

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 WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT*

**BRIEF OF AMICI CURIAE OHIO, 38 OTHER
STATES, AND THE DISTRICT OF COLUMBIA
IN SUPPORT OF PETITIONERS**

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INTRODUCTION AND *AMICI*'S INTEREST*

Federal and state courts are hopelessly confused and divided over an issue of immense importance: whether the Commodity Exchange Act preempts state sports-gambling laws. States have held the traditional power over sports gambling since this country's beginning. And they still have that power today, choosing different policies based on the diverse needs of their residents. Citizens in Ohio, for example, want different policies from those in Utah. *See* Ohio Rev. Code §3775; Utah Const. art. VI, §27; Utah Code Ann. §76-9-1402. As the Court put it less than a decade ago, “Americans have never been of one mind about gambling.” *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 458 (2018). So States remain “free to act” on the “controversial subject.” *Id.* at 486.

Prediction markets—companies that purport to facilitate derivatives trading as federally regulated exchanges—began offering sports bets about two years ago. These bets have taken many different forms: from who will win the Dodgers-Yankees game to how many corner kicks Lionel Messi will take in his match next week. Yet those markets (like Kalshi here) say that the States cannot apply sports-gambling laws to them because federal law supersedes the States’ authority.

They claim to have discovered this no-state-law-applies escape hatch buried within a subsection of a section of a federal financial reform bill passed in the wake of the 2008 mortgage crisis. That bill—the Dodd-Frank Act—gave the Commodity Futures

* *Amici* States provided all parties with the notice required by Rule 37.2.

Trading Commission “exclusive jurisdiction” over specified derivatives, including financial instruments called “swaps.” Prediction markets say that classic sports bets—things like whether Joe Burrow throws three touchdowns or Ohio State beats Michigan—are not bets at all. They are actually “swaps” within the CFTC’s “exclusive jurisdiction.” So Ohio, New Jersey, Nevada, and any other State can do nothing to regulate those transactions.

The prediction markets are wrong. They cannot strip the States of their core sovereign power through relabeling and window-dressing. Our constitutional structure is much more durable than that. And the promise of federalism ensures that States do not lose their ability to protect their citizens so easily. Yet that is precisely what would happen under the prediction markets’ theory.

For *Amici* States, much hangs in the balance. They thus write to emphasize two points.

First, *Amici* States write to provide this Court a complete picture of the national discord. This issue has resulted in chaos nationwide. A direct, but messy, split has emerged among the federal courts of appeals. Lower courts remain intractably divided. And the States sit in a regulatory turf war with the CFTC. Only this Court can turn this national disorder back on the orderly path—by providing a single answer to this nationwide legal issue.

Second, *Amici* States write to stress the importance of the issue to their sovereignty and to their citizens. The prediction markets’ aggressive theory of preemption not only impugns the States’ sovereignty but also leads to disastrous consequences for the States’ citizens. Over the years, States have

developed comprehensive schemes to protect their residents. From robust licensing schemes and exclusion lists to minimum-age requirements and spending limits, States aim to guard against problem gambling. The aggressive preemption theory pushed here threatens to wipe out all those critical protections.

STATEMENT

a. Gambling regulation falls within the States’ traditional police powers. *Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905). The authority to regulate gambling extends back to even before statehood for States like Ohio. *See Mills-Jennings of Ohio, Inc. v. Dep’t of Liquor Control*, 70 Ohio St. 2d 95, 99 (1982). And for most of this country’s history, States “largely banned” sports gambling. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 458 (2018).

Several years ago, this Court reaffirmed that States remain “free to act” on the controversial subject of sports gambling. *Id.* at 486. States have taken different approaches to regulate or ban the activity. *See* Am. Gaming Ass’n, *State of the States 2025: The AGA Analysis of the Commercial Casino Industry*, 12–13 (May 2025), available at <https://perma.cc/J27S-WLSB>. Utah prohibits sports gambling; Ohio legalizes and regulates it. As the CFTC recognized two years ago, “in the United States, gambling is overseen by state regulators with particular expertise and governed by state gaming laws aimed at addressing particular risks and concerns associated with gambling.” *Event Contracts*, 89 Fed. Reg. 48968, 48982–83 (June 10, 2024). Reaffirming that States have the final call and flexibility in regulating sports gambling meshes with “the states’ long-understood authority in this area,” which “does not involve an inherently national

system of regulation.” *KalshiEX, LLC v. Assad*, ___ F.4th ___, 2026 WL 2543846, *15 (9th Cir. 2026) (quotation omitted).

b. The federal government, meanwhile, regulates derivatives. A “derivative” is a financial instrument, often used for hedging, in which the value depends on another more basic asset or commodity, such as the price of stocks or the cost of hogs. John C. Hull, *Options, Futures, and Other Derivatives*, 1 (8th ed. 2012).

