the seventeenth century, settling communities began to outlaw such behavior. In 1633, for instance, the Puritans of Massachusetts enacted idleness laws that barred people from possessing cards, dice, or other gambling

devices. *Id.* About fifty years later, the Quakers of Pennsylvania enacted a similar prohibition. *Id.* During the next century, colonies like New Hampshire and New Jersey took comparable steps. *Id.* Authorities in the Northwest Territories did, too. *Mills-Jennings of Ohio, Inc. v. Department of Liquor Control*, 70 Ohio St. 2d 95, 99 (1982).

After the founding, opposition to gambling continued to build. For example, shortly after Ohio entered the Union, its General Assembly made various forms of gambling illegal. *Id.* And the Ohio Constitution of 1851 expressly added prohibitions on lotteries. *Id.* Even in Nevada, perhaps the most gambling-friendly State in the Union, games of chance were prohibited by the territorial and early State legislatures of the 1860s. *See History of Gaming in Nevada*, Nevada Resort Association, <https://perma.cc/9VX4-F8NG> (last accessed June 16, 2025). Eventually, by the late 1800s, “gambling was largely banned throughout the country.” *Murphy*, 584 U.S. at 458; *but see* Fenich, *A Chronology of (Legal) Gaming in the U.S.*, at 67–69 (listing some early examples of gambling).

The pendulum began to swing back in the twentieth century, with many States loosening gambling prohibitions to raise state revenue or fund non-profits. *Murphy*, 584 U.S. at 458–59. Return to Nevada. It was

an early adopter of legalized gambling, first decriminalizing certain forms of gambling in 1869. *History of Gaming in Nevada*, Nevada Resort Association. After a brief ban on gambling during the Progressive Movement, Nevada eventually legalized “wide-open” gambling in 1931, a move that soon gave rise to Nevada’s booming casino industry. *Id.*; Robert D. Faiss & Gregory R. Gemignani, *Nevada Gaming Statutes: The Evolution and History*, University of Nevada: The Center for Gaming Research, at 1 (2011), http://digitalscholarship.unlv.edu/occ_papers/11 (last accessed June 16, 2025). A decade later, the Nevada Legislature shifted licensing authority from local to state government through passage of the Gaming Control Act of 1949. *See* Faiss, *Nevada Gaming Statutes: The Evolution and History*, at 3. The State’s current regulatory structure, which involves the Nevada Gaming Control Board and Nevada Gaming Commission, evolved from there. *Id.* at 4–6.

Although Nevada was on the forefront, other States’ views have also softened on gambling over time. For example, in the 1970s, Ohio legalized bingo for charitable purposes and state-conducted lotteries. *Mills-Jennings of Ohio*, 70 Ohio St. 2d at 101. And, about fifteen years ago, a

slim majority of Ohio voters approved a constitutional amendment allowing for casino gaming. *See* Ohio Const. art. XV, §6(C).

Recently, the country's attention has turned to sports gambling. *Murphy*, 548 U.S. at 460–61. Nevada set the pace in this area, too: the Silver State has permitted sports betting since the passage of the Gaming Control Act of 1949. *See* Jennifer Carleton et al., Nevada *in* The Gambling Law Review 147 (Carl Rohsler ed. 2016), <https://perma.cc/3BSY-UYMZ>. By the 1990s, a few other States had also legalized certain forms of sports betting. *Murphy*, 548 U.S. at 462.

To prevent sports gambling's continued growth, Congress enacted the Professional and Amateur Sports Protection Act, which purported to bar the States from authorizing sports betting. *Id.* at 461. A few years ago, however, the Supreme Court held in *Murphy* that Congress could not lawfully impose such a barrier on state lawmakers. *Id.* at 458, 480. That clarification has led most States to embrace sports betting. At present, nearly forty States have legalized at least some forms of sports betting. Randi Richardson, *Online gambling has fueled an industry boom that threatens public health, commission finds*, NBC News (Oct. 24, 2024), <https://perma.cc/XL7W-QS2L>.

Importantly, the increased legalization of gambling across the States does not mean that such gambling is unregulated. Quite the opposite. The States’ “authorization of legalized gambling” over the years “has almost always been accompanied by the establishment of a corresponding regulatory regime and structure.” Nat’l Gambling Impact Study Comm’n, Final Report, 3-1 (1999). For example, Ohio has comprehensive statutory schemes regulating the forms of gambling it authorizes. *See, e.g.*, Ohio Rev. Code §§3769.01–.28 (horse racing), 3772.01–.99 (casino gaming), 3775.01–.99 (sports gaming). As does Nevada. *See, e.g.*, Nev. Rev. Stat. chs. 462 (lotteries and games), 463 (licensing and control of gaming), 463B (supervision of certain gaming establishments), 464 (pari-mutuel wagering), 465 (crimes and liabilities concerning gaming), 466 (horse racing).

The takeaway from this history is simple. Gambling undeniably qualifies as an area of “traditional state responsibility.” *See Bond*, 572 U.S. at 858; *see also Booth v. Illinois*, 184 U.S. 425, 429–32 (1902). Thus, under the federalism canon, this Court should not interfere with the State’s police power over gambling absent “clear, unmistakable” legislation from Congress. *See Ah Sin*, 198 U.S. at 505–06 (quoting *Booth*, 184 U.S.

at 429). And, as the New Jersey defendants aptly explain, the language within the Commodity Exchange Act does not clearly signal Congress's intent to override the States' traditional authority over sports betting.

III. Kalshi's contrary position would leave sports betting largely unregulated and endanger the States' citizens.

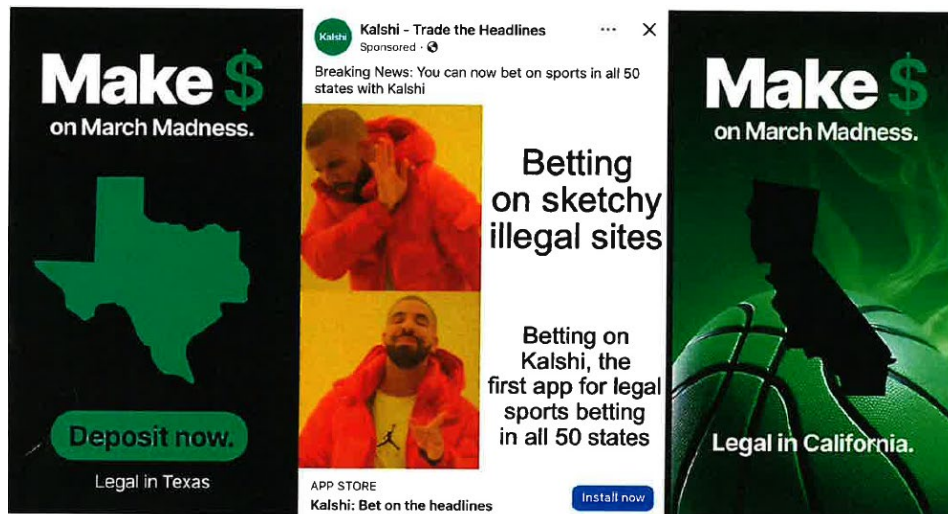
Kalshi takes a much different view of the world. Initially, it claims that its events contracts do not count as sports gambling. As a legal matter, that depends on definitions within state law. But, as a real-world matter, the activity Kalshi facilitates is obviously sports betting.

To confirm as much, one must only peruse Kalshi's website. The website has an entire category dedicated to "sports" where—through a few easy clicks—people can bet on things like the Steelers winning more than eight games this season or the Ravens winning the Super Bowl. *See* Kalshi Website, Sports: Football, <https://perma.cc/M9ZA-V7DP> (last accessed June 9, 2025). Baseball fans can similarly play the odds on whether the Phillies or the Mets will win the National League East. *See* Kalshi Website, Sports: Baseball, <https://perma.cc/GP7X-ZLEW> (last accessed June 9, 2025).

Kalshi's counter position strains credulity. The company has argued to States that its events contracts are not sports gambling because it is

not acting as the “House,” like a traditional sportsbook operator does. Since Kalshi merely operates the “exchange” on which “contracts” are entered between two willing participants on either side of an uncertain outcome, the argument goes, Kalshi falls outside state gaming law in the first instance. This amounts to a distinction without a difference. Kalshi’s position is indistinguishable from that of a Las Vegas poker room that simply operates as the venue in which willing participants play a card game. Like the poker room operator that takes a “rake” from each hand of poker played in its poker room, Kalshi takes a transaction fee from each contract entered on its exchange. *See* Kalshi Website, Help Center: Trading; Fees, <https://perma.cc/49FW-FM8K> (last accessed June 10, 2025).

Perhaps most importantly, from the consumer’s perspective, it is immaterial whether Kalshi is acting as the “House” that sets the line and takes a vig, or as an exchange, which facilitates the contract and takes a transaction fee. Kalshi has even told the public that they can “bet” using its platform. Gouker, *Ten Times Kalshi Said People Could Bet On Things*, Event Horizon. Take the following advertisement from last year’s March Madness tournament:



Id. Thus, Kalshi's own words betray its this-is-not-gambling position.

Regardless, Kalshi's broader argument is that, because of federal preemption, it does not matter if it facilitates sports gambling within the meaning of state laws. Said another way, Kalshi claims that by structuring sports betting as events contracts, it effectively makes state-law requirements disappear. And Kalshi relatedly argues that federal regulation—administered through the Commodity Futures Trading Commission—is both comprehensive and sufficient to protect consumers. Kalshi's views, in addition to being legally wrong, come with considerable societal consequences.

A. Recognizing an events-contract loophole to state gaming laws would have far-reaching consequences.

1. While gambling is entertaining for many, it is dangerous for some.

Millions of Americans across the country qualify as problematic or

pathological gamblers. Nat'l Gambling Impact Study Comm'n, Final Report, 4-1; Charita M. Goshay, *Ohio offers Voluntary Exclusion List for problem gamblers as calls to helpline rise*, Canton Repository (Sept. 2, 2024), <https://perma.cc/BQY6-YBC3>. Research, moreover, has linked gambling to many other problems—substance abuse and psychological distress, to name a few. See Richardson, *Online gambling has fueled an industry boom*, NBC News. Some gamble to the point of financial ruin. See Kelly Kennedy, *'I didn't care who was playing': Has the legalization of sports betting impacted problem gambling in Ohio?*, Cleveland 19 News (July 18, 2024), <https://perma.cc/JG9G-P7QT>. Others place gambling over the health of loved ones. See Erin Gottsacker, *A statewide telehealth service is changing the game for Ohioans with gambling addictions*, The Ohio Newsroom (Nov. 18, 2024), <https://perma.cc/E4ZU-U3MN>. And still others gamble to the point of suicide. See Matt Stone, *Risk of Gambling Addiction Up 30%*, 21-WFMJ (Feb. 16, 2025), <https://perma.cc/76KG-5ZGS> (noting that one in five problematic gamblers contemplates suicide due to hopelessness).

