

No. 26-299

IN THE
Supreme Court of the United States

MARY JO FLAHERTY, INTERIM DIRECTOR, NEW JERSEY
DIVISION OF GAMING ENFORCEMENT, *et al.*,
Petitioners,

v.

KALSHIEX, LLC,
Respondent.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Third Circuit

**BRIEF OF AMERICAN GAMING
ASSOCIATION AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONERS**

Kevin F. King
Counsel of Record
Matthew J. Glover
Scott J. Garfing
Sameer Aggarwal
Alexander J. Cave
Hassan Ahmad
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
kking@cov.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT	5
I. Kalshi Offers Sports Bets.	5
II. AGA’s Members, Consumers, and Tribes Would Benefit from the Court’s Prompt Resolution of the Deepening Split.	15
A. The Circuits Are Divided on Whether States May Regulate Prediction Markets’ Sports Bets.	15
B. Licensed Gaming Operators Have Built Their Businesses Around the State Regulatory Framework.	18
C. Prediction Markets Bypass the Core Consumer Protections That States Have Implemented.....	20
D. Congress Did Not Delegate Authority Over Sports Betting to the CFTC.....	24
III. This Case Is an Ideal Vehicle to Decide the Question Presented, Which Warrants Urgent Review.....	27
CONCLUSION	29

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Ah Sin v. Wittman</i> , 198 U.S. 500 (1905)	2
<i>Blue Lake Rancheria v. Kalshi, Inc.</i> , __ F.4th __, 2026 WL 2728466 (9th Cir. Sep. 16, 2026)	3, 5, 8, 9, 15
<i>Chiles v. Salazar</i> , 607 U.S. 627 (2026)	27
<i>Dunn v. CFTC</i> , 519 U.S. 465 (1997)	24, 25
<i>Free Speech Coal., Inc. v. Paxton</i> , 606 U.S. 461 (2025)	27
<i>KalshiEX, LLC v. Assad</i> , __ F.4th __, 2026 WL 2543846 (9th Cir. Aug. 28, 2026)	3, 5, 8, 9, 10, 11, 14, 15, 26
<i>KalshiEX, LLC v. Cafferelli</i> , 2026 WL 2294589 (D. Conn. Aug. 10, 2026)	14
<i>KalshiEX, LLC v. Cafferelli</i> , No. 26-2239, Dkt. 27.1 (2d Cir. Aug. 19, 2026)	17

<i>KalshiEX, LLC v. Cox</i> , No. 26-4100, Dkt. 19 (10th Cir. Sep. 8, 2026)	17
<i>KalshiEX, LLC v. Schuler</i> , 2026 WL 657004 (S.D. Ohio Mar. 9, 2026)	21
<i>KalshiEX, LLC v. Schuler</i> , __ F.4th __, 2026 WL 2884087 (6th Cir. Sep. 25, 2026)	3, 5, 10, 14, 15, 16, 26
<i>KalshiEX, LLC v. Williams</i> , 2026 WL 2017466 (S.D.N.Y. July 13, 2026)	24
<i>KalshiEX, LLC v. Williams</i> , No. 26-1835, Dkt. 32.1 (2d Cir. July 29, 2026)	17
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	28
<i>Murphy v. NCAA</i> , 584 U.S. 453 (2018)	2, 4, 18, 26
<i>NFIB v. OSHA</i> , 595 U.S. 109 (2022)	27
<i>Sackett v. EPA</i> , 598 U.S. 651 (2023)	27
<i>Util. Air Regul. Group v. EPA</i> , 573 U.S. 302 (2014)	27

<i>Whitman v. Am. Trucking Ass'ns</i> , 531 U.S. 457 (2001)	4
--	---

Statutes

7 U.S.C.	
§ 1a	13, 16
§ 2	16, 26
§ 13	26
§ 13a-1	26

Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701	1
--	---

Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010)	3, 25
---	-------

N.J. Stat. Ann.	
§ 5:12A-10	23
§ 5:12A-11	21, 22

Regulatory Materials

17 C.F.R. § 40.11(a)	28
----------------------------	----

205 Mass. Code Regs. § 256.05	23
-------------------------------------	----

Event Contracts, 89 Fed. Reg. 48,968 (June 10, 2024)	25
---	----

N.Y. Comp. Codes R. & Regs. tit. 9,	
§ 5329.16	23
§ 5329.37	23

Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 (June 12, 2026).....	28
--	----

Other Authorities

American Gaming Association, <i>Commercial Gaming Revenue Hits \$78.7 Billion in 2025, Driving Record \$18.1 Billion in Gaming Taxes Nationwide</i> (Feb. 26, 2026).....	5
American Gaming Association, <i>Economic Fact Sheet: New Jersey (2025)</i>	19
American Gaming Association, <i>Responsible Gaming Code of Conduct</i>	23
American Gaming Association, <i>State of Play Map</i>	19
American Gaming Association, <i>State of the States 2026: The AGA Analysis of the Commercial Casino Industry</i> (May 2026)	19
American Gaming Association, <i>Teen-Twenty Sports Betting Tracker</i>	21
Ben Blatt & Amy Fan, <i>Is Sports Betting Illegal in Your State? Not If You Call It a 'Prediction Market.'</i> , N.Y. Times (Oct. 5, 2025)	8

Marshall Cohen, <i>Young Adults Under 21 Traded \$5 Billion on Kalshi This Year, Amid Prediction Market Frenzy,</i> CNN Business (Aug. 28, 2026)	21
Dustin Gouker, <i>Kalshi Is Advertising That ‘Sports Betting’ Is Legal in California, Texas,</i> Event Horizon (Sep. 17, 2025)	6
Dustin Gouker, <i>Kalshi Says It’s ‘Kind of Addicting’ in Instagram Post,</i> Event Horizon (Oct. 21, 2025)	23
Dustin Gouker, <i>Kalshi Was Promoting a 30- Leg Parlay to Users on Tuesday,</i> Event Horizon (Apr. 1, 2026)	12
Dustin Gouker, <i>Robinhood Cometh?,</i> Event Horizon (Sep. 2, 2026)	8
Dustin Gouker, <i>Yes, Kalshi Is Still Marketing Itself as a Betting Platform,</i> Event Horizon (Aug. 27, 2025)	6
Kalshi, <i>Rutgers vs Maryland</i>	24
Kalshi, <i>SCOTUS & Courts</i>	14
Kalshi, <i>Signing Up as an Individual</i> (Mar. 10, 2026)	21
Kalshi, <i>Voluntary Self-Exclusion</i> (Mar. 16, 2026)	22