Congress first passed the Grain Futures Act of 1922, which it renamed in 1936 the Commodity Exchange Act (“CEA”). See *Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353, 362 (1982). In 1974, Congress created the Commodity Futures Trading Commission to oversee many financial derivatives involving commodities. *Id.* at 365–66, 386–87. It further gave the CFTC “exclusive jurisdiction” over certain types of agreements and transactions involving derivatives. 7 U.S.C. §2(a).

This case centers on one derivative: the “swap.” As with other derivatives, swaps allow people to hedge against financial risk. Hull, *Derivatives* 148–175, 733. For many years, the CFTC did not regulate swaps. See *United States v. Phillips*, 155 F.4th 102, 112 (2d Cir. 2025). Without regulation, “[t]rading in swaps exploded in the early 2000s,” leading many to blame unregulated swaps for the 2008 crisis. *Id.* at 113.

Congress responded by passing the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). Pub. L. 111-203, 124 Stat. 1376 (2010). Part of Dodd-Frank amended the CEA. In particular, Congress extended the CFTC’s “exclusive jurisdiction” to “swaps.” See 7 U.S.C. §2(a)(1)(A). But the exclusive-jurisdiction provision of the CEA has

two saving clauses. The first states that “[e]xcept as hereinabove provided, nothing contained in this section shall ... supersede or limit the jurisdiction at any time conferred on ... other regulatory authorities under the laws of the United States or any State.” *Id.* The second says “[n]othing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.” *Id.* The CEA also contains a six-part definition of “swap” which provides, among other things, that a swap includes agreements or transactions 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)(ii).

c. Prediction markets, like Kalshi, allow users to place sports bets on their platforms. Today, a person can access a prediction market (for example, by visiting the prediction market’s website or mobile application) to bet on the outcome of football games, point spreads, how many goals Messi scores, or how many rebounds LeBron James nabs in his game next Tuesday. Some prediction markets also offer “parlays” by which people can make multiple such bets that pay out only if every bet hits.

Kalshi, for its part, began offering sports bets on January 22, 2025. It certified to the CFTC that the products would be sold on its “designated contract market” (“DCM”) in compliance with federal law. *KalshiEX, LLC v. Schuler*, __ F.4th __, 2026 WL 2884087, *4 (6th Cir. Sept. 25, 2026). A DCM is a CFTC-regulated exchange that lists contracts for trading. *See* 7 U.S.C. §7a-2(c)(1). More specifically, Kalshi defines its products as “event contract derivatives” that can be traded on a DCM. Pet.App.6a n.1.

Derivatives, as explained above, include products used for hedging, like swaps. And the CFTC has “exclusive jurisdiction” over swaps traded on a DCM. 7 U.S.C. §2(a)(1)(A).

Kalshi, other prediction markets, and the current CFTC have argued that the exclusive-jurisdiction provision preempts all state sports-gambling laws. Kalshi’s principal theory has two steps. *First*, they maintains that sports bets are “swaps” traded on a DCM. *Second*, they says that the “exclusive jurisdiction” provision in §2 preempts state law. To prevail on their theory, they must be correct on both counts.

d. This theory has sparked considerable litigation. As unpacked below, a split among circuits has already formed—the Third Circuit ruled for prediction markets, the Ninth and Sixth Circuits against. *Compare KalshiEX, LLC v. Flaherty*, 172 F.4th 220 (3d Cir. 2026) with *KalshiEX, LLC v. Assad*, ___ F.4th ___, 2026 WL 2543846 (9th Cir. Aug. 28, 2026); *KalshiEX, LLC v. Schuler*, ___ F.4th ___, 2026 WL 2884087 (6th Cir. Sept. 25, 2026). Decisions from the Third and Ninth Circuits—involving the same dispute but with different prediction markets—have been brought to this Court on petitions for *certiorari*. *Flaherty v. KalshiEX, LLC*, No. 26-299 (U.S.); *N. Am. Derivatives Exchange, Inc., dba Crypto.com Derivatives N. Am. v. Nevada, et al.*, No. 26-344 (U.S.). (The prediction market in this dispute, Kalshi, sought *en banc* review from the Ninth Circuit. *KalshiEX, LLC v. Assad*, No. 25-7516 (9th Cir.), *pet. for en banc* filed Sept. 9, 2026.)