With the growing ease of gambling, these problems are on the rise. See *id.* For example, a 2022 survey performed by the Ohio Casino Control

Commission signaled that the prevalence of at risk/problem gamblers in the Buckeye State had nearly doubled in five years. *See Ohio Gambling Survey 2022*, Ohio Casino Control Commission, <https://perma.cc/4GG3-SGQE> (slide five of PowerPoint). As another datapoint, calls to Ohio's gambling hotline were up 55% in 2023. Katie Mogg & Aria Bendix, *Gambling addiction hotlines say volume is up and callers are younger as online sports betting booms*, NBC News (April 5, 2024), <https://tinyurl.com/mtjnna33>.

Online sports betting attracts a younger crowd. A recent New Jersey-based survey reflected that one in every five people surveyed between the ages of 18 and 24 was at a high risk of a gambling problem. *See Lia Nower, et al., The Prevalence of Online and Land-Based Gambling in New Jersey*, Rutgers University: Center for Gambling Studies, at 33 (2023), <https://perma.cc/V3KH-BPHC>. And research reflects that those who start gambling at a young age run a higher risk of problematic gambling. *See Nat'l Gambling Impact Study Comm'n, Final Report*, 4-12.

2. State regulations offer a powerful tool for combatting these dangers. Think, for example, of Nevada's regulatory scheme. Given the importance of gambling to Nevada's overall economy, the State strictly

regulates all gambling activities to ensure the public’s continued “confidence and trust.” Nev. Rev. Stat. §463.0129(1) (outlining Nevada’s public policy on gambling). A central part of Nevada’s mission is ensuring that gaming proprietors are “controlled and assisted” so as to “protect the public health, safety, morals, good order and general welfare of the inhabitants of the State.” *Id.*

Consistent with that goal, Nevada’s regulatory scheme offers gamblers in the State many levels of protection. As a general matter, Nevada employs a rigorous licensing process that ensures any gambling entity undergoes an in-depth investigation before receiving a license. *See* Nev. Rev. Stat. §§463.170, 463.530, 463.5735; *see also below* 23–24.

Nevada’s regulatory scheme also offers a variety of more specific protections. For instance, Nevada requires those that conduct gaming operations to conspicuously post information about resources for problem gamblers. Nev. Gaming Comm’n Reg. 5.170. Nevada law also includes various safeguards to protect against improper betting practices, including improper wagers on sports. *See, e.g.,* Nev. Rev. Stat. §§465.092–.094; Nev. Gaming Comm’n Regs. 22.010(14), 22.060–.063, 22.080(1); *cf. also* Nev. Rev. Stat. §§463.362–.3668 (detailing Nevada’s dispute resolution

process). Of particular note here, Nevada prohibits sports wagers by game officials, owners, coaches, players, or other team staff. *See Nev. Gaming Comm’n Reg. 22.1205; cf. also Mogg, Gambling addiction hot-lines say volume is up*, NBC News (reporting that gamblers recently threatened the coach of the Cleveland Cavaliers). Further, Nevada requires that those facilitating sports betting report suspicious activity. Nev. Gaming Comm’n Reg. 22.121.

Under Kalshi’s reading of the law, these types of state-law safeguards fall away so long as companies package sports betting as events contracts. That, in turn, creates a sizeable hole in the States’ ability to protect their citizens from predatory practices or other problematic behavior.

For additional support, consider Ohio’s recently adopted approach to sports gambling. Similar to Nevada, Ohio prohibits companies from offering sports betting without a license. Ohio Rev. Code §3775.03(A). That requires a company to establish that it can responsibly facilitate such gambling. *See Ohio Rev. Code §3775.09(A)–(B)*. Along related lines, Ohio facilitates an exclusion program whereby people worried about their sports gambling habits may place themselves on a voluntary exclusion list. *See Ohio Rev. Code §3775.02(B)(11)*. To enforce that list, sports

gaming proprietors are required to “employ commercially reasonable methods to prevent any person who is participating in the sports gaming voluntary exclusion program from engaging in sports gaming.” Ohio Rev. Code §3775.13(C)(1). But, adopting Kalshi’s view, the company has no such state-law obligation.

Another problem also warrants mention. If left unregulated, Kalshi’s business model would effectively lower the gambling age in many States. According to Kalshi’s membership agreement, the company’s services are open to anyone of the age of majority in their State. Kalshi Member Agreement (Dec. 13, 2024), <https://perma.cc/7G3F-W7B5>. In many—if not most—States, the age of majority is eighteen years old. *See, e.g.*, Nev. Rev. Stat. §129.010; Ohio Rev. Code §3109.01. But many States have decided to specifically limit gambling (or at least certain types of gambling) to those twenty-one or older. *See, e.g.*, Nev. Rev. Stat. §463.350; Ohio Rev. Code §3775.99(A). That discrepancy is no small matter. As discussed above, those who begin gambling at a younger age face a higher risk of long-term problems. That might be good for Kalshi’s bottom line, but it is bad for the States’ citizens.

B. Existing federal regulation is an insufficient substitute for the States’ robust gaming regulations.

Contrary to Kalshi’s suggestions, federal regulation of the futures marketplace is not a cure-all when it comes to nationwide sports betting. More precisely, Kalshi seeks to alleviate any concern about the far-reaching consequences of its position by pointing to the Commodity Exchange Act’s “detailed requirements for exchanges to maintain good standing as designated contract markets.” ECF No. 2, at 5. These requirements, termed the “Core Principles,” are twenty-three points, codified in the Code of Federal Regulations, by which designated contract markets, such as Kalshi, must abide. *See* 17 C.F.R. §38.100–.1200. These Core Principles govern topics from diversity of directors on the board of trade, 17 C.F.R. §38.1150, to dispute resolution, 17 C.F.R. §38.750, to conflicts of interest, 17 C.F.R. §38.850, to disciplinary procedures, 17 C.F.R. §38.700.

Although Kalshi is regulated in this sense, these Core Principles are naturally designed for participants in the financial markets. They do not replace the States’ regulatory schemes, which are specifically designed to combat problems associated with gambling. *See above* 18–21. What is more, relying on federal regulation alone forces a one-size-fits-all regime, eliminating the States’ ability to experiment with other approaches.

Giving the States flexibility to create their own regulatory schemes that are responsive to localized concerns is a core feature of federalism.

To better illustrate these points, return one last time to Nevada. The State, after all, has nearly one hundred years' experience in regulating legalized gambling and responding to challenges unique to both the gambling industry and local Nevadan concern.

With Nevada's considerable experience in mind, consider a key gap that would be left by a federal-only regime. Nevada has developed robust procedures for determining the suitability of any person involved in the gaming industry in Nevada. This suitability determination is a front-loaded process in which the person seeking a gaming approval bears the burden of showing the person is qualified to hold a license. Nev. Rev. Stat. §463.170(1). This burden entails satisfying the Nevada Gaming Commission that the person is a "person of good character, honesty and integrity"; that the person's "prior activities, criminal record . . . , reputation, habits and associations do not pose a threat to the public interest of [Nevada] or to the effective regulation and control of gaming"; and that the person is "[i]n all other respects qualified to be licensed or found suitable consistently with the declared policy of [Nevada]." Nev. Rev. Stat.

§463.170(2). This burden extends to the person showing “adequate business probity, competence and experience, in gaming” and that the financing for the operation is both adequate and from a suitable source. Nev. Rev. Stat. §463.170(3).

Further, the Nevada Gaming Commission “has full and absolute power and authority to deny any application for any cause it deems reasonable.” Nev. Rev. Stat. §463.220(7). The decision of the Nevada Gaming Commission concerning a person’s suitability is final; a person may not seek judicial review. Nev. Rev. Stat. §463.318(2).

For its part, the Commodity Exchange Act has no corollary to the Nevada suitability procedures. Worse still, designated contract markets may list new types of events contracts on their exchange without pre-approval, simply by self-certifying to the Commodity Futures Trading Commission that the new contract complies with federal law. *See* 7 U.S.C. §7a-2(c)(1). The result of such loose processes will be to have individuals who would be unable to clear state-law hurdles running de facto sports books throughout the country, immune from the States’ regulation. And this is but one example where federal regulations for the futures marketplace fall short of safeguarding important public policy

considerations of the States and protecting consumers in the milieu of gambling.

*

All told, Kalshi’s desire to be free from state regulation should give the Court considerable pause. As alluded to above, one of the benefits of our constitutional structure is that the States act “as laboratories” of democracy, “devising solutions” to new and difficult problems. *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 817 (2015) (quotation omitted). The problems associated with modern-day online sports betting fit that description, no matter how proprietors label such betting. And the States are in the best position to implement innovative regulatory schemes responsive to particularized concerns that arise within their borders, thereby protecting the public and promoting confidence in the gaming industry.

CONCLUSION

The Court should reverse.

AARON D. FORD
Nevada Attorney General
HEIDI PARRY STERN
Nevada Solicitor General
JESSICA E. WHELAN
Chief Deputy Solicitor General
Office of the Nevada
Attorney General
1 State of Nevada Way, Suite 100
Las Vegas, NV 89119
702.486.3420
jwhelan@ag.nv.gov
*Counsel for Amicus Curiae
State of Nevada*

DAVE YOST
Ohio Attorney General
/s/ T. Elliot Gaiser
T. ELLIOT GAISER*
Ohio Solicitor General
**Counsel of Record*
ZACHERY P. KELLER
Deputy Solicitor General
30 E. Broad St., 17th Fl.
Columbus, Ohio 43215
614.466.8980
thomas.gaiser@ohioago.gov
*Counsel for Amicus Curiae
State of Ohio*

ADDITIONAL COUNSEL

STEVE MARSHALL
Alabama Attorney General

LIZ MURRILL
Louisiana Attorney General

KRISTIN K. MAYES
Arizona Attorney General

AARON M. FREY
Maine Attorney General

TIM GRIFFIN
Arkansas Attorney General

ANTHONY G. BROWN
Maryland Attorney General

PHILIP J. WEISER
Colorado Attorney General

ANDREA JOY CAMPBELL
Massachusetts Attorney General

WILLIAM TONG
Connecticut Attorney General

DANA NESSEL
Michigan Attorney General

KATHLEEN JENNINGS
Delaware Attorney General

KEITH ELLISON
Minnesota Attorney General

BRIAN L. SCHWALB
District of Columbia
Attorney General

LYNN FITCH
Mississippi Attorney General

ANNE E. LOPEZ
Hawaii Attorney General

AUSTIN KNUDSEN
Montana Attorney General

RAÚL R. LABRADOR
Idaho Attorney General

LETITIA JAMES
New York Attorney General

KWAME RAOUL
Illinois Attorney General

JEFF JACKSON
North Carolina Attorney General

THEODORE E. ROKITA
Indiana Attorney General

DREW H. WRIGLEY
North Dakota Attorney General

BRENNA BIRD
Iowa Attorney General

EDWARD E. MANIBUSAN
Northern Mariana Islands
Attorney General

DAN RAYFIELD
Oregon Attorney General

DAVID W. SUNDAY, JR.
Pennsylvania Attorney General

PETER F. NERONHA
Rhode Island Attorney General

ALAN WILSON
South Carolina Attorney General

MARTY JACKLEY
South Dakota Attorney General

JONATHAN SKRMETTI
Tennessee Attorney General
and Reporter

DEREK E. BROWN
Utah Attorney General

CHARITY R. CLARK
Vermont Attorney General

NICHOLAS W. BROWN
Washington Attorney General

JOSH KAUL
Wisconsin Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, that this brief complies with the type-volume for an *amicus* brief supporting an appellant and contains 4,770 words. *See* Fed. R. App. P. 32(a)(7)(B)(i), 29(a)(5).