Letter from Xavier Sottile, Head of Markets, KalshiEX LLC, to CFTC, <i>Notification Regarding the Initial Listing of the “Will the fastest serve in <tennis match> be <above/below/ exactly/at least/between> <count><speed>?” Contract</i> (Jan. 16, 2026)	9
Anthony Macuk, <i>No, You Can’t Bet on College Sports Online in Oregon,</i> KGW8 (Mar. 21, 2024)	24
Justin Papp & Garrett Downs, <i>Kalshi, Polymarket Lobby as Insider Trading, Betting Eyed by Congress,</i> CNBC (Apr. 15, 2026)	16
Eric Ramsey & Dustin Gouker, <i>Parlays Propel Kalshi to Back-to-Back Volume Records to Open Football Season,</i> Event Horizon (Sep. 15, 2026)	14
Nancy Walecki, <i>It’s Not Gambling, It’s ‘Girl Math’</i> , The Atlantic (Apr. 1, 2026)	23

INTEREST OF *AMICUS CURIAE*¹

The American Gaming Association (AGA) is a non-profit trade association whose members represent the full spectrum of the legal, regulated gaming industry—including commercial and tribal casino operators, suppliers, and sports betting operators. AGA’s members participate in gaming markets throughout the United States that are regulated by state governments and federally recognized Indian tribes. These markets generate \$53 billion in annual tax revenue and support 1.8 million jobs nationwide. On behalf of its members, AGA works with law enforcement, elected officials, state agencies, and tribal leaders to combat illegal gambling and promote next-generation regulatory regimes.

Thirty-nine States and the District of Columbia permit sports betting, subject to applicable state laws. Many of AGA’s members offer sports betting under those state laws or tribal-state compacts authorized by the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.* Other AGA members provide services to state- and tribal-licensed sports betting operators. These markets are a significant economic sector: In 2025, bettors wagered \$166.94 billion in state-licensed sportsbooks, leading to \$16.89 billion in revenue for operators and \$3.71 billion in tax revenue for States.

¹ In accordance with Rule 37.2, all counsel of record received timely notification of *amicus*’s intent to file this brief. No party’s counsel authored any part of this brief and no one other than *amicus*, its members, and its counsel made any monetary contribution intended to fund its preparation or submission.

AGA submits this brief to address the disruptive effects the Third Circuit’s decision has had and will continue to have in New Jersey, one of the Nation’s largest and most significant gaming markets. AGA has a strong interest in orderly application of state and federal gaming laws, and its members have built their businesses around a framework in which state and tribal governments regulate sports betting. The Third Circuit’s decision upends that regime by allowing prediction markets to offer sports betting nationwide, without complying with state and tribal gaming laws. Congress never authorized that bifurcated scheme, which is inflicting serious competitive harm on state- and tribal-licensed gaming operators. Additionally, the Third Circuit’s decision erodes state and tribal sovereignty, eliminates important consumer protections, and allows sports betting by 18-20 year olds. This Court’s review is urgently needed to address the legal flaws and significant real-world effects of the Third Circuit’s misguided ruling.

INTRODUCTION AND SUMMARY OF ARGUMENT

For more than a century, the Court has held that oversight of “gambling is ... within the police powers of a state.” *Ah Sin v. Wittman*, 198 U.S. 500, 505-06 (1905). Some States have exercised that authority by prohibiting gaming altogether. Others have permitted gaming and enacted licensing standards, tax laws, and consumer-protection requirements designed to ensure that it serves the public interest. Congress has consistently “respect[ed] the policy choices of the people of each State on the controversial issue of gambling” by incorporating state-law rules in federal statutes. *Murphy v. NCAA*, 584 U.S. 453, 484 (2018).

AGA’s members have invested billions of dollars within that framework. They participate in state-regulated sports-betting markets and bear the licensing, compliance, and tax obligations those markets require. And until recently, in return, States had been able to mandate that all parties wishing to offer sports betting do the same, ensuring a level playing field.

The theory advanced by Kalshi—and adopted by the Third Circuit majority—has thrown that system into chaos. The majority concluded that the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010)—a law enacted in response to the financial crisis, and at a time when sports betting was illegal in most of the country—authorized prediction markets to offer so-called “sports-event contracts” nationwide, and that these contracts are derivatives governed exclusively by the Commodity Futures Trading Commission (CFTC). But the Sixth and Ninth Circuits have since reached the opposite conclusion, and for good reason.

Kalshi’s arguments have a “gambling problem”: its sports-event contracts are sports bets in every meaningful sense. *KalshiEX, LLC v. Assad*, __ F.4th __, 2026 WL 2543846, at *10 (9th Cir. Aug. 28, 2026). They are “virtually indistinguishable from sports bets” that are available on traditional sportsbooks, like those operated by AGA’s members. *KalshiEX, LLC v. Schuler*, __ F.4th __, 2026 WL 2884087, at *22 (6th Cir. Sep. 25, 2026). Indeed, when a customer places a sports bet on a prediction market, “[t]he only thing that changes is [the] vocabulary.” *Blue Lake Rancheria v. Kalshi, Inc.*, __ F.4th __, 2026 WL 2728466, at *9 (9th Cir. Sep. 16, 2026). Prediction markets offer garden-variety sports wagers, such as

bets on point spreads and parlays. And they have advertised those transactions as “legal sports betting.” So the consequence of the Third Circuit’s decision, as long as it stands, is that prediction markets may offer the same wagers as AGA’s members while avoiding the taxes, regulations, and licensing requirements that apply to all other sportsbooks.