Cases remain pending at the Second, Fourth, Seventh, Eighth, and Tenth Circuits, as well as the Massachusetts Supreme Judicial Court. *KalshiEX, LLC v. Williams*, No. 26-1835 (2d Cir.); *KalshiEX, LLC v.*

Martin, No. 25-1892 (4th Cir.) (argued May 7, 2026); *United States v. Wisconsin*, No. 26-2636 (7th Cir.); *KalshiEX, LLC v. Bird*, No. 26-2874 (8th Cir.); *KalshiEX, LLC v. Cox*, No. 26-4100 (10th Cir.); *Massachusetts v. KalshiEX, LLC*, No. SJC-13906 (Mass.) (argued May 4, 2026). Of those, the cases in the Fourth Circuit and the Massachusetts Supreme Judicial Court have been argued and are pending (likely imminent) decisions.

e. Two years ago, the CFTC disclaimed authority to regulate gambling. 89 Fed. Reg. at 48982–83. And, for a while, the CFTC remained neutral as to prediction markets’ sports-gambling activities. CFTC Letter No. 25-36, Certain Market Contracts (Sept. 30, 2025), available at <https://perma.cc/X6RT-7RVU>. But in recent months, under new leadership, the CFTC has endorsed the prediction markets’ view. Alongside Kalshi and other prediction markets, the Commission has filed *amicus* briefs in multiple cases. See *CFTC Exercises Emergency Authority to Ensure Market Stability* (Aug. 11, 2026), available at <https://perma.cc/3FSE-5DA7>. Perhaps more surprising, the CFTC has sued at least nine States itself, pushing the same preemption theory as Kalshi. See *id.*

On the regulatory stage, the CFTC has issued proposed rulemaking that would permit sports bets on federal markets. *Prediction Markets; Public Interest Determinations*, 91 Fed. Reg. 35806 (June 12, 2026). That represents a stark change from the CFTC’s prior position and current rule that categorically *bars* “gam- ing” on designated contract markets. 17 C.F.R. §40.11.

Most States have opposed the CFTC’s rulemaking efforts. *Forty-four* of them commented on the proposed rule, arguing that the CFTC lacks the power to preempt state laws and become the country’s sole gambling regulator. See Ohio Attorney General, *Comment Letter on Prediction Markets; Public Interest Determinations*, CFTC-2026-1189 (July 27, 2026), available at <https://perma.cc/GC7L-AFRW>. In short, the States and the CFTC are at an impasse over who can regulate.

SUMMARY OF ARGUMENT

The Court should resolve the Question Presented to bring clarity to an issue of exceeding importance. The prediction markets’ theory raises several issues that *each* warrant *certiorari*: It infringes state sovereignty by preempting the States’ traditional authority. It invokes the major questions doctrine by handing over immense power to a federal regulatory agency. It endangers citizens who will lose protection from important state gambling laws. And it has splintered the circuits and lower courts with no resolution on the horizon. Only this Court can provide the much-needed answer. It should do so.

REASONS TO GRANT THE PETITION

For prediction markets to avoid state gambling law, they must show two things under the CEA: (1) that sports bets are “swaps” under the CEA’s definition, and (2) that the CEA’s “exclusive jurisdiction” clause preempts state law. These are purely legal questions that hinge on no factual disputes. Preemption, after all, is a question of statutory interpretation. *Kansas v. Garcia*, 589 U.S. 191, 208 (2020). And only “constitutional text or a federal statute” can “displac[e]” state law. *Va. Uranium, Inc. v. Warren*, 587

U.S. 761, 767 (2019) (Gorsuch, J., op.) (quotation omitted). So to know whether state laws are preempted, courts must interpret the relevant statutory text.

The lower courts have attempted to do so—to no avail. The circuit courts are split. District courts are in disarray. And the CFTC pushes forward in its attempt to strip States of their long-established power to regulate gambling. *Amici* States begin here—by painting a full picture of this national discord for the Court, including the multiway splintering on the legal issues in these cases.

Amici States also write to emphasize that the problem is not merely theoretical. Until this Court speaks, prediction markets and their aggressive attempts to circumvent State law threaten our system of federalism by displacing, without any congressional authorization, the States from their traditional role as gambling regulators. That not only upends our federal-state balance of power, but also harms the States’ citizens by removing the protections States have built to protect their citizens from problematic gambling.