I further certify that this brief complies with the typeface requirements of Federal Rule 32(a)(5) and the type-style requirements of Federal Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

/s/ T. Elliot Gaiser
T. ELLIOT GAISER
Ohio Solicitor General

CERTIFICATE OF IDENTICAL COMPLIANCE OF BRIEF

I hereby certify that the electronic version of this brief is identical to the text version in the paper copies that are being dispatched by overnight delivery to the Clerk of the Court of the United States Court of Appeals for the Third Circuit.

/s/ T. Elliot Gaiser
T. ELLIOT GAISER
Ohio Solicitor General

CERTIFICATE OF VIRUS SCAN

I hereby certify that this document was scanned using CrowdStrike Falcon Sensor, version 7.24.19607, and Microsoft Defender 365 and no viruses were detected.

/s/ T. Elliot Gaiser
T. ELLIOT GAISER
Ohio Solicitor General

CERTIFICATE OF COUNSEL

I hereby certify that I am a member of the bar of this Court.

/s/ T. Elliot Gaiser
T. ELLIOT GAISER
Ohio Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2025, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ T. Elliot Gaiser
T. ELLIOT GAISER
Ohio Solicitor General

EXHIBIT 3

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

KALSHIEX LLC,
Plaintiff-Appellant,

v.

JOHN A. MARTIN, ET AL.,
Defendants-Appellees.

On Appeal from the Judgment of the United States
District Court for the District of Maryland
(Dist. Ct. No. 1:25-cv-01283-ABA)

**BRIEF OF *AMICI CURIAE* OF NEVADA, OHIO, 36 OTHER STATES, AND THE
DISTRICT OF COLUMBIA SUPPORTING APPELLEES**

AARON D. FORD
Nevada Attorney General

HEIDI PARRY STERN
Nevada Solicitor General
JESSICA E. WHELAN
Chief Deputy Solicitor General
Office of the Nevada
Attorney General
1 State of Nevada Way, Suite 100
Las Vegas, NV 89119
702.486.3420
jwhelan@ag.nv.gov

*Counsel for Amicus Curiae
State of Nevada*

DAVE YOST
Ohio Attorney General

MATHURA J. SRIDHARAN*
Ohio Solicitor General
**Counsel of Record*
ZACHERY P. KELLER
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614.466.8980
Mathura.Sridharan@OhioAGO.gov

*Counsel for Amicus Curiae
State of Ohio*

Additional counsel listed after signature block

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF AMICI INTEREST	1
INTRODUCTION.....	1
BACKGROUND	3
I. The States traditionally have regulated gambling, including sports betting.	3
II. In 2010, Congress amended the Commodity Exchange Act in the wake of the 2008 financial crisis.....	7
III. Kalshi argues that Congress—in responding to the 2008 financial crisis—legalized sports betting nationwide.	11
SUMMARY OF ARGUMENT.....	14
ARGUMENT	15
I. When Congress makes major changes to the existing state of law, it does so clearly, not obscurely.	16
A. Kalshi’s position violates the federalism canon.	17
B. Kalshi’s position violates the major-questions doctrine.....	21
II. Kalshi’s position would leave sports betting largely unregulated and endanger the States’ citizens.	25
A. States are experienced in regulating sports betting and its many potential harms.....	25
B. Existing federal regulation is an insufficient substitute for the States’ robust gaming regulations.....	31
CONCLUSION.....	34
ADDITIONAL COUNSEL	36
CERTIFICATE OF COMPLIANCE.....	38
CERTIFICATE OF SERVICE.....	39

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ah Sin v. Wittman</i> , 198 U.S. 500 (1905).....	3, 14, 18, 19
<i>Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n</i> , 576 U.S. 787 (2015).....	33
<i>Bond v. United States</i> , 572 U.S. 844 (2014).....	<i>passim</i>
<i>Cipollone v. Liggett Grp., Inc.</i> , 505 U.S. 504 (1992).....	21
<i>CSX Transp., Inc. v. Easterwood</i> , 507 U.S. 658 (1993).....	18
<i>FDA v. Brown & Williamson Tobacco Corp.</i> , 529 U.S. 120 (2000).....	20
<i>Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.</i> , 598 U.S. 339 (2023).....	16
<i>Greater New Orleans Broadcasting Ass’n, Inc. v. United States</i> , 527 U.S. 173 (1999).....	19
<i>Helton v. Hunt</i> , 330 F.3d 242 (4th Cir. 2003).....	19
<i>Inv. Co. Inst. v. CFTC</i> , 720 F.3d 370 (D.C. Cir. 2013)	7, 8
<i>Kalshiex, LLC v. Hendrick</i> , No. 2:25-cv-00575, 2025 WL 3286282 (D. Nev. Nov. 24, 2025).....	13
<i>Kansas v. Garcia</i> , 589 U.S. 191 (2020).....	16

<i>King v. Burwell</i> , 576 U.S. 473 (2015).....	15, 22, 25
<i>Merrill Lynch, Pierce, Fenner & Smith v. Curran</i> , 456 U.S. 353 (1982).....	9
<i>Mills-Jennings of Ohio, Inc. v. Dep’t of Liquor Control</i> , 70 Ohio St. 2d 95 (1982)	4, 5
<i>Murphy v. NCAA</i> , 584 U.S. 453 (2018).....	<i>passim</i>
<i>United States v. Phillips</i> , 155 F.4th 102 (2d Cir. 2025).....	9, 10
<i>West Virginia v. EPA</i> , 597 U.S. 697 (2022).....	<i>passim</i>
<i>Whitman v. Am. Trucking Ass’ns</i> , 531 U.S. 457 (2001).....	1, 14, 16

Statutes, Regulations, and Constitutional Provisions

U.S. Const. amend. X	17
U.S. Const. art. VI.....	15
Ohio Const. art. XV, §6	5
17 C.F.R. §§38.100–.1200.....	31
17 C.F.R. §38.700	31
17 C.F.R. §38.750	31
17 C.F.R. §38.850	31
54 Fed. Reg. 30694 (July 21, 1989)	10
7 U.S.C. §1a	11, 23
7 U.S.C. §2	<i>passim</i>

7 U.S.C. §7a-2.....	33
7 U.S.C. §16.....	20, 21
Nev. Gaming Comm’n Reg. 22.010	26
Nev. Gaming Comm’n Reg. 22.060–.063	26
Nev. Gaming Comm’n Reg. 22.080	26
Nev. Gaming Comm’n Reg. 22.1205	27
Nev. Gaming Comm’n Reg. 22.121	27
Nev. Gaming Comm’n Reg. 5.170	26
Nev. Rev. Stat. ch. 462	7
Nev. Rev. Stat. ch. 463	7
Nev. Rev. Stat. ch. 463B.....	7
Nev. Rev. Stat. ch. 464	7
Nev. Rev. Stat. ch. 465	7
Nev. Rev. Stat. ch. 466	7
Nev. Rev. Stat. §129.010	30
Nev. Rev. Stat. §463.0129	25, 26
Nev. Rev. Stat. §463.170	26, 32
Nev. Rev. Stat. §463.350	30
Nev. Rev. Stat. §§463.362–.3668.....	26
Nev. Rev. Stat. §463.530	26
Nev. Rev. Stat. §463.5735	26
Nev. Rev. Stat. §§465.092–.094.....	26

Ohio Rev. Code ch. 3769.....	7
Ohio Rev. Code ch. 3770.....	7
Ohio Rev. Code ch. 3772.....	7
Ohio Rev. Code ch. 3774.....	7
Ohio Rev. Code ch. 3775.....	7
Ohio Rev. Code §3109.01.....	30
Ohio Rev. Code §3775.02.....	27
Ohio Rev. Code §3775.03.....	27
Ohio Rev. Code §3775.09.....	27
Ohio Rev. Code §3775.13.....	27
Ohio Rev. Code §3775.99.....	30
Pub. L. 111-203, 124 Stat. 1376 (2010).....	10

Other Authorities

Am. Gaming Ass’n, <i>State of the States 2025</i> (May 13, 2025)	6
Brandon Gustafson, <i>2024: A year of growth for sports betting revenue</i> , CBS Sports (Mar. 28, 2025).....	22
Charita M. Goshay, <i>Ohio offers Voluntary Exclusion List for problem gamblers as calls to helpline rise</i> , Canton Repository (Sept. 2, 2024).....	28
Dustin Gouker, <i>Kalshi Rolls Out Same-Game Parlays For Monday Night Football Games</i> , Event Horizon (Sept. 30, 2025).....	12
Dustin Gouker, <i>Ten Times Kalshi Said People Could Bet On Things</i> , Event Horizon (April 3, 2025)	11, 12

Erin Gottsacker, <i>A statewide telehealth service is changing the game for Ohioans with gambling addictions</i> , The Ohio Newsroom (Nov. 18, 2024).....	28
Fin. Crisis Inquiry Comm’n, <i>The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States</i> (2011).....	10
George G. Fenich, <i>A Chronology of (Legal) Gaming in the U.S.</i> , 3 UNLV Gaming Rsch. & Rev. J. 65 (1996)	3, 4
<i>History of Gaming in Nevada</i> , Nevada Resort Association.....	4, 5
Jennifer Carleton et al., <i>The Gambling Law Review</i> (Carl Rohsler ed. 2016)	5
John C. Hull, <i>Options, Futures, and Other Derivatives</i> (8th ed. 2012).....	7, 8, 9
John Gramlich, <i>Americans increasingly see legal sports betting as a bad thing for society and sports</i> , Pew Research Center (Oct. 2, 2025).....	22
Kalshi Member Agreement (November 4, 2025)	29
Kalshi Website, <i>Sports: Pro Football; Exact wins</i>	12
Katie Mogg & Aria Bendix, <i>Gambling addiction hotlines say volume is up and callers are younger as online sports betting booms</i> , NBC News (April 5, 2024).....	29
Kelly Kennedy, <i>‘I didn’t care who was playing’: Has the legalization of sports betting impacted problem gambling in Ohio?</i> , Cleveland 19 News (July 18, 2024).....	28
Lev Akabas, <i>Kalshi’s Volume Has Been 90% Sports During Football Season</i> , Sportico (Oct. 3, 2025).....	22