There is no credible evidence that Congress designed Dodd-Frank to have that destabilizing effect. The purpose of Dodd-Frank was to reform and regulate the financial system, not to establish a nationwide gambling code. Yet the Third Circuit concluded that changes it made to the Commodity Exchange Act (CEA) resulted in the (implied) preemption of a broad swath of state gaming laws and granted the CFTC sweeping new authority to serve as a sports-betting regulator. Congress does not “hide elephants in mouseholes,” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001), and federalization of state- and tribal-regulated gaming markets would be a very large elephant indeed. The provisions the Third Circuit relied upon in holding otherwise do not come close to establishing that Dodd-Frank and the CEA grant the CFTC *any* authority over prediction markets’ sports wagers, much less that those laws override the States’ traditional authority over gaming.

The question presented here is incredibly important to AGA’s members and the markets in which they operate. Sports betting has long involved “important policy choice[s]” by state and tribal governments, *Murphy*, 584 U.S. at 486, and generated more than \$165 billion in transactions in 2025 alone,

leading to \$3.71 billion in state tax revenue.² New Jersey’s petition, like the petitions pending in cases from the Ninth Circuit,³ is an excellent vehicle for this Court to resolve the split among the courts of appeals. Given the significant disruption that split is causing for States, tribes, businesses, and consumers, the Court should grant certiorari without delay and should hold that Kalshi is not entitled to injunctions blocking enforcement of state gaming laws.

ARGUMENT

I. Kalshi Offers Sports Bets.

Kalshi’s arguments attempt to obfuscate a simple truth: it offers sports bets. As courts across the country have observed, “[e]ach entry into a sports event contract materially resembles” a traditional sports bet—i.e., “an act of placing a bet or wager.” *Blue Lake*, 2026 WL 2728466, at *9 (cleaned up). Although Kalshi argues its contracts should be regulated as “swaps,” rather than as sports bets, the contracts involve sports betting in “substance,” and “everyone, including Kalshi, knows it.” *Assad*, 2026 WL 2543846, at *9-11; *Schuler*, 2026 WL 2884087, at *22.

Kalshi has “market[ed] its sports event contracts ... as ‘legal sports betting’” and “advertised itself as ‘the first app for legal sports betting in all 50 states.’” *Assad*, 2026 WL 2543846, at *9-10; *accord Schuler*,

² See AGA, *Commercial Gaming Revenue Hits \$78.7 Billion in 2025, Driving Record \$18.1 Billion in Gaming Taxes Nationwide* (Feb. 26, 2026), <https://perma.cc/67YZ-VMBN>.

³ See *N. Am. Derivatives Exch., Inc., dba Crypto.com v. Nevada* (No. 26-344); *Robinhood Derivatives, LLC v. Dreitzer* (No. 26-338).

2026 WL 2884087, at *4. Although Kalshi employs sanitized terms like “trading” in its court papers, its advertisements have repeatedly described its offerings as “sports betting,” including in States like California where sports betting is prohibited:⁴

⁴ Dustin Gouker, *Kalshi Is Advertising That ‘Sports Betting’ Is Legal in California, Texas*, Event Horizon (Sep. 17, 2025), <https://perma.cc/8NJ4-HFUR>; Dustin Gouker, *Yes, Kalshi Is Still Marketing Itself as a Betting Platform*, Event Horizon (Aug. 27, 2025), <https://perma.cc/QEH6-YA3L>.

Kalshi kalshi_official

Hey New York...

**Bet on the NFL,
Legal in 50 states.**



Join 2M+ Americans on Kalshi

Potential payouts are not guaranteed. See terms, conditions, and privacy.

 **Install now**

Kalshi - Trade the Headlines
Sponsored
Library ID: 790170480042882

Bet on who scores the first touchdown. Live odds on Kalshi.

**BREAKING NEWS: SPORTS BETTING
IN CALIFORNIA IS NOW LEGAL**
New York-headquartered prediction market Kalshi has legalized
sports betting in all 50 states.

 **Jeffrey Rieger**
09/03/25



See also *Blue Lake*, 2026 WL 2728466, at *6. The data confirm what the marketing makes clear. In 2025, sports betting accounted for “[o]ver 90% of Kalshi’s trades” and “95% of its revenue.” *Assad*, 2026 WL 2543846, at *4.

Kalshi offers the same bets, on the same outcomes, as sportsbooks. A customer at a traditional sportsbook “can place a sports bet on the Las Vegas Raiders winning a game by over 7.5 points,” while on Kalshi “that same customer can buy an event contract based on the Las Vegas Raiders winning a game by over 7.5 points,” each with the same payout. *Id.* at *10. The graphic below, published in a *New York Times* article regarding prediction markets’ expansion into sports betting, illustrates the point.⁵ The top image shows betting options for an NFL game on a state-regulated sportsbook; the bottom shows betting options offered by Kalshi for the same game. Both use the same format, offer bets on the same point spread, and offer bets on the same over-under for the number of points scored:⁶

⁵ Ben Blatt & Amy Fan, *Is Sports Betting Illegal in Your State? Not If You Call It a ‘Prediction Market.’*, N.Y. Times (Oct. 5, 2025), <https://perma.cc/JZ9K-7HX8>.

⁶ Although Kalshi recently discontinued “American” pricing (e.g., “-106” in the Cowboys/Jets example), it explained that “[n]othing about the markets themselves has changed” and “[t]his change only affects how prices are shown on screen.” Dustin Gouker, *Robinhood Cometh?*, Event Horizon (Sep. 2, 2026), <https://perma.cc/6XHR-F432>.

