

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

KALSHIEX LLC,

Plaintiff,

and

UNITED STATES OF AMERICA
and COMMODITY FUTURES TRADING
COMMISSION

Proposed
Plaintiff-
Intervenors

Case No. 1:26-cv-00327

v.

MARK FURCOLO, in his official capacity as
Director of the Division of State Lottery;
PETER F. NERONHA, in his official capacity
as Rhode Island Attorney General; CHRISTINA
TOBIASZ, in her official capacity as Gaming
and Athletics Administrator, Department of
Business Regulation,

Defendants.

**MOTION TO INTERVENE BY THE UNITED STATES AND THE COMMODITY
FUTURES TRADING COMMISSION AND MEMORANDUM IN SUPPORT**

The United States and the Commodity Futures Trading Commission (“CFTC”), the federal agency with exclusive jurisdiction over the nation’s derivatives markets, move under Federal Rule of Civil Procedure 24 to intervene in this action. This lawsuit is about whether Rhode Island state officials can usurp the CFTC’s jurisdiction and enforce state gaming laws against federally regulated exchanges in connection with the listing of federally regulated event contracts. The federal proposed intervenors meet the standards for intervention as of right and for permissive

intervention based on their interest in protecting the CFTC’s exclusive regulation of designated contract markets (“DCMs”) as established in the Commodity Exchange Act (“CEA”).

Therefore, the federal proposed intervenors request that the Court grant their motion and permit their intervention. Plaintiff KalshiEX LLC (“Kalshi”) consents to this motion; the State Defendants oppose it. A proposed complaint as required by Rule 24(c) is attached as **Exhibit A**.

BACKGROUND

The CEA provides a comprehensive framework for the regulation of derivatives transactions in the United States and designates the CFTC as the federal agency with “exclusive jurisdiction” over the regulation of commodity futures, options, and swaps traded on federally regulated exchanges. 7 U.S.C. § 2(a)(1)(A). Event contracts offered directly by CFTC-regulated DCMs such as Kalshi—including event contracts where the underlying event relates to sports—are “swaps” under the plain meaning of the CEA and therefore are subject to the CFTC’s exclusive jurisdiction. *See KalshiEX, LLC v. Flaherty*, 172 F.4th 220, 228 (3d Cir. 2026) (“Because Kalshi’s sports-related event contracts are traded on a CFTC-licensed DCM and depend on event outcomes associated with economic consequences, they fit within the Act’s definition of ‘swaps’ subject to the CFTC’s jurisdiction.”).

Over the past two months, the United States and the CFTC have filed suit against six States that have threatened to enforce state law against CFTC-regulated DCMs. *See United States v. Arizona*, No. 2:26-cv-02246 (D. Ariz.) (consolidated with *KalshiEX v. Johnson*, No. 2:26-cv-01715 (D. Ariz.)); *United States v. Connecticut*, No. 3:26-cv-00498 (D. Conn.); *United States v. Illinois*, No. 1:26-cv-03659 (N.D. Ill.); *United States v. Minnesota*, No. 0:26-cv-2661 (D. Minn.); *United States v. New York*, No. 1:26-cv-3404 (S.D.N.Y.); *United States v. Wisconsin*, No. 2:26-cv-749 (E.D. Wis.). The District of Arizona—the only court to date to issue a decision in one of

the cases filed by the federal government—granted both a temporary restraining order and preliminary injunction against the enforcement of state law. *See KalshiEX LLC v. Johnson*, ___ F. Supp. 3d ___, 2026 WL 976055, at *2 (D. Ariz. Apr. 10, 2026) (TRO); *KalshiEX LLC v. Johnson*, ___ F. Supp. 3d ___, 2026 WL 1223373, at *9 (D. Ariz. May 5, 2026) (preliminary injunction). The CFTC has also filed amicus briefs in support of its exclusive jurisdiction in the Sixth and Ninth Circuits.