Lia Nower, et al., <i>The Prevalence of Online and Land-Based Gambling in New Jersey</i> , Rutgers University: Center for Gambling Studies (2023)	29
Matt Stone, <i>Risk of Gambling Addiction Up 30%</i> , 21-WFMJ (Feb. 16, 2025).....	28
Nat’l Gambling Impact Study Comm’n, Final Report (1999).....	7, 27, 29
Norman Menachem Feder, <i>Deconstructing Over-the-Counter Derivatives</i> , 2002 Colum. Bus. L. Rev. 677 (2002)	8
<i>Ohio Gambling Survey 2022</i> , Ohio Casino Control Commission.....	28
Rena S. Miller, <i>Derivatives Regulation and Legislation Through the 111th Congress</i> , Congressional Research Services (Jan. 30, 2012)	8
Randi Richardson, <i>Online gambling has fueled an industry boom</i> , NBC News (Oct. 24, 2024)	28
Robert D. Faiss & Gregory R. Gemignani, <i>Nevada Gaming Statutes: The Evolution and History</i> , UNLV: The Center for Gaming Research Occasional Paper Series (2011).....	5
Ryan Morik, <i>Ohio governor calls for an end to player prop betting amid investigation into Guardians pitchers</i> , Fox Business (July 31, 2025)	30
Tom Withers, <i>Cavs coach Bickerstaff says he received threats from gamblers, feels sports betting ‘gone too far’</i> , AP News (Mar. 20, 2024).....	30
<i>U.S. Charges N.B.A. Coach and Players in Gambling Schemes</i> , The New York Times (Oct. 23, 2025).....	30

STATEMENT OF AMICI INTEREST

Amici consist of Nevada, Ohio, 36 other States, and the District of Columbia (collectively, “the *amici* States”). They are interested in this case because Kalshi’s aggressive theory of preemption threatens the States’ longstanding ability to protect their citizens. The *amici* States submit this brief under Federal Rule of Appellate Procedure 29(a)(2).

INTRODUCTION

As the saying goes, Congress does not “hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). Courts do not expect Congress to make dramatic changes through obscure language. They instead expect Congress to speak clearly if it intends a sea change.

This basic point dooms Kalshi’s case. By way of background, in January 2025, Kalshi began offering online sports betting on its platform. This activity, unsurprisingly, caught the States’ attention. The States have long regulated gambling, including sports betting. In some States, sports betting is simply illegal, while in other States, it is allowed but comprehensively regulated. Nonetheless, Kalshi says that state gambling laws do not matter to its activities. That is so, Kalshi argues, because of financial legislation Congress enacted fifteen years ago. Back

then, sports betting was illegal in all but a few States. But, according to Kalshi, Congress subtly preempted the States from regulating sports betting when it responded to the 2008 financial crisis—apparently without anyone noticing for years.

If that sounds farfetched, that is because it is. Indeed, Kalshi’s position violates two clear-statement rules that inform how courts interpret federal law. *First*, under the federalism canon, courts expect Congress to speak clearly when it intends to shift this country’s traditional balance of power. It follows that Congress could not have removed the States’ traditional authority over sports betting without even mentioning the subject. *Second*, under the major-questions doctrine, courts expect Congress to speak clearly if it intends to give a federal agency unprecedented authority over significant topics. That doctrine also matters here, as Kalshi’s position would delegate to a federal commission the authority to set nationwide sports-gambling policy. If Congress really wanted to delegate that much power, it would not have kept the matter a secret.

In short, the unlikelihood of Kalshi’s position signals its downfall. The *amici* States thus submit this brief in support of Maryland.

BACKGROUND

Kalshi's preemption argument rests on an unrealistic premise. The company submits that, when responding to the 2008 financial crisis, Congress quietly chose to make sweeping changes to this country's gambling laws. To understand why that is so unlikely, it helps to review this country's regulatory history—both as to gambling and derivatives markets.

I. The States traditionally have regulated gambling, including sports betting.

A. The regulation of gambling is “concededly within the police powers of a state.” *Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905). Indeed, the States have a lengthy history of regulation.

Gambling regulation traces back to before the Founding. On their way to the Americas, sailors on Columbus's ships played games of chance to pass the time. See George G. Fenich, *A Chronology of (Legal) Gaming in the U.S.*, 3 UNLV Gaming Rsch. & Rev. J. 65, 66 (1996). But, in the seventeenth century, settling communities began to outlaw such behavior. In 1638, the Puritans of Massachusetts enacted idleness laws that barred people from possessing cards, dice, or other gambling devices. *Id.* About fifty years later, the Quakers of Pennsylvania enacted a similar prohibition. *Id.* During the next century, colonies like New Hampshire

and New Jersey took comparable steps. *Id.* Authorities in the Northwest Territories did, too. *Mills-Jennings of Ohio, Inc. v. Dep't of Liquor Control*, 70 Ohio St. 2d 95, 99 (1982).

After the Founding, opposition to gambling continued to build. For instance, shortly after Ohio entered the Union, its legislature made various forms of gambling illegal. *Id.* And the Ohio Constitution of 1851 expressly added prohibitions on lotteries. *Id.* Even in Nevada, perhaps the most gambling-friendly State in the Union, games of chance were prohibited by the territorial and early state legislatures. *See History of Gaming in Nevada*, Nevada Resort Association, perma.cc/M3FE-BUW2. With these and other developments, “gambling was largely banned throughout the country” by the late 1800s. *Murphy v. NCAA*, 584 U.S. 453, 458 (2018).

But in the twentieth century, many States loosened gambling prohibitions. *Id.* at 458–59. Nevada, for instance, first decriminalized certain forms of gambling in 1869. *History of Gaming in Nevada*, Nevada Resort Association, perma.cc/M3FE-BUW2. After a brief ban on gambling during the Progressive Movement, Nevada eventually legalized “wide-open” gambling in 1931, a move that soon gave rise to Nevada’s booming casino

industry. *Id.*; Robert D. Faiss & Gregory R. Gemignani, *Nevada Gaming Statutes: The Evolution and History*, UNLV: The Center for Gaming Research Occasional Paper Series, at 1 (2011), http://digitalscholarship.unlv.edu/occ_papers/11.

Although Nevada was on the forefront, other States have also softened on gambling over time. Ohio, as one example, legalized bingo and state-conducted lotteries in the 1970s. *Mills-Jennings of Ohio*, 70 Ohio St. 2d at 101. And, about fifteen years ago, a slim majority of Ohio voters approved a constitutional amendment allowing for casino gaming. *See* Ohio Const. art. XV, §6(C).

B. Recently, the country's attention has turned to sports betting. *See Murphy*, 584 U.S. at 460–61. Like other forms of gambling, sports betting was illegal throughout the States for much of this country's history. *See id.* at 458. That began to change in the mid-twentieth century. Nevada set the pace in this area, too: the Silver State began permitting some sports betting with the passage of the Gaming Control Act of 1949. *See* Jennifer Carleton et al., *The Gambling Law Review* 147 (Carl Rohsler ed. 2016), perma.cc/3BSY-UYMZ. Over the next few decades, Montana,

Delaware, and Oregon also legalized certain forms of sports betting. *Murphy*, 584 U.S. at 462.

In the early 1990s, Congress tried to halt sports betting's continued growth. Through the Professional and Amateur Sports Protection Act, Congress purported to bar States from authorizing any additional sports betting. *Id.* at 461. In *Murphy*, however, the Supreme Court held that this barrier was unlawful. *Id.* at 458, 480. Thus, just seven years ago, the Supreme Court left the States "free to act" as they wished on the "controversial subject" of "sports gambling." *Id.* at 486.

The States have made different choices after *Murphy*. Eleven States—Alabama, Alaska, California, Georgia, Hawaii, Idaho, Minnesota, Oklahoma, South Carolina, Texas, and Utah—have kept sports betting illegal. See Am. Gaming Ass'n, *State of the States 2025*, at 12-13 (May 13, 2025), perma.cc/J27S-WLSB. But most States have chosen legalization. Today, thirty-nine States, along with the District of Columbia, permit some form of sports betting. *Id.*

C. The increased legalization of gambling has not left gambling unregulated. Instead, the States' "authorization of legalized gambling" over the years "has almost always been accompanied by the establishment of

a corresponding regulatory regime and structure.” Nat’l Gambling Impact Study Comm’n, Final Report, 3-1 (1999), perma.cc/UF4R-2UXH. For example, Ohio has comprehensive statutory schemes regulating the gambling it authorizes. *See, e.g.*, Ohio Rev. Code chs. 3769 (horse racing), 3770 (lotteries), 3772 (casino gaming), 3774 (fantasy contests), 3775 (sports gaming). As does Nevada. *See, e.g.*, Nev. Rev. Stat. chs. 462 (lotteries and games), 463 (licensing and control of gaming), 463B (supervision of certain gaming establishments), 464 (pari-mutuel wagering), 465 (crimes and liabilities concerning gaming), 466 (horse racing).

II. In 2010, Congress amended the Commodity Exchange Act in the wake of the 2008 financial crisis.

A. The States’ regulation of gambling has long co-existed with federal regulation of derivatives markets. Before unpacking those federal regulations, it helps to review some financial terms. A “derivative” is a financial contract whose value depends on, and usually derives from, another, more basic asset such as the value of a stock or the price of hogs. John C. Hull, *Options, Futures, and Other Derivatives*, 1 (8th ed. 2012); *Inv. Co. Inst. v. CFTC*, 720 F.3d 370, 372 (D.C. Cir. 2013). A “futures contract” is one type of derivative in which “an agreement between two parties to buy or sell an asset at a certain time in the future for a certain price.”

Hull, *Options, Futures, and Other Derivatives*, 7. Parties come together to trade such contracts in standardized form on “exchanges.” *Id.*

Swaps are another type of derivative in which two parties agree to exchange cash flows in the future. *Id.* at 148; *see also Inv. Co. Inst.*, 720 F.3d at 373; Norman Menachem Feder, *Deconstructing Over-the-Counter Derivatives*, 2002 Colum. Bus. L. Rev. 677, 701–13 (2002) (discussing different types of swaps). The “most common” swap is an interest-rate swap in which “a company agrees to pay cash flows equal to interest at a predetermined” rate over a number of years and, in return, receives interest at a floating rate over the same period of time. Hull, *Options, Futures, and Other Derivatives*, 148. As another example, a “credit-default swap” mitigates the creditors’ risk of a debtor defaulting. To illustrate, “a company that supplies auto parts to General Motors and depends on payments from GM might purchase a credit default swap on a GM bond to hedge against the risk of a GM default.” Rena S. Miller, *Derivatives Regulation and Legislation Through the 111th Congress*, Congressional Research Services, at 2 (Jan. 30, 2012).

B. With those terms established, move to the regulatory history. From as early as 1921, Congress authorized legislation regulating trades

of certain derivatives in commodities markets. *Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353, 360 (1982). In 1936, Congress enacted the Commodity Exchange Act to expand federal oversight to different commodities and to increase regulation over futures contracts. *Id.* at 362. Among other things, the Act authorized federal officials “to fix limits on the amount of permissible speculative trading in a futures contract.” *Id.* at 362–63.