 DAL Cowboys		-2.5 -110	-134	O 47.5 -104
 NY Jets		+2.5 -110	+114	U 47.5 -118
 SUN 1:01PM ET		Stats  More wagers 		

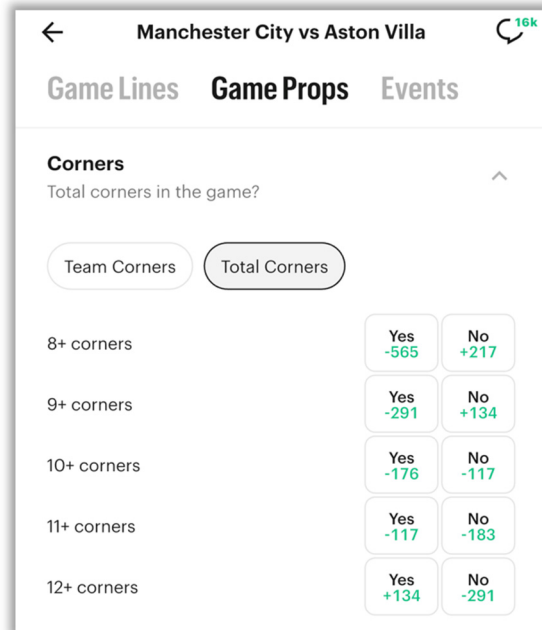
	Pro Football	Spread	Money	Total
	DAL	-2.5 -106	-135	O 47.5 -111
@				
	NYJ	+2.5 -102	+123	U 47.5 -106
 Oct 5 @ 1:00pm EDT		More markets		

See *Blue Lake*, 2026 WL 2728466, at *5.

Kalshi also offers other bets that have long been standard sportsbook fare, including “prop[osition] bets,” which are “bets based on outcomes within a game.” *Assad*, 2026 WL 2543846, at *4. For example, Kalshi offers bets on the speed of the fastest serve in tennis matches⁷ and the number of corner kicks in soccer matches:⁸

⁷ Letter from Xavier Sottile, Head of Markets, KalshiEX LLC, to CFTC, *Notification Regarding the Initial Listing of the “Will the fastest serve in <tennis match> be <above/below/exactly/at least/between><count><speed>?” Contract* (Jan. 16, 2026), <https://perma.cc/SGE5-NT5N>.

⁸ AGA’s counsel took a screenshot of this page on the Kalshi mobile application on May 20, 2026.



See also *Schuler*, 2026 WL 2884087, at *11, *13 (discussing corner kicks example).

Kalshi likewise allows users to place parlay bets, which combine several different wagers and pay off only if *all* listed outcomes occur, with the payout “depend[ing] on the performance of [multiple] sports team[s] or” “player[s].” *Assad*, 2026 WL 2543846, at *10. A parlay based on the NFL game depicted above, for example, could wager that Dallas will win by more than 2.5 points *and* that the teams will collectively score more than 47.5 points.

These types of bets are common on traditional state-licensed sportsbooks, such as the one operated by AGA member BetMGM. For instance, users on both BetMGM and Kalshi can wager on the Detroit Lions to defeat the Arizona Cardinals by at least 4.5

points, the Philadelphia Eagles and Jacksonville Jaguars to combine for more than 42.5 points, and a Dallas Cowboys wide receiver to score a touchdown in a game against the Tampa Bay Buccaneers, all combined into one parlay that offers “a larger payout if each leg hits,” *Assad*, 2026 WL 2543846, at *4.⁹

BetMGM Parlay

The screenshot displays a BetMGM Parlay bet slip. At the top, it shows 'Parlays' with an upward arrow. Below this, it indicates '3 Legs' with an information icon, a '+628' odds multiplier, and a '\$10.00' stake. The total payout is listed as 'Payout: \$72.89'. There is a 'Hide selections' link and an 'Add promo' button. The parlay consists of three legs, each with a close button (X) and an odds multiplier:

- Yes (+100):** CeeDee Lamb to score 1+ TDs, Tampa Bay Buccaneers @ Dallas Cowboys.
- Over 42.5 (-110):** Totals, Philadelphia Eagles @ Jacksonville Jaguars.
- Detroit Lions -4.5 (-110):** Spread, Detroit Lions @ Arizona Cardinals.

⁹ AGA’s counsel took screenshots of these pages on the BetMGM mobile application and Kalshi web application on October 6, 2026.

Kalshi Parlay

The screenshot displays a '3 MARKETS COMBO' bet on the Kalshi platform. The bet costs \$10.00 and is projected to pay out \$73.04, with a profit of +\$5.00. The bet consists of three NFL markets:

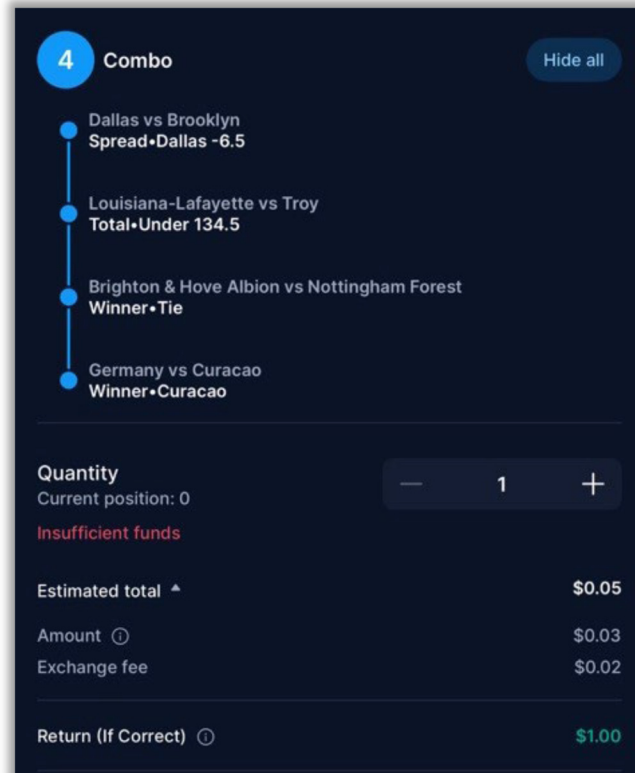
- TB Buccaneers at DAL Cowboys:** CeeDee Lamb: 1+ touchd... (49% probability)
- PHI Eagles at JAC Jaguars:** Over 42.5 points (52% probability)
- DET Lions at ARI Cardinals:** DET Lions win by over 4.5 ... (51% probability)

Each market selection is accompanied by a small 'x' icon, likely for removing the selection.