Rhode Island is the latest State to threaten an enforcement action against CFTC-regulated DCMs. Dkt. No. 1 ¶¶ 3, 7–8. Indeed, just hours after this lawsuit was filed, the State *filed* an enforcement action in Providence Superior Court against Kalshi and QCX, LLC (“Polymarket”), seeking an injunction preventing Kalshi and Polymarket from listing federally regulated offerings in the State under the threat of civil, and potentially criminal, liability. *See* Petition for Declaratory Judgment, *Rhode Island v. KalshiEX LLC*, C.A. No. PC-2026-02753 (Super. Ct. May 21, 2026), *removed to federal court*, *Rhode Island v. KalshiEX LLC*, No. 1:26-cv-333, Dkt. No. 1 (D.R.I. May 22, 2026). Kalshi has moved to enjoin that action in this Court. *See* Dkt. No. 5 (Kalshi preliminary injunction to enjoin enforcement action). Consistent with its stance toward other States that have sought to elevate state law over the CEA, the federal government seeks to intervene and defend its exclusive jurisdiction over the derivatives markets against Rhode Island’s overreach.

LEGAL STANDARD

For a proposed intervenor to establish intervention as of right under Federal Rule of Civil Procedure 24(a)(2), it must show: “(1) the timeliness of her motion; (2) a concrete interest in the pending action; (3) a ‘realistic threat’ that resolution of the pending action will hinder her ability to effectuate that interest; and (4) the absence of adequate representation by any existing party.” *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 39 (1st Cir. 2020) (internal citations

omitted). The intervenor’s interest in the action must “bear a sufficiently close relationship to the dispute between the original litigants.” *Ungar v. Arafat*, 634 F.3d 46, 51 (1st Cir. 2011) (quoting *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 638 (1st Cir. 1989)).

Permissive intervention under Rule 24(b) is within the trial court’s broad discretion. *Dagget v. Commission on Gov’t Ethics & Election Pracs.*, 172 F.3d 104, 113 (1st Cir. 1999). The Federal Rules expressly contemplate the intervention of the federal government if “a party’s claim or defense is based on . . . a statute or executive order administered by the officer or agency” or “any regulation . . . made under the statute or executive order.” Fed R. Civ. P. 24(b)(2).

ARGUMENT

I. The United States and CFTC are entitled to intervene as of right.

The United States and CFTC meet all four requirements for intervention as of right.

First, the federal proposed intervenors’ motion is unquestionably timely: Kalshi filed this lawsuit on May 21, just a week before this motion to intervene. *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 39 (1st Cir. 2020).

Second, the federal proposed intervenors have a “concrete interest” in this action. *Id.* The United States is injured “when its valid laws in a domain of federal authority are undermined by impermissible state regulations.” *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012); *see also United States v. Missouri*, 114 F.4th 980, 984 (8th Cir. 2024) (holding that “[t]he United States has a legally protected interest in enforcing federal law” that it may defend when “impaired” by state law); 28 U.S.C. § 2403(a) (permitting the United States to intervene in any suit “wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question”). Here, Rhode Island’s aggressive enforcement of its preempted state laws—including through its use of enforcement actions to intimidate federally regulated entities and, ultimately, halt the

operation of federally regulated markets—intrudes upon the federal government’s sovereign interest in maintaining exclusive regulatory jurisdiction. In doing so, Rhode Island threatens to undermine the uniformity of federal law and to subject DCMs to a patchwork of 50 state regulations contrary to Congress’s goals. The State also threatens to short-circuit CFTC regulations, such as the requirement that DCMs provide “impartial access” to all eligible participants nationwide. 17 C.F.R. § 38.151(b). These harms to the CFTC’s sovereign interests plainly give the federal government a concrete stake in the outcome of this action.

Third, there is a “realistic threat” that the resolution of this action will impair the CFTC’s jurisdiction. *T-Mobile*, 969 F.3d at 39. If Rhode Island is permitted to enforce its state gaming laws, the DCMs and derivative products that the State targets will become unavailable within its borders, given the heavy threat of civil—or potentially even criminal—liability. That would effectively cripple the CFTC’s ability to approve such exchanges and financial products for listing in the State of Rhode Island and, more broadly, would undermine the CFTC’s mandate to “promote responsible innovation and fair competition” in American derivatives markets. 7 U.S.C. § 5(b).