A few decades later, Congress created the Commodity Futures Trading Commission (“CFTC”). *Id.* at 365–66. It gave the CFTC “exclusive jurisdiction over commodity futures trading.” *Id.* at 386. But lawmakers worried that some might overread the CFTC’s jurisdiction. *Id.* at 386. Thus, the statute detailing the CFTC’s exclusive jurisdiction contains two saving clauses, which protect the States’ “regulatory authorities” and “the jurisdiction” of state courts. 7 U.S.C. §2(a)(1)(A).

C. Until 2010, the CFTC lacked authority to regulate swaps. *United States v. Phillips*, 155 F.4th 102, 112 (2d Cir. 2025). That is likely because for many years, swaps were perceived as a narrow category of derivatives with little potential for mischief. In 1989, for instance, the CFTC issued guidance distinguishing unregulated “swap transactions”

from regulated “futures contracts.” *See* 54 Fed. Reg. 30694, 30694 (July 21, 1989). The commission stressed that swaps were “predominantly” confined to “commercial and institutional participants.” *Id.* at 30695. A swap, moreover, typically involved parties acting “in conjunction with” their “line of business.” *Id.* at 30697. The CFTC further emphasized that unregulated swaps were not “marketed to the public.” *Id.*

Without regulation, however, “[t]rading in swaps exploded in the early 2000s.” *Phillips*, 155 F.4th at 113. And many blamed swaps for the 2008 financial crisis. *Id.* In particular, a congressionally authorized investigation found that credit-default swaps helped “fuel the housing bubble.” Fin. Crisis Inquiry Comm’n, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* at xxiv (2011), perma.cc/C54L-RZVE.

In response, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. 111-203, 124 Stat. 1376 (2010). The Act extended the CFTC’s jurisdiction to include “swaps.” *See* 7 U.S.C. §2(a)(1)(A). The Act defined a “swap” to include “any agreement, contract, or transaction ... that provides for any purchase, sale, payment,

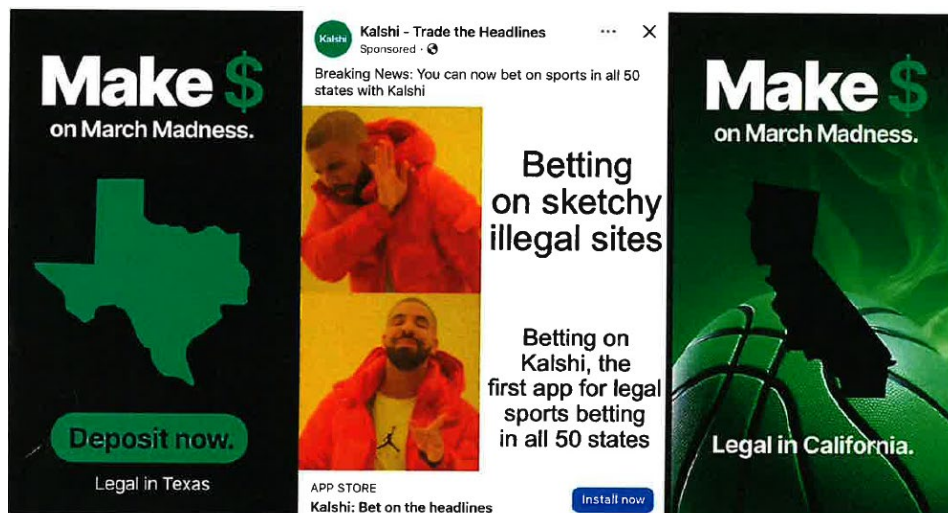
or delivery ... that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. §1a(47)(A). The Act further made it generally “unlawful for any person ... to enter into a swap unless the swap is entered into on” a CFTC-regulated contract market. 7 U.S.C. §2(e); *see also* 7 U.S.C. §1a(18). Thus, an ordinary consumer who wishes to trade in a “swap” must do so on a designated contract market.

III. Kalshi argues that Congress—in responding to the 2008 financial crisis—legalized sports betting nationwide.

This brings us to the dispute between Kalshi and the States. Kalshi is a designated contract market that offers online “events contracts” to users. Contracts traded on Kalshi identify a future circumstance and allow users to bet on whether the circumstance will happen. If users bet correctly, they are paid out. By this format, Kalshi boasts that users may “[t]rade on anything” regardless of state law. X Post, @Kalshi, perma.cc/X9YC-EHE7 (last accessed November 24, 2025).

Many of the “contracts” Kalshi lists are indistinguishable from sports betting. *See* Dustin Gouker, *Ten Times Kalshi Said People Could Bet On Things*, Event Horizon (April 3, 2025) perma.cc/CWK2-TZCV. Kalshi has

said so. Take, for instance, this ad from the last March Madness tournament:



Id.

It takes only a quick trip to Kalshi’s website to solidify the point. The website has an entire category dedicated to “sports” where people can bet on “events” like whether the Baltimore Ravens will win ten or more games this season. Kalshi Website, Sports: Pro Football; Exact wins, <https://kalshi.com/sports/football> (last accessed December 15, 2025). Kalshi also recently began offering parlays, which combine two or more wagers into a single bet. See Dustin Gouker, *Kalshi Rolls Out Same-Game Parlays For Monday Night Football Games*, Event Horizon (Sept. 30, 2025), perma.cc/V3M9-L59R.

To support its claim of nationwide sports betting, Kalshi relies on a novel theory. It argues that events contracts about sports are “swaps” within the CFTC’s exclusive jurisdiction. Kalshi Br.25–26. Kalshi is now litigating this theory across the country. In addition to Maryland, lawsuits are ongoing in Connecticut, Nevada, New Jersey, New York, Massachusetts, and Ohio. Illinois and Montana have also sent Kalshi cease-and-desist letters.

While preliminary results have been mixed, multiple district courts have already found Kalshi’s theory unlikely. Below, the district court laid out many different reasons why statutory text does not signal the necessary preemptive intent. Memo. Op. 13–20, R.70. More recently, a Nevada district court rejected the premise that sports wagers qualify as swaps under federal law. *Kalshiex, LLC v. Hendrick*, No. 2:25-cv-00575, 2025 WL 3286282, at *3 (D. Nev. Nov. 24, 2025). That court emphasized that “Kalshi’s proposed reading” would upend the “the traditional balance between state and federal regulation of gaming” without an “expressed congressional intent to do so”; all while leaving “no federal gaming regulator to replace the states’ regulatory infrastructures.” *Id.* at *8.

SUMMARY OF ARGUMENT

The *amici* States agree with Maryland that federal law does not preempt States from regulating sports betting via events contracts. Through both legal and practical considerations, this brief highlights the implausible nature of Kalshi's theory.

I. When Congress intends major changes to federal law, it does not obscure that intent. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). Kalshi's position violates this well-settled notion in two ways.

First, Kalshi's position violates the federalism canon. Under the canon, courts expect Congress to speak clearly if it intends to shift the States' historic powers to the federal government. *Bond v. United States*, 572 U.S. 844, 857–59 (2014). This canon applies here. The regulation of gambling falls within the States' traditional powers. *Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905). For centuries, therefore, the States have regulated gambling, including sports betting. This Court should not upset this traditional balance absent a clear congressional directive. And Kalshi identifies none.

Second, Kalshi's position violates the major-questions doctrine. The doctrine requires broad claims of federal-agency authority to flow from

“clear congressional authorization.” *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (quotation omitted). This doctrine also applies here. With millions of people involved and billions of dollars at stake, sports betting is a matter of great political and economic significance. Kalshi’s theory gives the CFTC broad power to make nationwide decisions about sports betting. If Congress intended to give the CFTC so much power, it would have spoken far more clearly.

II. The negative ramifications of Kalshi’s position are another sure sign that the company is wrong. The States have considerable experience in regulating gambling, including sports betting. The CFTC, by contrast, “has no expertise in crafting” policies to address sports betting. *See King v. Burwell*, 576 U.S. 473, 486 (2015). That makes it “especially unlikely that Congress would have delegated” this power in such an opaque manner. *See id.*

ARGUMENT

Under the Supremacy Clause, federal law is “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. So, when Congress acts within its enumerated powers, it may preempt state law through federal statutes. Such preemption can take different forms: federal statutes sometimes

preempt state law expressly; other times they preempt by implication. *Kansas v. Garcia*, 589 U.S. 191, 202–03 (2020). But preemption always turns on the text of federal law. *Id.* at 202. And to give statutory text a “fair reading,” courts must remain aware that “Congress legislates against the backdrop” of certain presumptions. *Bond v. United States*, 572 U.S. 844, 857 (2014) (quotation omitted).

In this case, two backdrop presumptions—the federalism canon and major-questions doctrine—render Kalshi’s position untenable. And practical considerations only reinforce the point.

I. When Congress makes major changes to the existing state of law, it does so clearly, not obscurely.

Congress, the Supreme Court has said, does not “hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). So when Congress seeks to change the “fundamental” nature of existing law, it does not use “vague terms or ancillary provisions.” *Id.* Textual arguments that suggest otherwise “ultimately founder.” *See id.*

This no-elephants-in-mouseholes principle has several context-specific applications. For example, if Congress wishes to abrogate a government body’s sovereign immunity, it “must use unmistakable language.” *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo*

Investigativo, Inc., 598 U.S. 339, 342 (2023). And “absent a clear statement from Congress,” courts presume that federal statutes are inapplicable outside the United States. *Bond*, 572 U.S. at 857. These and other “clear-statement rules help courts act as faithful agents of the Constitution.” *West Virginia v. EPA*, 597 U.S. 697, 736 (2022) (Gorsuch, J., concurring) (quotation omitted).

Two clear-statement rules prove critical here. Specifically, the federalism canon and major-questions doctrine both demonstrate why Kalshi’s counterintuitive preemption theory should fail.

A. Kalshi’s position violates the federalism canon.

Begin with the federalism canon, which stems from “basic principles of federalism.” *Bond*, 572 U.S. at 859. As every schoolchild learns, the Constitution gives the federal government “only limited powers; the States and the people retain the remainder.” *Id.* at 854; *see* U.S. Const. amend. X. That setup leaves the States with considerable police powers that they exercise for the public good. *Bond*, 572 U.S. at 854. Congress, moreover, legislates against this default ordering of sovereign authority. *Id.* at 857–58. Against that “backdrop,” any statute that displaces or limits a significant amount of state power constitutes a major change. *See*

id. at 857 (quotation omitted). And one expects Congress to speak clearly when effecting a major change. Thus, absent a “clear statement,” courts should not assume that Congress intends “a significant change in the sensitive relation between” the federal and state governments in an area of “traditional state authority.” *Id.* at 858–59 (quotation omitted). That ensures that Congress “has in fact faced, and intended to bring into issue, the critical matters involved.” *Id.* at 858 (quotation omitted).