Prediction markets do not restrict their parlays to a single game or even to matchups within a single sport. For example, Kalshi regularly promotes parlays that depend on 30 different outcomes across multiple games in different cities.¹⁰ Earlier this year, Crypto.com offered a bet that (1) the Dallas Mavericks would defeat the Brooklyn Nets by at least 6.5 points in an NBA game; (2) the University of Louisiana-Lafayette and Troy University would combine for no more

¹⁰ Dustin Gouker, *Kalshi Was Promoting a 30-Leg Parlay to Users on Tuesday*, Event Horizon (Apr. 1, 2026), <https://perma.cc/V34F-4WAU>.

than 134 points in a basketball game; (3) Brighton & Hove Albion F.C. and Nottingham Forest F.C. would tie in a soccer match; and (4) Curaçao would defeat Germany in the FIFA World Cup:¹¹



Under the CEA, a transaction qualifies as a “swap” only if (among other things) it is “associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. § 1a(47)(A)(ii). Yet the Third Circuit made no effort to show that Kalshi’s parlays,

¹¹ AGA’s counsel took a screenshot of this page on the Crypto.com mobile application on February 23, 2026.

“of which [Kalshi] offers billions of dollars’ worth per month,” *Schuler*, 2026 WL 2884087, at *15, and which make up 60% of Kalshi’s betting volume, satisfy that test.¹² Nor could it. There is “no principled reason for why” a 30-leg parlay or “a combo on both the Giants and Broncos winning” is associated with any economic consequence “apart from its significance to participants ... who have wagered on that particular combination of outcomes.” *KalshiEX, LLC v. Cafferelli*, 2026 WL 2294589, at *8 (D. Conn. Aug. 10, 2026).¹³

Kalshi nevertheless argues that sports-event contracts are fundamentally different from traditional sports bets. But the “distinctions” cited by Kalshi are, as the Ninth Circuit has explained, “without differences,” and they lack “any connection to the statutory definition[s]” at issue. *Assad*, 2026 WL 2543846, at *11. “[P]lacing sports bets, even when called by another name, is still gambling.” *Id.* at *10.

¹² Eric Ramsey & Dustin Gouker, *Parlays Propel Kalshi to Back-to-Back Volume Records to Open Football Season*, Event Horizon (Sep. 15, 2026), <https://perma.cc/V4CC-X3DZ>.

¹³ Beyond its sports bets, Kalshi offers wagers on a broad range of topics, including whether Kim Kardashian will pass the bar exam, <https://perma.cc/3TCT-5356>; the substance of this Court’s decisions (such as whether the Court will hold in *Kian v. Florida*, No. 25-6623, that the Constitution requires 12-person juries for serious felonies, <https://perma.cc/243W-TZ73>); and whether a Justice of this Court will be charged with a federal crime, <https://perma.cc/63XT-XPCU>; see also Kalshi, *SCOTUS & Courts*, <https://perma.cc/Q5TM-G3AP> (listing additional markets).

Although Kalshi contends its sports bets can be used to hedge risk, they “do not help institutions or investors hedge against risk” and instead “*create* risk, largely for ordinary consumers, where none previously existed.” *Id.* Kalshi’s hedging argument is particularly nonsensical regarding parlays like those above. *See Schuler*, 2026 WL 2884087, at *13 (“It is ... difficult to see how determining the probability that a certain number of corner kicks will be taken in a given soccer game—or that a 30-leg parlay will hit—would serve” the goals of hedging and price discovery). And reading the CEA “so expansively as to include any conceivable downstream economic consequence” for anyone would “render the definition of swap so broad as to be meaningless.” *Assad*, 2026 WL 2543846, at *12; *see Schuler*, 2026 WL 2884087, at *11 (similar).

In short, Kalshi’s interpretation “has a gambling problem.” *Assad*, 2026 WL 2543846, at *10. “The similarities between a sports event contract, which even Kalshi calls ‘sports betting,’ and a traditional sports wager are overwhelming.” *Blue Lake*, 2026 WL 2728466, at *8. The decision below failed to recognize or account for this fundamental reality.

II. AGA’s Members, Consumers, and Tribes Would Benefit from the Court’s Prompt Resolution of the Deepening Split.

A. The Circuits Are Divided on Whether States May Regulate Prediction Markets’ Sports Bets.

As Petitioners explain, the courts of appeals are split on whether sports bets remain subject to state

gaming laws when prediction markets offer them.¹⁴ The conflict has further deepened since Petitioners filed their petition, as the Sixth Circuit recently joined the Ninth Circuit in concluding that Kalshi’s sports bets are not “swaps.” *Schuler*, 2026 WL 2884087, at *10 (citing 7 U.S.C. § 1a(47)(A)(ii)). The Sixth Circuit explained that it was “not persuaded” by the Third Circuit’s “swap” interpretation because it relies on “consequences” that are “too attenuated, indirect, and speculative to satisfy the statutory definition.” *Id.* at *15.

The Sixth Circuit also created an additional split because, unlike the Third and Ninth Circuits, it rejected Kalshi’s theory that the CEA’s “exclusive jurisdiction” provision, 7 U.S.C. § 2(a)(1)(A), expressly preempts state gaming laws. *Schuler*, 2026 WL 2884087, at *20. Mindful that “[p]rinciples of federalism” counsel against reading less-than-clear laws to upend traditional state authority, the court concluded that “the CEA does not expressly preempt the States’ sports-betting laws because those laws do not directly regulate [designated contract markets (DCMs)] but have only incidental effects on them.” *Id.* at *23. The circuits thus now disagree on whether Dodd-Frank gives the CFTC regulatory authority over sports bets

¹⁴ This split exists not only for prediction markets generally, but also for Kalshi’s wagers specifically, given the varying approaches taken by the Third, Sixth, and Ninth Circuits in cases involving Kalshi. That division of authority is commercially significant because Kalshi “account[s] for roughly 90% of U.S.” market share for prediction markets. Justin Papp & Garrett Downs, *Kalshi, Polymarket Lobby as Insider Trading, Betting Eyed by Congress*, CNBC (Apr. 15, 2026), <https://perma.cc/2UBQ-MPBW>.

to begin with, and, assuming it does, whether the CEA preempts state gaming laws.