I. The Question Presented has resulted in a national turf war, splitting the nation’s courts and pitting the States against the federal government.

The Question Presented has splintered the nation, with courts and regulators splitting over the answer itself and how best to reach the answer. *Amici* States start by describing the escalating disagreement.

a. The Third Circuit issued the first federal appellate decision on the matter and affirmed a preliminary injunction granted to Kalshi. A split panel held that (1) sports bets on prediction markets are “swaps”

under the CEA, and (2) the CEA’s exclusive-jurisdiction provision supplants all state laws. Pet.App.1a.

Starting with whether Kalshi’s sports bets are swaps, the panel majority held that “Kalshi’s sports-related event contracts are swaps.” Pet.App.4a. Recall that to be a swap under the relevant definition, a contract must involve an “event” that is “associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. §1a(47)(A)(ii). The majority held that the “outcome of a sports event certainly can be associated with” such a consequence because “affected stakeholders” such as “sponsors, advertisers, television networks, franchises” and more are affected by sports games. Pet.App.8a. Thus, “swap’ includes event contracts” involving sports. Pet.App.6a. The majority did not analyze or consider any specific bets on Kalshi—such as parlays, prop bets, or point spreads.

The panel majority also held that the “exclusive jurisdiction” provision in §2(a) preempts state law. It said that “both field and conflict preemption” flow from the CEA’s text. Pet.App.9a. But it did not hold that “exclusive jurisdiction” amounts to an *express* preemption clause, as the prediction markets have argued. *See id.*

On field preemption, the Third Circuit explained that “[b]ecause Kalshi’s sports-related event contracts are swaps ... the scope of field preemption” was “the regulation of trading on a DCM ... rather than gambling” generally. Pet.App.11a. And the CEA, the panel majority concluded, supersedes any laws affecting trading on DCMs. So “state laws that purport to regulate sports-related event contracts on CFTC-licensed DCMs” are field preempted. Pet.App.10a.

The panel majority also found conflict preemption. Pet.App.12a–14a. It concluded the CEA was a “comprehensive regulatory structure” designed “to do away with the patchwork of state regulations and bring futures trading on DCMs under the exclusive jurisdiction of the CFTC.” Pet.App.12a (quotation omitted). And because state sports-gambling laws were “exactly the patchwork that Congress replaced wholecloth,” conflict preemption applied. Pet.App.13a. The court said that the CEA’s text would overcome any presumption against preemption even assuming “that states have long regulated gambling.” Pet.App.13a–14a.

Judge Roth dissented. Noting that the prediction market bets were “virtually indistinguishable from the betting products available on online sportsbooks,” Judge Roth rejected Kalshi’s “alchemy that transmute[s] its products from sports gambling to futures trading.” Pet.App.20a. On swaps, Judge Roth noted that Kalshi’s definition would mean “virtually every kind of wager that could exist” would fall within the definition—a “rationality-defying outcome” that “Congress could not have intended.” Pet.App.22a. Yet, she did not decide the swaps issue because she “would rule against Kalshi on the basis of preemption.” *Id.*

On preemption, Judge Roth applied the presumption against preemption, which requires a clear statement from Congress before stripping States of their historic police powers. Pet.App.23a. She concluded that although the CEA’s exclusive-jurisdiction provision does “occup[y] the field of DCM trading,” it does not preempt the field of state-gambling laws. Pet.App.27a. She finally rejected the majority’s conflict-preemption holding, arguing that prediction

markets can comply with both state and federal law. Pet.App.33a.

This decision is the subject of New Jersey’s petition for *certiorari* in this case—the first seeking this Court’s review.

b. Next, the Ninth Circuit directly split with the Third. *KalshiEX, LLC v. Assad*, No. 25-7516, __ F.4th __, 2026 WL 2543846 (9th Cir. Aug. 28, 2026). A unanimous panel held that the CEA does *not* preempt state sports-gambling laws, directly the opposite to the just-discussed Third Circuit decision on outcome. And the reasoning was almost fully the opposite of the Third Circuit’s. The Ninth Circuit panel held that (1) the exclusive-jurisdiction provision expressly preempts state law, but (2) Kalshi’s products are not swaps. So it ultimately held that the CEA does not preempt state gambling laws.