This federalism canon applies with particular force to preemption. Preemption necessarily triggers the “sensitive relation between federal and state” authority. *Id.* (quotation omitted). Courts thus need “to be certain of Congress’ intent before finding that federal law overrides the usual constitutional balance of federal and state powers.” *Id.* at 858 (quotation omitted). Courts should thus be especially “reluctant to find” preemption in an area “traditionally governed by state law.” *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993).

The federalism canon applies with full force here. Given the many dangers of gambling (*below* 27–30), the regulation of gambling fits neatly “within the police powers of a State.” *Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905). Or, to borrow this Court’s words, “because the regulation

of lotteries, betting, poker, and other games of chance touch all of the above aspects of the quality of life of state citizens the regulation of gambling lies at the heart of the state’s police power.” *Helton v. Hunt*, 330 F.3d 242, 246 (4th Cir. 2003) (quotation omitted). It should therefore come as no surprise that the States have a lengthy history of gambling regulation, including the regulation of sports betting. *Above* 3–7. And federal law historically has “defer[red] to, and even promote[d], differing gambling policies in different States.” *Greater New Orleans Broadcasting Ass’n, Inc. v. United States*, 527 U.S. 173, 187 (1999).

Applying the federalism canon, Kalshi’s theory should fail unless Congress made a “clear statement” signaling that it intended “a significant change in the sensitive relation between” the federal and state governments as to gambling. *See Bond*, 572 U.S. at 858–59 (quotation omitted); *accord Ah Sin*, 198 U.S. at 505–06. Kalshi identifies no clear statement within federal law. Kalshi instead offers a roundabout preemption theory under which Congress—fifteen years ago, when sports betting was mostly illegal—supposedly made a subtle-but-drastic change to gambling laws by inserting the word “swap” into a pre-existing regulatory scheme aimed at financial regulation. *See* Kalshi Br.25–26; *above* 8–11.

Tellingly, Kalshi’s position is much like proposed readings that have failed in past clear-statement cases. For instance, in 2000, the Supreme Court stopped a dramatic expansion of federal regulatory authority by refusing to read the word “drug”—in the context of the Food, Drug, and Cosmetic Act—to include tobacco. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000). And in *Bond*, the Supreme Court refused to read the term “chemical weapon” in an “improbably broad” and “boundless” way that would have reached “purely local crimes” and “intrude[d] on the police power of the States.” *Bond*, 572 U.S. at 860. This Court should likewise refuse to read the term “swaps”—a term of art describing particular financial instruments used to hedge against economic risk—in an improbably broad and boundless way that usurps the States’ police power over sports betting.

If the text clearly signals anything here, it is the *lack* of any intent to preempt sports-betting regulations. The exclusive-jurisdiction provision on which Kalshi so heavily relies includes not just one, but two saving clauses, both of which signal preservation of state authority. 7 U.S.C. §2(a)(1)(A). The statutory scheme also includes two express preemption clauses. 7 U.S.C. §16(e)(2), (h). One of those clauses preempts state laws

about select forms of “gaming.” §16(e)(2). But that clause does not cover sports betting. Thus, Congress’s inclusion of a specific preemption provision tailored to other forms of gaming indicates a lack of preemptive intent as to sports betting. *See Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517 (1992).

In sum, Kalshi invites the Court to read an express-preemption clause into federal law where none exists. Because this is an area of traditional state authority, the Court should squarely reject that invitation.

B. Kalshi’s position violates the major-questions doctrine.

Turn next to another clear-statement rule: the major-questions doctrine. The doctrine teaches that courts—when reading statutes empowering federal agencies—should employ “common sense as to the manner in which Congress would have been likely to delegate” power. *West Virginia*, 597 U.S. at 722–23 (alteration accepted, quotation omitted). “Extraordinary grants of regulatory authority,” the Supreme Court has explained, “are rarely accomplished through modest words, vague terms, or subtle devices.” *Id.* at 723 (alteration accepted, quotation omitted).

The major-questions doctrine thus requires a clear statement whenever a federal agency claims broad and novel authority over matters of

great economic and political significance. *See id.* at 721, 724. In these situations, a “colorable textual basis” is not enough to support a major grant of federal-agency authority. *Id.* at 722. Rather, an assertion of broad authority must arise from a “clear congressional authorization.” *Id.* at 724 (quotation omitted).

This case implicates the major-questions doctrine. Sports betting is an issue of political and economic significance—and one on which “Americans have never been of one mind.” *Murphy*, 584 U.S. at 458. Like other major questions, sports betting involves “billions of dollars” and affects “millions of people.” *King v. Burwell*, 576 U.S. 473, 485 (2015). Over the last year, over one-in-five adults in this country bet money on sports. John Gramlich, *Americans increasingly see legal sports betting as a bad thing for society and sports*, Pew Research Center (Oct. 2, 2025), perma.cc/9WPS-4UYT. And Americans wagered almost \$150 billion on sports in 2024. Brandon Gustafson, *2024: A year of growth for sports betting revenue*, CBS Sports (Mar. 28, 2025), <https://tinyurl.com/yje8srnp>. Indeed, Kalshi alone now reports wagering volumes of over \$1 billion a month, 90% of which comes from sports betting. Lev Akabas, *Kalshi’s*

Volume Has Been 90% Sports During Football Season, Sportico (Oct. 3, 2025), perma.cc/X5WL-8LGM.

Beyond those staggering figures, the regulation of sports betting is politically and historically significant. As detailed above (at 5–6), sports betting has been illegal under state law for much of this country’s history. It remains illegal in eleven States. And the States that do allow sports betting have made different decisions about what to allow.

Against this backdrop, Kalshi’s position would grant the CFTC an incredible and unexpected amount of power. Once again, Kalshi argues that sports bets packaged as events contracts qualify as “swaps” for purposes of CFTC’s exclusive jurisdiction. *See* Kalshi Br.25–26; 7 U.S.C. §2(a)(1)(A).

An important textual consequence flows from Kalshi’s position. If sports bets qualify as swaps within the CFTC’s exclusive jurisdiction, then sports bets cannot be treated in any other fashion. Under the federal definition of swap, a swap is any type of “agreement, contract, or transaction” that satisfies certain conditions. 7 U.S.C. §1a(47)(A). If an agreement satisfies those conditions, the federal scheme makes it “*unlawful* for any person” to enter into such an agreement except via a

CFTC-regulated contract market. 7 U.S.C. §2(e) (emphasis added). Thus, Kalshi is not simply arguing that sports betting *may* occur on designated contract markets. Kalshi’s real argument is that sports betting *must* occur on those markets, subject to the sole regulation of the CFTC. It would follow that States which authorize sports betting via state-regulated processes—again, about forty States at present, *see above* 6—are all facilitating illegal activity under federal law.

In effect, Kalshi’s position would make the CFTC this country’s arbiter of sports betting. If Congress truly meant to give the commission that much discretion, it would have spoken clearly. Kalshi, again, points to no such clear statement. *Above* 19–20. Instead, its attenuated theory of preemption relies on a contextless brand of textualism that is “colorable” at best. *See West Virginia*, 597 U.S. at 724 (quotation omitted). And a merely colorable textual theory is not enough for such a change. *Id.*

To hammer the point home, revisit the history. As Kalshi would have it, Congress preempted state gambling laws as part of its response to the 2008 financial crisis. *Above* 9–13. But that makes no historical sense. Nobody thought that “sports gambling gone wrong” caused the financial crisis. Sports betting was, after all, mostly illegal at that time. *See*

Murphy, 584 U.S. at 458. Congress was instead responding to a much different problem involving derivatives like credit default swaps. *Above* 10. Thus, employing even an ounce of “common sense as to the manner in which Congress would have been likely to delegate” power, *see West Virginia*, 597 U.S. at 722–23 (quotation omitted), Kalshi’s argument crumbles. Congress did not sneak sports-gambling preemption into the Dodd-Frank Act, and this Court should confirm as much.

II. Kalshi’s position would leave sports betting largely unregulated and endanger the States’ citizens.

Practical concerns make Kalshi’s position even less likely. As a corollary to the major-questions doctrine, Congress is “especially unlikely” to delegate broad power to an agency that “has no expertise” crafting “policy” on a given subject. *King*, 576 U.S. at 486. This Court should thus be “especially” reluctant to transfer authority over sports betting from experienced state regulators to an inexperienced federal commission.

A. States are experienced in regulating sports betting and its many potential harms.

1. States that allow sports betting comprehensively regulate that activity. For example, given the importance of gambling to Nevada’s overall economy, the State strictly regulates all gambling activities to ensure the public’s continued “confidence and trust.” Nev. Rev. Stat.

§463.0129(1) (outlining Nevada’s public policy on gambling). A central part of Nevada’s mission is ensuring that gaming proprietors are “controlled and assisted” so as to “protect the public health, safety, morals, good order and general welfare of the inhabitants of the State.” *Id.*

Consistent with that goal, Nevada’s regulatory scheme offers gamblers many levels of protection. As a general matter, Nevada employs a rigorous licensing process that ensures any gambling entity undergoes an in-depth investigation before receiving a license. *See Nev. Rev. Stat. §§463.170, 463.530, 463.5735; see also below 32–33.* This process ensures that gambling is free from organized crime and other criminal elements.

Nevada’s regulatory scheme also offers a variety of more specific protections. For instance, Nevada requires those that conduct gaming operations to conspicuously post information about resources for problem gamblers. Nev. Gaming Comm’n Reg. 5.170. Nevada law also includes various safeguards to protect against improper betting practices, including improper wagers on sports. *See, e.g., Nev. Rev. Stat. §§465.092–.094; Nev. Gaming Comm’n Regs. 22.010(14), 22.060–.063, 22.080(1); cf. also Nev. Rev. Stat. §§463.362–.3668 (detailing Nevada’s dispute resolution process).* Of particular note, Nevada prohibits sports wagers by game

officials, owners, coaches, players, or other team staff. *See Nev. Gaming Comm’n Reg. 22.1205.* Further, Nevada requires that those facilitating sports betting report suspicious activity. *Nev. Gaming Comm’n Reg. 22.121.*

Consider also Ohio’s recently adopted approach to sports gambling. Similar to Nevada, Ohio prohibits companies from offering sports betting without a license. *Ohio Rev. Code §3775.03(A).* That requires a company to establish that it can responsibly facilitate such gambling. *See Ohio Rev. Code §3775.09(A)–(B).* Along related lines, Ohio facilitates an exclusion program whereby people worried about their sports gambling habits may place themselves on a voluntary exclusion list. *See Ohio Rev. Code §3775.02(B)(11).* To enforce that list, sports gaming proprietors are required to “employ commercially reasonable methods to prevent any person who is participating in the sports gaming voluntary exclusion program from engaging in sports gaming.” *Ohio Rev. Code §3775.13(C)(1).*

2. These and other regulations protect the States’ citizens and mitigate the risks of gambling. While gambling is entertaining for many, it is dangerous for some. Millions of Americans qualify as problematic or pathological gamblers. *Nat’l Gambling Impact Study Comm’n, Final*

Report, 4-1; Charita M. Goshay, *Ohio offers Voluntary Exclusion List for problem gamblers as calls to helpline rise*, Canton Repository (Sept. 2, 2024), perma.cc/BQY6-YBC3. And research has linked gambling to many other problems—substance abuse and psychological distress, to name a few. See Randi Richardson, *Online gambling has fueled an industry boom*, NBC News (Oct. 24, 2024), perma.cc/XL7W-QS2L.