Several other courts of appeals have also addressed Kalshi’s arguments. In both the Second and Tenth Circuits, Kalshi sought injunctions pending appeal after district courts in New York, Connecticut, and Utah rejected its preliminary injunction motions. In the Tenth Circuit, the motions panel held that “Kalshi ha[d] not shown” the stay “factors weigh in its favor.” *KalshiEX, LLC v. Cox*, No. 26-4100, Dkt. 19 at 2 (10th Cir. Sep. 8, 2026). In the Second Circuit, two judges separately denied Kalshi’s requests for temporary relief. *See KalshiEX, LLC v. Williams*, No. 26-1835, Dkt. 32.1 (2d Cir. July 29, 2026); *KalshiEX, LLC v. Cafferelli*, No. 26-2239, Dkt. 27.1 (2d Cir. Aug. 19, 2026).

These splits, moreover, are bound to deepen further. Kalshi’s arguments are the subject of appeals across the country, including in the Second, Fourth, Seventh, Eighth, and Tenth Circuits, as well as the Massachusetts Supreme Judicial Court.¹⁵ All of these courts are (or soon will be) considering the same issues that have divided the Third, Sixth, and Ninth Circuits. This Court’s review is necessary to ensure that all States can regulate gaming within their borders. *See Murphy*, 584 U.S. at 484.

¹⁵ *See KalshiEX, LLC v. Williams*, No. 26-1835 (2d Cir.); *KalshiEX, LLC v. Cafferelli*, No. 26-2239 (2d Cir.); *KalshiEX, LLC v. Martin*, No. 25-1892 (4th Cir.); *United States v. Wisconsin*, Nos. 26-2636, 26-2675 & 26-2696 (7th Cir.); *KalshiEX, LLC v. Bird*, No. 26-2874 (8th Cir.); *KalshiEX, LLC v. Cox*, No. 26-4100 (10th Cir.); *Commonwealth v. KalshiEX, LLC*, No. SJC-13906 (Mass.).

B. Licensed Gaming Operators Have Built Their Businesses Around the State Regulatory Framework.

Since *Murphy*, States have made different choices about whether and how to offer sports betting. Some States prohibit sports betting altogether, but 39 States and the District of Columbia have adopted regulatory frameworks to permit sports betting. In several jurisdictions, such as Connecticut and Florida, States and tribes have relied on IGRA's compacting process to allocate jurisdiction over the statewide gaming market.

Gaming operators, including many of AGA's members, have invested accordingly, building state-specific systems for licensing, geolocation, account controls, vendor relationships, and permissible bet offerings. And they work closely with state and tribal regulators to ensure that consumers can enjoy gaming as a safe, responsible form of entertainment.

States often require prospective gaming operators to apply—and pay a substantial fee—to state regulators for a license. After that process, which often involves extensive investigations, is complete, licensed operators must pay taxes; comply with state consumer-protection rules; and periodically renew their licenses. AGA's members have made substantial investments to satisfy these obligations, through advertising guidelines, gaming self-exclusion programs, and employee training standards. They have built their businesses on the expectation that States will continue to exercise their longstanding police power to oversee gaming.

The state-based regulatory framework delivers real public benefits. Nationwide, commercial gaming revenue reached \$78.62 billion in 2025—including \$16.89 billion from commercial sports betting—and produced \$17.86 billion in direct gaming tax revenue.¹⁶ Licensed gaming operators support more than 1.8 million jobs and generate approximately \$52.7 billion in overall tax impact and tribal revenue.¹⁷ States and tribes often use these revenues to support public programs; for instance, New Jersey uses gaming tax revenue to fund public education, senior citizen and disability programs, law enforcement, and economic development.¹⁸ In contrast, prediction markets offer sports bets without paying state taxes, costing States substantial revenue and inflicting serious damage to the public fisc. As of this filing, States have lost more than \$1.5 billion in potential tax revenue since prediction markets began offering sports bets.¹⁹

There is a bargain at the heart of the state-based framework. Operators are licensed and investigated by the States in which they operate; their systems are audited; and their platforms are built to incorporate geolocation, identity verification, and reporting requirements. They provide States with revenue,

¹⁶ AGA, *State of the States 2026: The AGA Analysis of the Commercial Casino Industry* at 7-8, 10 (May 2026), <https://perma.cc/AS8X-CVFT>.

¹⁷ AGA, *State of Play Map* (archived Oct. 7, 2026), <https://perma.cc/9XPB-35ZZ>.

¹⁸ AGA, *Economic Fact Sheet: New Jersey* (2025), <https://perma.cc/G9WF-SAW9>.

¹⁹ *State of Play Map*, *supra*.

investments, and compliance functions designed to ensure that gaming is a safe, responsible form of entertainment. The States, in return, provide a market in which all competitors are subject to the same standards of integrity, consumer protection, and responsibility. That level playing field has created settled expectations for regulators and operators alike.

The Third Circuit’s decision has upended those expectations for AGA’s members in New Jersey, one of the Nation’s largest and most important gaming markets. Those members must continue to bear the full cost of licensing, compliance, and taxation, yet they must now compete against prediction markets for the same customers and the same wagers, under a legal regime in which prediction markets enjoy litigation-based immunity from state-law obligations. In the meantime, AGA’s members elsewhere, including those in the Sixth and Ninth Circuits, compete on a level playing field in which state gaming laws have full force and may be applied to prediction markets’ sports bets. The competitive disadvantages for AGA’s members in the Third Circuit—and in other jurisdictions where litigation remains pending—will persist for as long as the decision below stands and the circuit split remains.

C. Prediction Markets Bypass the Core Consumer Protections That States Have Implemented.

The Third Circuit’s decision embracing Kalshi’s novel legal theory allows prediction markets to circumvent policy choices that States have made regarding sports betting, including laws that protect

minors, provide responsible-gaming safeguards, regulate advertising, and limit wagers on college sports. Allowing the Third Circuit’s decision to stand would override those choices and impose serious harms on licensed operators, tribes, and consumers each day that prediction markets can offer unlicensed sports bets. That dynamic increases the urgency for the Court to grant certiorari and decide the case at the earliest opportunity.