Starting with the exclusive-jurisdiction provision, the Ninth Circuit held that, “based on its plain wording, §2 preempts state regulation of swaps that are ‘traded or executed’ on a DCM.” *Assad*, 2026 WL 2543846 at *7. The clause, the panel held, “excludes all others, not just the SEC.” *Id.* So the CEA expressly preempts state law. *Id.* at *8. But that preemption, the panel explained, extends only to enumerated derivatives in the CEA—such as swaps.

And on “swaps,” the court concluded that sports bets fall outside of the statutory definition. *Id.* at *12. First, it held that sports bets do not involve an “occurrence of an event.” *Id.* at *8–9. Although “in isolation” the word “event” is broad, the panel declined to read “event” to mean *anything* because the definition “uses both event and occurrence,” so “these words should have independent meaning to avoid rendering one

term superfluous.” *Id.* at *9. Statutory context confirmed that reading. *Id.* at *9–10. And no one thinks “how many touchdowns Fernando Mendoza might throw in a game, or how many points BYU Football will win by” counts “as an ‘event.’” *Id.* at *9.

The court then explained that even if sports bets involve “events,” they are not “associated with” an economic consequence under the statute, so they are not swaps. *Id.* at *12; 7 U.S.C. §1a(47)(A)(ii). Under the statute’s plain text, “associated with” means that the event itself is “inherently” connected to a consequence. Attenuated or downstream possible consequences are not enough. *Assad*, 2026 WL 2543846 at *12. So the court rejected the prediction markets’ theory that everything will have a “potential financial or economic consequence.” *Id.* (quotation omitted).

To confirm the point, the panel explained why reading “swap” broadly would lead to a major questions problem. *Id.* at *14. It would give the CFTC an “extraordinary ... regulatory authority” without any “clear congressional authorization.” *Id.* (quotation omitted). After all, under 7 U.S.C. §2(e), *all* swaps *must* be traded on federal markets. So if sports bets are swaps, they must be on DCMs and regulated by the CFTC, thus making the agency a national gambling czar and leaving the States with no power.

Like Judge Roth in the Third Circuit, the Ninth Circuit believed that the prediction markets’ definition of “swap”—which would take away the States’ core sovereign powers—requires a clear statement from Congress. *Assad*, 2026 WL 2543846 at *14. There, too, a disagreement: while Judge Roth cited the presumption against preemption, the Ninth Circuit said the major questions doctrine applied. *Id.* at

*7, *14–15. But both agreed that “the words in the definition of swap” lacked the required clarity to give CFTC so much power. *Id.* at *15.

Finally, the Ninth Circuit disagreed directly with the Third Circuit on conflict and field preemption, holding that neither applied. *Id.* at *16–17.

c. The latest ruling comes from the Sixth Circuit, which charted its own path. That unanimous panel agreed with the Ninth Circuit’s ultimate conclusion—that the CEA did not preempt state sports-gambling laws—but the reasoning differed. The Sixth Circuit held (1) that the prediction market contracts are not swaps (agreeing with the Ninth Circuit), and (2) “exclusive jurisdiction” supplies neither express, field, nor conflict preemption (disagreeing with the Ninth and Third Circuits). *KalshiEX, LLC v. Schuler*, __ F.4th __, 2026 WL 2884087 (6th Cir. Sept. 25, 2026).

On swaps, the Sixth Circuit first said, in contrast to the Ninth, that “sports-event contracts are conditioned on the occurrence of ‘events.’” *Id.* at *8. But the court then concluded that those events are not “associated with” economic consequences, so they are not swaps. “The text, structure and context of the CEA” point to a “narrow[]” reading of “this part” of the swap definition. *Id.* at *10. This time, like the Ninth Circuit, the Sixth held that “associated with” means economic consequences are “necessarily associated with the event,” not “attenuated” or “downstream.” *Id.* at *10. Swaps must include consequences “inherently associated with” the event. *Id.* at *11. A broader reading, the panel explained, would give “associate with” “effectively ... no force.” *Id.*

The panel further explained that the broader statutory context confirmed this narrow reading of

“swap.” *Id.* at *12. After all, “the surrounding definitions for a swap refer almost exclusively to financial measures, indices, or instruments, that can be used to drive price discovery or that contemplate intrinsic financial risks that can be hedged against.” *Id.* (quotations omitted). Sports bets bear none of those characteristics. Reading “swap” to reach sports bets would “[l]ack[] any concrete limiting principle” and be at odds with the statute’s text and purpose. *Id.* at *13.