Some gamble to the point of financial ruin. See Kelly Kennedy, *‘I didn’t care who was playing’: Has the legalization of sports betting impacted problem gambling in Ohio?*, Cleveland 19 News (July 18, 2024), perma.cc/JG9G-P7QT. Others place gambling over the health of loved ones. See Erin Gottsacker, *A statewide telehealth service is changing the game for Ohioans with gambling addictions*, The Ohio Newsroom (Nov. 18, 2024), perma.cc/E4ZU-U3MN. Still others gamble to the point of suicide. See Matt Stone, *Risk of Gambling Addiction Up 30%*, 21-WFMY (Feb. 16, 2025), perma.cc/76KG-5ZGS.

With the growing ease of gambling, these problems are on the rise. See *id.* A 2022 survey performed by the Ohio Casino Control Commission signaled that the prevalence of at risk/problem gamblers in the Buckeye State had nearly doubled in five years. See *Ohio Gambling Survey 2022*,

Ohio Casino Control Commission, perma.cc/4GG3-SGQE (slide five of PowerPoint). As another datapoint, calls to Ohio's gambling hotline were up 55% in 2023. Katie Mogg & Aria Bendix, *Gambling addiction hotlines say volume is up and callers are younger as online sports betting booms*, NBC News (April 5, 2024), <https://tinyurl.com/mtjnna33>.

Minors are particularly vulnerable, as online sports betting attracts a younger crowd. A recent New Jersey-based survey reflected that nearly one in every five people surveyed between the ages of 18 and 24 was at high risk of a gambling problem. See Lia Nower, et al., *The Prevalence of Online and Land-Based Gambling in New Jersey*, Rutgers University: Center for Gambling Studies, at 33 (2023), perma.cc/V3KH-BPHC. And research reflects that those who start gambling at a young age run a higher risk of problematic gambling. See Nat'l Gambling Impact Study Comm'n, Final Report, 4-12.

But Kalshi's position, if accepted, would effectively lower the gambling age in many States. According to Kalshi's membership agreement, the company's services are open to anyone of the age of majority in their State. Kalshi Member Agreement (November 4, 2025), <https://perma.cc/ZH3B-2G9P>. In many if not most States, the age of

majority is eighteen. *See, e.g.*, Nev. Rev. Stat. §129.010; Ohio Rev. Code §3109.01. But many States have decided to limit gambling (or at least certain types of gambling) to those twenty-one or older. *See, e.g.*, Nev. Rev. Stat. §463.350; Ohio Rev. Code §3775.99(A). That discrepancy is no small matter. As just mentioned, those who begin gambling at a young age face a higher risk of long-term problems. That might be good for Kalshi's bottom line, but it is bad for the States' citizens.

One final problem deserves emphasis. As several recent events illustrate, sports betting also risks the integrity of sporting events. Just weeks ago, the federal government indicted dozens of people—including current and former NBA players—alleging unlawful betting on professional basketball games. *U.S. Charges N.B.A. Coach and Players in Gambling Schemes*, The New York Times (Oct. 23, 2025), <https://tinyurl.com/yux8k2nk>. Earlier this year, it took only a few pitches during baseball games to spark controversy over prop bets in Ohio. *See* Ryan Morik, *Ohio governor calls for an end to player prop betting amid investigation into Guardians pitchers*, Fox Business (July 31, 2025), perma.cc/CA26-SA28. And last year, gamblers even threatened a coach of the Cleveland Cavaliers. Tom Withers, *Cavs coach Bickerstaff says he*

received threats from gamblers, feels sports betting ‘gone too far’, AP News (Mar. 20, 2024), perma.cc/4KR5-3F56.

B. Existing federal regulation is an insufficient substitute for the States’ robust gaming regulations.

Contrary to Kalshi’s suggestions, federal regulation of the derivatives marketplace is not a cure-all when it comes to nationwide sports betting. Kalshi hints that federal law’s “detailed system” for regulating designated contract markets should alleviate any concerns. *See* Kalshi Br.15–17. But the CFTC’s present regulatory requirements provide cold comfort for sports betting. Those requirements—often called the “core principles”—are outlined within the federal code. *See* 17 C.F.R. §§38.100–.1200. They cover topics like dispute resolution, 17 C.F.R. §38.750, conflicts of interest, 17 C.F.R. §38.850, and disciplinary procedures, 17 C.F.R. §38.700.

Although Kalshi is regulated in this sense, these regulations are geared toward participants in the financial markets. They do not replace the States’ regulatory schemes, which are specifically designed to combat problems associated with gambling. Moreover, relying on federal regulation alone forces a one-size-fits-all regime, eliminating the States’ ability to experiment with other approaches.

Take Nevada again. The State, after all, has nearly one hundred years' experience in regulating legalized gambling to respond to challenges unique to both the gambling industry and local Nevadan concern.

With that experience in mind, consider a gap that would result from a federal-only regime. Nevada has developed robust procedures for determining the suitability of any person involved in the gaming industry in Nevada. This suitability determination is a front-loaded process in which the person seeking a gaming approval bears the burden of showing the person is qualified to hold a license. Nev. Rev. Stat. §463.170(1). This burden entails satisfying the Nevada Gaming Commission that the person is a “person of good character, honesty and integrity”; that the person’s “prior activities, criminal record ..., reputation, habits and associations do not pose a threat to the public interest of [Nevada] or to the effective regulation and control of gaming”; and that the person is “[i]n all other respects qualified to be licensed or found suitable consistently with the declared policy of [Nevada].” Nev. Rev. Stat. §463.170(2). This burden extends to the person showing “adequate business probity, competence and experience, in gaming” and that the financing for the operation is both adequate and from a suitable source. Nev. Rev. Stat. §463.170(3).

In this way, Nevada takes care to screen out potentially predatory, bad actors from its system of legalized gambling.

The Commodity Exchange Act offers no comparator to Nevada's suitability procedures. Worse still, designated contract markets like Kalshi may list new types of events contracts on their exchange without pre-approval, simply by self-certifying to the CFTC that the new contract complies with federal law. *See* 7 U.S.C. §7a-2(c)(1). Such loose processes will allow individuals who would be unable to clear state-law hurdles to run de facto sports books, immune from the States' regulation.

The takeaway is simple. Under Kalshi's theory, the various state-law safeguards discussed above would disappear. That, in turn, would create a sizeable hole in the States' ability to protect their citizens from predatory practices and other problematic behavior.

*

One critical benefit of our constitutional structure is that the States act "as laboratories" of democracy, "devising solutions" to new and difficult problems. *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 817 (2015) (quotation omitted). That flexibility is a particularly good thing here since "Americans have never been of one mind

about gambling.” *Murphy*, 584 U.S. at 458. States are in the best position to implement innovative regulatory schemes responsive to particularized concerns that arise within their borders, thereby protecting the public and promoting confidence in the gaming industry. Nothing in federal law suggests, much less clearly states, that Congress has stripped the States of their traditional power over sports betting. This Court, it follows, should not do so.

CONCLUSION

The Court should affirm.

AARON D. FORD
Nevada Attorney General
HEIDI PARRY STERN
Nevada Solicitor General
JESSICA E. WHELAN
Chief Deputy Solicitor General
Office of the Nevada
Attorney General
1 State of Nevada Way, Suite 100
Las Vegas, NV 89119
702.486.3420
jwhelan@ag.nv.gov
Counsel for Amicus Curiae
State of Nevada

DAVE YOST
Ohio Attorney General
/s/ Mathura J. Sridharan
MATHURA J. SRIDHARAN*
Ohio Solicitor General
**Counsel of Record*
ZACHERY P. KELLER
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614.466.8980
Mathura.Sridharan@OhioAGO.gov
Counsel for Amicus Curiae
State of Ohio

ADDITIONAL COUNSEL

STEVE MARSHALL
Alabama Attorney General

THEODORE E. ROKITA
Indiana Attorney General

STEPHEN J. COX
Alaska Attorney General

BRENNNA BIRD
Iowa Attorney General

KRISTIN K. MAYES
Arizona Attorney General

KRIS KOBACH
Kansas Attorney General

TIM GRIFFIN
Arkansas Attorney General

LIZ MURRILL
Louisiana Attorney General

ROB BONTA
California Attorney General

AARON M. FREY
Maine Attorney General

PHILIP J. WEISER
Colorado Attorney General

ANDREA JOY CAMPBELL
Massachusetts Attorney General

WILLIAM TONG
Connecticut Attorney General

DANA NESSEL
Michigan Attorney General

KATHLEEN JENNINGS
Delaware Attorney General

KEITH ELLISON
Minnesota Attorney General

BRIAN L. SCHWALB
District of Columbia
Attorney General

LYNN FITCH
Mississippi Attorney General

ANNE E. LOPEZ
Hawai'i Attorney General

MICHAEL T. HILGERS
Nebraska Attorney General

RAÚL R. LABRADOR
Idaho Attorney General

MATTHEW J. PLATKIN
New Jersey Attorney General

KWAME RAOUL
Illinois Attorney General

RAÚL TORREZ
New Mexico Attorney General

LETITIA JAMES
New York Attorney General

JEFF JACKSON
North Carolina Attorney General

GENTNER DRUMMOND
Oklahoma Attorney General

DAN RAYFIELD
Oregon Attorney General

DAVID W. SUNDAY, JR.
Pennsylvania Attorney General

PETER F. NERONHA
Rhode Island Attorney General

ALAN WILSON
South Carolina Attorney General

MARTY JACKLEY
South Dakota Attorney General

JONATHAN SKRMETTI
Tennessee Attorney General
and Reporter

DEREK E. BROWN
Utah Attorney General

CHARITY R. CLARK
Vermont Attorney General

NICHOLAS W. BROWN
Washington Attorney General

JOSH KAUL
Wisconsin Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, that this brief complies with the type-volume for an *amicus* brief supporting an appellant and contains 6,394 words. *See* Fed. R. App. P. 32(a)(7)(B)(i), 29(a)(5).

I further certify that this brief complies with the typeface requirements of Federal Rule 32(a)(5) and the type-style requirements of Federal Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

/s/ Mathura J. Sridharan
MATHURA J. SRIDHARAN
Ohio Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2025, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Mathura J. Sridharan
MATHURA J. SRIDHARAN
Ohio Solicitor General

EXHIBIT 4

From: Cooper, Robert E.
Sent: Wednesday, December 31, 2025 11:12 AM
To: lacey.mase@ag.tn.gov
Subject: Kalshi Inc.