Age Limits. In New Jersey and most other States, persons under age 21 are prohibited from placing sports wagers. *See, e.g.*, N.J. Stat. Ann. § 5:12A-11(e). But Kalshi and other prediction markets ignore these restrictions and offer sports bets to all users 18 or older.²⁰ Kalshi thus allows even high schoolers to bet on sports, despite States’ judgments that such wagers present unacceptable risks. *See KalshiEX, LLC v. Schuler*, 2026 WL 657004, at *10 n.9 (S.D. Ohio Mar. 9, 2026) (individuals ages 18-20 “have unrestricted access to sports-event contracts” on prediction markets and are left “unprotected by Ohio’s responsible gaming laws”). And this is no small issue: as of late August, “[y]oung adults between 18 and 21 ... ha[d] traded an estimated \$5.4 billion so far this year” on Kalshi’s prediction market alone.²¹

²⁰ *See* Kalshi, *Signing Up as an Individual* (Mar. 10, 2026), <https://perma.cc/GA9G-8PRW>.

²¹ Marshall Cohen, *Young Adults Under 21 Traded \$5 Billion on Kalshi This Year, Amid Prediction Market Frenzy*, CNN Business (Aug. 28, 2026), <https://perma.cc/JX6L-LREH>; *see also* AGA, *Teen-Twenty Sports Betting Tracker* (archived Oct. 8, 2026), <https://perma.cc/9DEG-PACR> (estimating \$7.5 billion in wagers by this group).

Responsible Gaming. Many States also require robust responsible-gaming protections, including programs that identify risky play and allow customers to impose voluntary limits or self-exclude from wagering. *See, e.g.*, N.J. Stat. Ann. § 5:12A-11(f)(3). These protections allow bettors to opt out of all casino gaming statewide.

Under the Third Circuit’s decision, however, prediction markets like Kalshi are not required to offer self-exclusion programs or take any steps to ensure responsible gaming. Kalshi, for instance, does not monitor for signs of problem gaming, and does not contact users who exhibit signs of irresponsible use—steps that state-licensed operators must take. Some prediction markets do not offer any responsible-gaming tools at all. And others maintain only narrowly drawn programs that offer self-exclusion from particular betting applications, in contrast to the comprehensive self-exclusion programs provided under state law.²²

Advertising. States also regulate gaming advertisements. In many States, licensed operators must ensure that individuals who have self-excluded from gaming do not receive solicitations; include prominent responsible-gaming messages in advertisements (such as the phone number for a free problem-gambling hotline); and refrain from depicting or targeting minors. Some States prohibit sports betting advertisements on college campuses. *See* 205 Mass. Code Regs. § 256.05. Others forbid advertisements that

²² Kalshi, *Voluntary Self-Exclusion* (Mar. 16, 2026), <https://help.kalshi.com/en/articles/13823789-voluntary-self-exclusion>.

“suggest that betting is a means of solving” financial problems. N.Y. Comp. Codes R. & Regs. tit. 9, § 5329.37(b)(2).

AGA and its members have implemented the Responsible Gaming Code of Conduct. The Code includes several commitments, including respecting the legal age for sports wagering, limiting college and university advertising, and supporting responsible gaming.²³

Kalshi’s advertising, however, blows past all limits. One of its advertisements described its wagers as “kind of addicting.”²⁴ Another depicted “a woman anxiously checking a Kalshi bet with her friends, with the caption, ‘I was about to be unable to pay my rent, but I got two years of rent through Kalshi’s prediction. It’s amazing!’”²⁵ And none include responsible-gaming messages, nor is there any evidence that Kalshi prevents its advertisements from reaching minors and self-excluded individuals.

College Sports. Many States also restrict wagers on collegiate sporting events. Some States prohibit wagers on in-state colleges and in-state events, *see* N.J. Stat. Ann. § 5:12A-10; others restrict player proposition bets for college sports, *see* N.Y. Comp. Codes R. & Regs. tit. 9, § 5329.16(b)(1); and still others restrict

²³ AGA, *Responsible Gaming Code of Conduct* (archived Oct. 7, 2026), <https://perma.cc/SX8G-6FZT>.

²⁴ Dustin Gouker, *Kalshi Says It’s ‘Kind of Addicting’ in Instagram Post*, Event Horizon (Oct. 21, 2025), <https://perma.cc/5W6T-5UZK>.

²⁵ Nancy Walecki, *It’s Not Gambling, It’s ‘Girl Math’*, The Atlantic (Apr. 1, 2026), <https://perma.cc/7CCJ-FN7M>.

wagers on *all* college sports on mobile sportsbook platforms.²⁶ Although licensed gaming operators abide by these restrictions, prediction markets do not—again undermining the judgments of state policymakers. *See KalshiEX, LLC v. Williams*, 2026 WL 2017466, at *10 (S.D.N.Y. July 13, 2026). For example, although it is illegal in New Jersey to bet on a football game between Rutgers and Maryland, under the Third Circuit’s decision, Kalshi can offer bets on that game in New Jersey and nationwide.²⁷

D. Congress Did Not Delegate Authority Over Sports Betting to the CFTC.

The Third Circuit’s interpretation replaces States’ comprehensive and robust regulation of sports betting with a federal regulatory regime anchored by the CFTC—an agency that Congress created to “regulate the ‘volatile and esoteric’ market in futures contracts in fungible commodities.” *Dunn v. CFTC*, 519 U.S. 465, 468-69 (1997). The notion that Congress effected that sea change in obscure derivatives provisions defies history and common sense.

Congress first authorized federal regulation of derivatives in 1922 when it enacted the Grain Futures Act, which “defined the regulated commodities to include ‘wheat, corn, oats, barley, rye, flax, and sorghum.’” *Id.* at 475 n.11. Congress then “expanded

²⁶ Anthony Macuk, *No, You Can’t Bet on College Sports Online in Oregon*, KGW8 (Mar. 21, 2024), <https://perma.cc/T2RU-4WZT>.

²⁷ Kalshi, *Rutgers vs Maryland* (archived Oct. 8, 2026), <https://perma.cc/3M8L-FLHA>. AGA’s counsel verified that this wager was available in New Jersey on Kalshi’s web application on October 8, 2026.

the coverage of the legislation” in 1936 when it passed the CEA and “add[ed] further agricultural commodities, including cotton, rice, butter, eggs, and Irish potatoes.” *Id.* In 1974, Congress amended the CEA to “include nonagricultural commodities” and “creat[e] the CFTC.” *Id.* at 469, 475 n.11. And in 2010, Congress enacted Dodd-Frank, which amended the CEA to “promote the financial stability of the United States by improving accountability and transparency in the financial system.” 124 Stat. at 1376.