Finally on swaps, the Sixth Circuit noted that under §2(e) all swaps must be traded on federal markets. *Id.* at *14. Thus, “Kalshi’s overbroad swap definition would likely cover all sorts of commonplace gambling activity” and would make any such gambling “unlawful.” *Id.* That “would ... expose countless Americans to potential criminal liability for partaking in even the most unsophisticated, off-DCM gambling activity.” *Id.* And it would result in the CFTC regulating gambling nationwide. The panel “note[d] the appeal of applying” the major questions doctrine and the federalism canon, but “because [it] resolve[d] the issue on ‘straight-up statutory construction’ grounds, [it] d[id] not resort to these clear statement rules.” *Id.* at *16 n.9 (quoting *Learning Res., Inc. v. Trump*, 607 U.S. 229, 310 (2026) (Kagan, J., concurring)).

On “exclusive jurisdiction,” the court held that §2(a) “neither expressly nor impliedly preempts the States’ gambling laws,” splitting with the Ninth and Third Circuits. *Id.* at *18. It first explained that, given the States’ historic power over gambling, the presumption against preemption applied. *Id.* at *19. Through that interpretive lens, the court concluded that “exclusive jurisdiction” “typically applies to limit courts’ jurisdiction, rather than agencies’ power to regulate or states’ power to make law.” *Id.* at *20.

And “[b]ecause the provision does not use the language Congress traditionally employs when it preempts state power to make laws,” express preemption did not apply. *Id.* Instead, “the exclusive jurisdiction provision displaces direct enforcement and regulatory authority pertaining to the licensing and operation of DCMs.” *Id.* at *21. State gambling laws “do not directly regulate the licensure and operation of transactions on DCMs,” so the clause does not preempt the States’ laws. *Id.* at *22.

The court finally held—this time in sync with the Ninth Circuit, but contra the Third—that neither field nor conflict preemption applied. *Id.* at *23–27.

*

As this discussion shows, the circuits are fractured. And they are not split only on outcome. They are divided on all possible modes of analysis. One (the Third) says sports bets are swaps and preemption applies. Another (the Ninth) says the CEA contains an express-preemption provision, but it does not cover sports bets because they are not swaps. And the last (the Sixth) says sports bets are not swaps and the CEA would not result in preemption in any event. The resulting nationwide confusion should be put to an end. This Court should grant the petition.

d. Without this Court’s intervention, more confusion is likely to come. After all, several other cases are in line for decision at the Second, Fourth, Seventh, Eighth, and Tenth Circuits, as well as the Massachusetts Supreme Judicial Court. *KalshiEX, LLC v. Williams*, No. 26-1835 (2d Cir.); *KalshiEX, LLC v. Martin*, No. 25-1892 (4th Cir.) (argued May 7, 2026); *United States v. Wisconsin*, No. 26-2636 (7th Cir.); *KalshiEX, LLC v. Bird*, No. 26-2874 (8th Cir.); *KalshiEX, LLC v.*

Cox, No. 26-4100 (10th Cir.); *Massachusetts v. KalshiEX, LLC*, No. SJC-13906 (Mass.) (argued May 4, 2026). Cases at the Fourth Circuit and Massachusetts Supreme Judicial Court have been argued. Decisions could come any day.

And the issue has plagued lower courts. The prediction markets' aggressive preemption theory has led to a staggering number of lawsuits. An incomplete sample of court decisions in this matter paints the picture:

KalshiEX, LLC v. Bird, No. 4:26-cv-00109, 2026 WL 2691009 (S.D. Iowa Sept. 8, 2026); *Coinbase v. Tong*, ___ F.Supp.3d ___, 2026 WL 2294602 (D. Conn. Aug. 10, 2026); *KalshiEX, LLC v. Cafferelli*, ___ F.Supp.3d ___, 2026 WL 2294589 (D. Conn. Aug. 10, 2026); *Coinbase Fin. Mkts, Inc. v. Nessel*, ___ F.Supp.3d ___, 2026 WL 2295184 (E.D. Mich. Aug. 7, 2026); *KalshiEX, LLC v. Cox*, No. 26-cv-151, 2026 WL 2241564 (D. Utah Aug. 4, 2026); *KalshiEX, LLC v. Williams*, No. 25-cv-8846, 2026 WL 2017466 (S.D.N.Y. Jul. 13, 2026); *KalshiEX, LLC v. Furcolo*, No. 1:26-cv-00327 (D.R.I.); *Kentucky v. QCX, LLC*, No. 3:26-cv-47 (E.D. Ky.); *United States v. Kentucky*, No. 3:26-cv-49 (E.D. Ky.); *Coinbase Fin. Mkts, Inc. v. Raoul*, No. 1:25-cv-15406 (N.D. Ill.); *QCX, LLC v. Nessel*, No. 1:26-cv-710, 2026 WL 1895958 (W.D. Mich. June 17, 2026), appeal docketed, No. 26-1552 (6th Cir.); *Robinhood Derivatives, LLC v. Nessel*, No. 1:26-cv-00730, 2026 WL 2454883 (W.D. Mich. June 17, 2026), appeal docketed, No. 26-1542 (6th Cir.); *KalshiEX, LLC v. Johnson*, 832 F.Supp.3d 954 (D. Ariz. 2026); *Washington v. KalshiEX, LLC*, No. C26-1062-JCC, 2026 WL 1217743 (W.D. Wash. May 5, 2026), appeal docketed No. 26-3106 (9th Cir.); *Ill. Gambling Recovery, LLC v. Kalshi Inc.*, No. 25-CV-11374, 2026 WL 1164703 (N.D. Ill.

Apr. 29, 2026); *KalshiEX, LLC v. Schuler*, No. 25-cv-1165, 2026 WL 657004 (S.D. Ohio Mar. 9, 2026); *Ohio Gambling Recovery, LLC v. Kalshi Inc.*, No. 4:25-CV-1573, 2026 WL 865788 (N.D. Ohio Mar. 30, 2026); *Ky. Gambling Recovery LLC v. Kalshi Inc.*, No. 3:25-CV-00054, 2026 WL 596107 (E.D. Ky. Mar. 4, 2026); *Ga. Gambling Recovery LLC v. Kalshi Inc.*, No. 4:25-CV-310, 2026 WL 279375 (M.D. Ga. Feb. 3, 2026); *KalshiEX, LLC v. Hendrick*, 817 F. Supp.3d 1014 (D. Nev. 2025); *KalshiEX, LLC v. Martin*, 793 F. Supp.3d 667 (D. Md. 2025); *United States v. Wisconsin*, No. 2:26-cv-00749 (E.D. Wis.); *United States v. New York*, No. 1:26-cv-03404 (S.D.N.Y.); *United States v. Arizona*, No. 2:26-cv-2246 (D. Ariz.); *United States v. Connecticut*, No. 3:26-cv-498 (D. Conn.); *United States v. Illinois*, No. 1:26-cv-3659 (N.D. Ill.); *United States v. Minnesota*, No. 0:26-cv-02661 (D. Minn.); *United States v. New Mexico*, No. 1:26-cv-01912 (D.N.M.).

Like the circuits, these courts disagree not only about *whether* state law is preempted, but *why*—and how. As the Petition notes, “courts have issued over 20 decisions and divided by an 18-4 ratio,” rejecting preemption. Pet.18. That scorecard regularly changes—with no clear answers, or emerging consensus, in sight.

e. The resulting confusion has led to chaos as the States and federal government engage in regulatory battles across the country. The CFTC has begun to sue States directly, arguing that its regulatory power preempts States’ laws, echoing Kalshi’s theory. The CFTC has sued “Arizona, Connecticut, Illinois, Kentucky, Minnesota, New Mexico, New York, Rhode Island, and Wisconsin” to stop States from enforcing their own sports-gambling laws. *CFTC Exercises Emergency Authority to Ensure Market Stability* (Aug.

11, 2026), available at <https://perma.cc/3FSE-5DA7>. These cases present the same issue as this case: whether the CEA preempts the States' laws. The CFTC has also filed *amicus* briefs supporting this broad preemption theory in the Sixth and Ninth Circuits, as well as the Supreme Judicial Court in Massachusetts. *Id.*

Beyond the courtroom, the CFTC has charged forward with efforts to *itself* preempt state law and put all sports bets on federal exchanges. In a Notice of Proposed Rulemaking for Prediction Markets, the CFTC says “[p]reemption [is] necessary” “because, for decades, states had attempted to apply state gambling laws to derivatives trading.” *Prediction Markets; Public Interest Determinations*, 91 Fed. Reg. 35806, 35808 n.24 (June 12, 2026); *see also id.* at 35822. The States have pushed back on that claim, explaining in a 44-State-coalition comment letter that the Commodity Exchange Act does not preempt state law. Ohio Attorney General, *Comment Letter on Prediction Markets; Public Interest Determinations*, CFTC-2026-1189 (July 27, 2026), available at <https://perma.cc/GC7L-AFRW>. The CFTC has yet to finalize a rule, but more litigation will surely follow when it does.