Fourth, absent intervention, the federal government’s interests may not be adequately represented. *T-Mobile*, 969 F.3d at 39. This case raises the question whether the CEA preempts state gambling laws as applied to CFTC-regulated DCMs. The only party to this action that shares the federal government’s view that such laws are preempted is Kalshi—but it would be downright bizarre to conclude that *the federal government’s* interests are adequately represented in court by *a private party it regulates*. See *Conservation L. Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 45 (1st Cir. 1992) (holding that regulated fishing groups could intervene in suit against Secretary of Commerce because the two had distinct interests); *Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 748–49 (7th Cir. 2020) (holding that regulators and regulated parties

have distinct interests for purposes of intervention). Kalshi’s injury, after all, is based on Rhode Island’s enforcement action against it—not the wider community of federally regulated markets. That is precisely why Kalshi’s request for relief only asks for an injunction preventing Rhode Island’s enforcement of state gaming laws against *it*, not universally against DCMs. *See* Dkt. No. 1 ¶ 84. The federal government’s interest, by contrast, lies in protecting its exclusive jurisdiction from invasion by a State, which has regulatory consequences for all DCMs as well as other key market participants, including Derivatives Clearing Organizations (DCOs) and Futures Commission Merchants (FCMs). And as the exclusive regulator in this domain, the CFTC brings unique and important insight into how Rhode Island’s enforcement attempts threaten the derivatives markets more broadly, a perspective that is not currently represented in this lawsuit.

II. The United States and CFTC also qualify for permissive intervention.

If nothing else, the United States and CFTC easily meet the test for permissive intervention under Federal Rule of Civil Procedure 24(b). The Rule expressly permits “a federal . . . governmental . . . agency to intervene if a party’s claim or defense is based on . . . a statute or executive order administered by the . . . agency; or . . . any regulation, order requirement, or agreement issued or made under the statute or executive order.” Fed. R. Civ. P. 24(b)(2). Thus, permissive intervention is appropriate where a proposed intervenor: “(1) file[s] a timely motion, (2) [is] a federal or state governmental officer or agency, (3) administer[s] the statute, executive order, or regulation at issue, and (4) [will] not cause undue delay or prejudice to the original parties’ rights, if allowed to (permissively) intervene.” *Coffey v. Commissioner*, 663 F.3d 947, 951 (8th Cir. 2011).

The federal government’s intervention motion meets these requirements. For one, the motion is timely, coming seven days after the filing of the lawsuit. *Supra* § I. As a result, the

government’s participation will not cause any delay to the original parties’ rights. “If anything, allowing intervention will promote judicial economy and spare the parties from needing to litigate a similar case” filed by the federal government in this District. *California v. Health & Hum. Servs.*, 330 F.R.D. 248, 255 (N.D. Cal. 2019); *see, e.g., United States v. Arizona*, No. 2:26-cv-02246 (D. Ariz.); *KalshiEX LLC v. Johnson*, No. 2:26-cv-01715 (D. Ariz.) (separate lawsuits filed by the federal government and Kalshi challenging Arizona’s enforcement of state law against DCMs).

The CFTC, moreover, is a federal agency. And it is charged with administering the federal statute—the CEA—that is central to Kalshi’s claim in this case. *See* Dkt. No. 1 ¶ 84 (“Defendants may not enforce Rhode Island’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.*”). Kalshi has also asserted that it would be impossible to simultaneously comply with Rhode Island law and CFTC regulations that require it to provide “impartial access to its markets and services.” *Id.* ¶ 83 (citing 17 C.F.R. §§ 38.150, 38.151(b)). And Kalshi has otherwise asserted that the CEA broadly preempts the field of derivatives regulation that Rhode Island seeks to invade, and that Rhode Island law would be an obstacle to the accomplishment of the CEA’s full purposes and objectives. *Id.* ¶¶ 80–81. In short, Rule 24(b)(2) contemplates the federal government’s intervention under precisely this scenario.

Finally, it bears emphasis that the federal government’s participation in this case is amply warranted under the circumstances. As explained above, the CFTC has a significant interest in this action that may be impaired absent its participation in the lawsuit. *Supra* § I. Further, the federal government is already litigating in federal court against six other States on precisely the same issue. The government should not be relegated to the sidelines in this dispute about *its own jurisdiction*. *See Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 595 U.S. 267, 278 (2022)

(emphasizing a government’s “weighty interest” in “protecting its own laws” via permissive intervention).

CONCLUSION

For the foregoing reasons, the United States and the CFTC respectfully request that the Court allow them to intervene either as of right under Federal Rule of Civil Procedure 24(a)(2) or permissively under Rule 24(b)(2).

Dated: May 28, 2026

Respectfully submitted,

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