Lacey – I am reaching out to you on behalf of Kalshi Inc., a web-based prediction market platform. Kalshi is aware of the enforcement issues raised by the Tennessee Sports Wagering Council in its letter earlier this year to the Commodity Futures Trading Commission and by the Tennessee Attorney General office's recent issuance of cease-and-desist letters to online sweepstakes casinos. Kalshi would appreciate an opportunity to open a line of communication with your office about these issues as they affect Kalshi. Would you be open to a call with Kalshi's national counsel? I appreciate your consideration of this request. Thanks, and best wishes for the new year. Bob

BASS BERRY  SIMS

Robert E. Cooper, Jr.
Member

Bass, Berry & Sims PLC
21 Platform Way South, Suite 3500 • Nashville, TN 37203
615-742-7835 phone
bob.cooper@bassberry.com • www.bassberry.com
[map](#)

This email may contain privileged and confidential information and is meant only for the use of the specific intended addressee(s). Your receipt is not intended to waive any applicable privilege. If you have received this email in error, please delete it and immediately notify the sender by separate email.

EXHIBIT 5

From: Lacey E. Mase <Lacey.Mase@ag.tn.gov>
Sent: Tuesday, January 6, 2026 6:02 PM
To: Cooper, Robert E.
Cc: Austin Watkins
Subject: RE: Kalshi

Bob,

Happy new year! Appreciate your patience. I spent the last week of 2025 enjoying my family and out of the office.

Andy Cook from Orrick reached out with the same question on behalf of Kalshi about a month ago. As I told Andy, I don't have anything to share with Kalshi at this time. If circumstances change, we'll certainly be open to a call.

Have a great evening!

Lacey E. Mase
Chief Deputy Attorney General
Office of the Attorney General & Reporter
615-532-5983
lacey.mase@ag.tn.gov



From: Cooper, Robert E. <bob.cooper@bassberry.com>
Sent: Tuesday, January 6, 2026 4:50 PM
To: Lacey E. Mase <Lacey.Mase@ag.tn.gov>
Subject: Kalshi

Lacey,

I hope you had a good holiday season. I am writing to follow up on my voicemail last Tuesday and my follow-up email on Wednesday, December 31, concerning my client Kalshi. As you are probably aware, Kalshi is in litigation with a number of other states—including three cases that are in federal Courts of Appeal (3rd, 4th, 9th Circuits). It is our understanding that Tennessee may be contemplating a related action, and we would appreciate the opportunity to have a dialogue with the AG's Office before any litigation is filed. Alternatively, if the state is not considering bringing an action, we would appreciate confirmation of that. Kalshi has had productive discussions with authorities in a number of other states, several of which have opted to take a wait-and-see approach as the current litigation plays out. Please let us know your availability for a call.

Best regards,
Bob

Robert E. Cooper, Jr.

Member

Bass, Berry & Sims PLC

21 Platform Way South, Suite 3500 • Nashville, TN 37203

615-742-7835 phone

bob.cooper@bassberry.com • www.bassberry.com

[map](#)

This email may contain privileged and confidential information and is meant only for the use of the specific intended addressee(s). Your receipt is not intended to waive any applicable privilege. If you have received this email in error, please delete it and immediately notify the sender by separate email.

EXHIBIT 6



Tennessee

Sports Wagering Council

312 Rosa Parks Avenue, 8th Floor
Nashville, Tennessee 37243

January 9, 2026

Tarek Mansour
Chief Executive Officer
KalshiEX LLC, dba Kalshi
594 Broadway, Suite 407
New York, NY 10012

Via Email to tarek@kalshi.com and Federal Express Standard Overnight.

RE: Demand to Cease and Desist Offering Sports Events Contracts in Tennessee

Dear Mr. Mansour:

The Tennessee Sports Wagering Council (the “SWC”) is the regulator of sports wagering in the State of Tennessee and is responsible for enforcing and supervising compliance with the laws and rules relating to wagering on sporting events in this state.¹ In Tennessee, it is a taxable privilege to offer sports wagering pursuant to a license issued in accordance with the Tennessee Sports Gaming Act (the “Act”).²

In Tennessee, “Interactive sports wagering” means “placing a wager on a sporting event via the internet, a mobile device, or other telecommunications platform”.³ Interactive sports wagering may only be offered in Tennessee pursuant to a license issued by the SWC.⁴ The Act defines “Sporting event” as “any professional sporting or athletic event, including motorsports and e-sports, any collegiate sporting or athletic event, or any Olympic sporting or athletic event sanctioned by a national or international organization or association. ‘Sporting event’ does not include horse racing.” The Act further defines “Wager” as “a sum of money that is risked by a bettor on the unknown outcome of one (1) or more sporting events, including, but not limited to, the form of fixed-odds betting, a future bet, live betting, a money line bet, pari-mutuel betting, parlay bet, pools, proposition bet, spread bet, or in any other form or manner as authorized by rule

¹ Tenn. Code Ann. § 4-49-106(a).

² Tenn. Code Ann. § 4-49-104(a).

³ Tenn. Code Ann. § 4-49-102(14).

⁴ Tenn. Code Ann. § 4-49-117.

promulgated by the council”.⁵ Therefore, a person or entity that accepts a sum of money risked on the outcome of a sporting event without a valid license issued by the SWC violates the Act.

KalshiEX LLC (“Kalshi”) is registered with the Commodities Futures Trading Commission as a designated contract market and currently lists sports events contracts on its exchange, all of which can be accessed by individuals located within the borders of the State of Tennessee. These sports events contracts give consumers the option to purchase contracts corresponding to one of two outcomes of an event. For example, a consumer may purchase a contract that reflects which team they believe will win or lose the matchup. The ultimate result is money being won or lost based on the outcome of a game. Accordingly, the sports events contracts offered on Kalshi’s exchange are Wagers under the Act and are being offered illegally in violation of Tennessee law and regulations.

The Tennessee Legislature has put in place many laws and regulations with which Licensees must comply that are designed to protect the public interest of Tennessee. Among other protections, individuals under the age of twenty-one are not permitted to wager in Tennessee.⁶ The Act also lists persons or categories of persons who are ineligible to place a wager in Tennessee.⁷ The Act and SWC rules contain specific anti-money laundering controls required of Licensees.⁸ The Act requires that Licensees offer various forms of responsible gaming protections, including the ability for an individual to exclude themselves completely from the ability to wager on the Licensee’s platform, as well as offering limits on the time spent betting and amounts wagered.⁹

The sports events contracts offered on Kalshi’s exchange are not compliant with these protections (and many others) and are an immediate and significant threat to the public interest of Tennessee. Even if it did offer these protections, Kalshi does not have the required license issued by the SWC and does not pay the privilege tax mandated by statute.

To that end, the SWC demands that Kalshi cease offering sports events contracts to customers in Tennessee *immediately*, void all pending sports events contracts that were entered into by any person located in Tennessee, and refund all funds on deposit to any person located in Tennessee no later than January 31, 2026.

Failure to comply with the SWC’s demand will result in the imposition of fines pursuant to the Act, which states that the SWC *shall* impose a fine against any person offering wagers in Tennessee without a license in the amount of \$10,000 for the first offense; \$15,000 for a second offense; and \$25,000 for a third or subsequent offense.¹⁰ Moreover, failure to comply with the SWC’s demand will result in the SWC seeking injunctive relief in accordance with Tenn. Code Ann § 4-49-129.

In addition, unless an exception applies, Tennessee gambling statutes broadly prohibit any kind of gambling and provide: “‘Gambling’ is contrary to the public policy of this state and means

⁵ Tenn. Code Ann. § 4-49-102(39).

⁶ Tenn. Code Ann. § 4-49-118(a); Tenn. Code Ann. § 4-49-102(19).

⁷ Tenn. Code Ann. § 4-49-112.

⁸ Tenn. Code Ann. § 4-49-110; Tenn. Comp. R. & Regs. 1350-03-.08.

⁹ Tenn. Code Ann. § 4-49-119.

¹⁰ Tenn. Code Ann. § 4-49-127(b)(2).

risking anything of value for a profit whose return is to any degree contingent on chance, or any games of chance associated with casinos, including, but not limited to slot machines, roulette wheels and the like.”¹¹ The definition of “gambling” has certain exceptions, one of which is “[l]awfully accepting or placing a wager on a sporting event in accordance with the Tennessee Sports Gaming Act, compiled in title 4, chapter 49.”¹² As stated above, Kalshi is not lawfully accepting wagers in accordance with the Act because it is not a licensed operator under the Act.

The Tennessee gambling statutes further provide that: “A person commits an offense who knowingly induces or aids another to engage in gambling, and: (1) Intends to derive or derives an economic benefit other than personal winnings from the gambling.”¹³ This offense, gambling promotion, is a Class B misdemeanor.¹⁴ In addition,

- (a) A person commits an offense who knowingly invests in, finances, owns, controls, supervises, manages or participates in a gambling enterprise.
- (b) For purposes of this section, ‘gambling enterprise’ means two (2) or more persons regularly engaged in gambling promotion as defined in § 39-17-503.
- (c) The offense of aggravated gambling promotion is a Class E felony.¹⁵

Thus, Kalshi’s failure to comply with the SWC’s demand will also result in the referral of Kalshi’s illegal gambling operation to law enforcement for further investigation.

The SWC looks forward to Kalshi’s immediate and unqualified compliance with its demand. For questions, you may call me at 615-770-3947 or e-mail at Mary.Beth.Thomas@tn.gov.

Sincerely,



Mary Beth Thomas
Executive Director

CC: The Honorable Jonathan Skrmetti
Attorney General and Reporter for the State of Tennessee

Billy Orgel
Chairman
Tennessee Sports Wagering Council

¹¹ Tenn. Code Ann. § 39-17-501(2).

¹² *Id.*

¹³ Tenn. Code Ann. § 39-17-503(a).

¹⁴ Tenn. Code Ann. § 39-17-503(b).

¹⁵ Tenn. Code Ann. § 39-17-504.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rule of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KALSHIEX, LLC

(b) County of Residence of First Listed Plaintiff New York, NY

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Neal Katyal, Joshua B. Sterling, William E. Havemann - MILBANK LLP
1101 New York Avenue NW Washington D.C. 20005Britt Latham, Robert E. Cooper, Jr., Courtney A. Hunter - BASS, BERRY & SIMS PLC
21 Platform Way South, Suite 3500, Nashville, TN 37203

DEFENDANTS

WILLIAM ORGEN, MARY BETH THOMAS, TENNESSEE SPORTS
WAGERING COUNCIL, JONATHAN SKRMETTICounty of Residence of First Listed Defendant Davidson County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Jonathan Skrmetti, Attorney General of the State of Tennessee

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suit <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relation <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyright <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
7 U.S.C. § 7 et. seq.

Brief description of cause:

Tennessee gambling laws are federally preempted as applied to Plaintiff.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/9/2026

SIGNATURE OF ATTORNEY OF RECORD

/s/ Britt K. Latham

FOR OFFICE USE ONLY

RECEIPT #

Case 3:26-cv-00034

Document 1-7

Filed 01/09/26

Page 1 of 2 PageID #: 127

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.