The conflict accelerated by the CFTC's direct involvement has added to on-the-ground disorder. New York serves as a case in point. The New York Attorney General filed an enforcement action against Kalshi in state court. *See People v. KalshiEX, LLC*, No. 453272/2026 (Sup. Ct. N.Y. Cty.); *Gov. Hochul and Attorney General James Announce New York Has Sued Kalshi for Running Illegal Gambling Operation* (July 31, 2026), available at <https://perma.cc/8FWB-475P>. A few days later, the CFTC issued a conflicting order, instructing Kalshi to continue operating,

notwithstanding the ongoing New York litigation. *Order Directing Kalshi to Continue Exercising DCM Functions* (Aug. 11, 2026), available at <https://perma.cc/9SD4-K7XC>. As part of that announcement, the CFTC Chairman criticized New York’s alleged “iron curtain of state gaming laws” and stated that “derivatives exchanges” cannot “be regulated under a patchwork of state gaming laws.” *CFTC Exercises Emergency Authority to Ensure Market Stability* (Aug. 11, 2026), available at <https://perma.cc/3FSE-5DA7>. States, the Chairman said, have “no business regulating these interstate financial markets.” *Id.*

Waiting too long to address this issue will permit the federal-state regulatory dispute to escalate. The ongoing power struggle between the States and the CFTC highlights the unpredictability about what law applies—and to whom. Whether in this case, or in one of the many more cases sure to come, this Court should step in, resolve the circuit split, provide guidance to lower courts, clarify the CFTC’s authority, and provide the badly needed answer to the Question Presented.

II. Whether the States have been stripped of their power to regulate gambling is exceedingly important to the States.

The States fiercely guard their traditional power to regulate gambling. So they have pushed back against the prediction markets’ theory that Congress preempted state gambling laws in a financial reform bill, sixteen years ago, without anyone knowing. If it prevails, the theory impugns the States’ sovereignty and threatens the safety of their citizens.

The federalism implications require little explanation or illustration. States have joined together in *amicus* briefs nationwide, arguing that clear-statement rules—such as the major questions doctrine and federalism canon—require Congress to supply unequivocal text before depriving States of their core sovereign authority. See *States’ Amicus Briefs in KalshiEX, LLC v. Schuler*, No. 26-3196 (6th Cir.) (39 States and Washington, D.C.); *N. Am. Derivatives Exchange v. Nevada*, Nos. 25-7187, 25-7516, 25-7831 (9th Cir.) (39 States and Washington, D.C.); *KalshiEX, LLC v. Assad*, No. 25-7516 (9th Cir.) (39 States and Washington, D.C.); *KalshiEX, LLC v. Flaherty*, No. 25-1922 (3d Cir.) (34 States, Washington, D.C., and the Northern Mariana Islands); *KalshiEX, LLC v. Martin*, No. 25-1892 (4th Cir.) (38 States and Washington D.C.); *Massachusetts v. KalshiEX, LLC*, No. SJC-13906 (Mass.) (37 States and Washington, D.C.). No such text exists here. As already mentioned, *forty-four* States have opposed the CFTC’s aggressive rulemaking. *Above* 19. That almost all the nation’s States have spoken with one voice on the matter should be enough.

More practically, the issue has on-the-ground consequences. The States have developed, from their long experience as gambling regulators, comprehensive regulations designed to protect their citizens and ensure a functioning market. States prevent minors from betting, create exclusion lists to assist gambling addicts, apply consumer protections to prevent unfair practices and protect the integrity of sports, limit gambling spending, and more. As the CFTC acknowledged just two years ago, States possess the “particular expertise” to “address[] particular risks and concerns associated with gambling.” *Event Contracts*, 89

Fed. Reg. 48968, 48982–83 (June 10, 2024). The CFTC does not. So the States “understandably feel protective of their longstanding regulatory authority, given the significant impact gambling has on society.” *Assad*, 2026 WL 2543846 at *15.

The CEA comes nowhere close to providing the clear text required to take the States’ power away. And eliminating those guardrails would come with real costs. States lose core sovereign powers. Citizens lose critical protections. But prediction markets walk away with a bigger bottom line. That is not a tradeoff that this Court should accept.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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