None of those laws refer to sports betting. So unsurprisingly, between 1922 and early 2025 *no one* had *ever* transacted a sports wager on a federally regulated derivatives exchange. Similarly, in the half-century since the birth of the CFTC, and the more than 15 years since Congress passed Dodd-Frank, the CFTC has *never* asserted the authority to regulate sports betting. To the contrary, the agency just two years ago disclaimed its ability to do so, acknowledging that it “is not a gaming regulator” and does not have “the statutory mandate nor specialized experience appropriate to oversee it.” Event Contracts, 89 Fed. Reg. 48,968, 48,982-83 (June 10, 2024). And it further acknowledged that so-called “event contracts” involving a contest or game generally lack any “underlying cash market with bona fide economic transactions” necessary to provide “price forming information,” and thus diverge from “the vast majority of commodities underlying Commission-regulated derivatives contracts.” *Id.* at 48,982; *see Schuler*, 2026 WL 2884087, at *16.

The CFTC’s prior statements make good sense. As the Court has recognized, Congress has “implement[ed] a coherent federal policy” to “respect the

policy choices of the people of each State on the controversial issue of gambling.” *Murphy*, 584 U.S. at 484. Yet the Third Circuit’s ruling would drastically alter this state-based framework.

The Third Circuit also failed to grapple with the implications of its interpretation. Because 7 U.S.C. § 2(e) mandates that all “swaps” be traded on DCMs, a conclusion that sports bets qualify as “swaps” would mean that “every person placing a sports bet at Caesar’s Sportsbook (or anywhere else for that matter) is violating the CEA” and thus liable for civil or criminal penalties. *Assad*, 2026 WL 2543846, at *11; see *Schuler*, 2026 WL 2884087, at *14; 7 U.S.C. §§ 13(a)(5), 13a-1(a), (d)(1). “[A]dopting Kalshi’s view,” as the Third Circuit did, also “gives the CFTC regulatory authority over sports betting”—an activity that “involves ‘billions of dollars’ and affects ‘millions of people,’” and which “has long been regulated by the States and Tribes.” *Assad*, 2026 WL 2543846, at *14-15 (citation omitted).

That cannot be right. There is no reason to think that Congress tacitly turned the CFTC into the Nation’s exclusive sports betting regulator in Dodd-Frank, a law geared toward federal oversight of traditional financial markets. Dodd-Frank “cannot be read as a direct (or indirect) regulation of sports gambling, and the CFTC is not a national gambling regulator.” *Assad*, 2026 WL 2543846, at *14.

The major questions doctrine and the federalism canon foreclose the Third Circuit’s approach as well. Under these principles, courts are “skeptical[all]” “[w]hen an agency claims to discover in a long-extant statute an unheralded power” over a matter of vast

economic and political significance, *Util. Air Regul. Group v. EPA*, 573 U.S. 302, 324 (2014), and when the federal government claims Congress has “significantly alter[ed] the balance between federal and state power,” *Sackett v. EPA*, 598 U.S. 651, 679 (2023). The “lack of historical precedent” for any purported CFTC authority over traditionally state-regulated gaming, “coupled with the breadth of authority” that the agency now asserts, is “a ‘telling indication’” that the CFTC’s claimed authority “extends beyond [its] legitimate reach.” *NFIB v. OSHA*, 595 U.S. 109, 119-20 (2022). Here, the dramatic shift of power from States and tribes to the CFTC would result in fewer consumer protections, reduced revenues for States and tribes, and a competitive imbalance for licensed gaming operators.

III. This Case Is an Ideal Vehicle to Decide the Question Presented, Which Warrants Urgent Review.

As Petitioners explain (Pet. 19-20), this case, like the cases arising from the Ninth Circuit,²⁸ provides an excellent vehicle to resolve the circuit split.

Although this case (like the Ninth Circuit cases) arises in a preliminary injunction context, all three decisions have turned on Kalshi’s likelihood of success on the merits, rather than the other factors. This Court has routinely granted review to decide important questions in preliminary procedural postures. *See, e.g., Chiles v. Salazar*, 607 U.S. 627 (2026); *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461 (2025).

²⁸ *Supra* note 3.

Nor is there any other reason to delay review. Between the Third, Sixth, and Ninth Circuit decisions, all of the relevant arguments have been thoroughly ventilated. There is also no reason to wait for the CFTC to finalize a proposed rule that would assert regulatory authority over Kalshi’s sports bets. See Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 (June 12, 2026). That proposed rule cannot affect the meaning of the CEA’s “swap” and “exclusive jurisdiction” provisions. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 393-94 (2024). At most, it could remove an independent obstacle to the CFTC’s regulation of prediction markets’ sports bets—namely, that they are “gaming” contracts categorically barred under existing regulations. See 17 C.F.R. § 40.11(a). But the rulemaking cannot affect the question presented: if Kalshi’s sports bets are not “swaps,” the CFTC lacks authority to authorize them, and even if they were “swaps,” the proposed rule alone could not preempt state gaming laws.

Instead, given the importance of the question presented, all relevant stakeholders—States, prediction markets, tribes, the CFTC, and AGA’s members—would benefit from this Court granting certiorari and deciding the matter this Term. New Jersey’s gaming laws should not be improperly sidelined any longer. Nor should AGA’s members operating in New Jersey continue to face significant competitive harms from Kalshi’s illicit sports bets that members in Las Vegas can avoid.

Finally, if the Court grants review in this case, it would benefit from also granting the pending petitions in the Ninth Circuit cases noted above. Doing so would provide the Court with the perspective of each

of the States with the foremost casino gaming markets in the United States in terms of market size and responsible-gaming regulations.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

Kevin F. King
Counsel of Record
Matthew J. Glover
Scott J. Garfing
Sameer Aggarwal
Alexander J. Cave
Hassan Ahmad
COVINGTON & BURLING LLP
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
kking@cov.com

October 8, 2026