

No. 26-299

IN THE
Supreme Court of the United States

MARY JO FLAHERTY AND JENNIFER DAVENPORT,
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 *AMICUS CURIAE*
NATIONAL FOOTBALL LEAGUE
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

The National Football League (NFL) is the world's premier professional football league. Structured as an unincorporated membership association consisting of 32 member clubs, *amicus* has hundreds of millions of fans around the world. Those fans interact with *amicus* and its member clubs in numerous ways, including by purchasing tickets to live games, viewing television broadcasts of games, and participating in fantasy football contests.

For years, many of these fans have also engaged with the NFL through the placement of wagers on the outcomes and other aspects of NFL games through sportsbooks authorized by state and tribal gaming authorities and, more recently, through the purchase of sports-related “event contracts” on federally designated contract markets (DCMs) like respondent Kalshi, which are not subject to the same rigorous regulatory constructs and oversight provided by state gaming authorities. Event contracts related to NFL games make up a substantial share of these markets' overall trading volume: On the first Sunday of this NFL season, more than half of all prediction-markets' trading volume—\$1.8 billion out of \$3.3 billion total—related to the NFL.

The question presented in this case—whether Congress, through the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, preempted States from regulating sports bets if those bets are offered on

¹ Per Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in any part, and that no person or entity other than *amicus* or its counsel made a monetary contribution to fund its preparation or submission. Per Rule 37.2, counsel for all parties received timely notice of the intent to file this brief.

DCMs—is of considerable importance to *amicus*. The NFL’s highest priority is preserving the integrity of its games. The NFL has long engaged with legal sportsbooks and state gaming authorities to create and support a comprehensive statutory and regulatory framework that provides core integrity protections. These state and sportsbook protections include bans on manipulable or objectionable bets, information-sharing agreements regarding official league data for accurate bet settlement, and bet monitoring to ensure that league insiders do not trade on material nonpublic information.

Kalshi and other DCMs now claim that their sports-related event contracts—like bets on whether the Washington Commanders will make the 2026 NFL playoffs, whether the Commanders will beat the Dallas Cowboys in their Week 18 matchup, or whether Cowboys wide receiver CeeDee Lamb will have more than one touchdown in that game—are “swaps” under federal law. And Congress, they say, preempted state sports-betting laws governing such contracts traded on DCMs. In other words, on the DCMs’ view, they may offer NFL-related event contracts without regard to state law, and entirely outside the framework of traditional state regulation of sports wagering.

For those reasons, the question presented by the petition in this case has broad ramifications for *amicus* and other professional sports leagues, teams, and governing bodies who share the NFL’s interest in the integrity of their competitions. *Amicus* thus has a substantial interest in the resolution of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

“[S]ports gambling is immensely popular.” *Murphy v. NCAA*, 584 U.S. 453, 460 (2018). Indeed, since the Court held eight years ago that Congress could not bar states from authorizing sports betting, 39 states (and the District of Columbia) have legalized sports betting in some form. Karl E. Schneider, *Sports Betting and Consumer Finance*, Cong. Rsch. Serv. (July 15, 2026), bit.ly/3Thw6Mp. But sports gambling “has long had strong opposition,” including from the NFL, other professional sports leagues, and the NCAA, due in part to past incidents where gamblers “corrupted and seriously damaged the reputation of professional and amateur sports.” *Murphy*, 584 U.S. at 460 & nn.17–18.²

Game integrity is fundamental. Since this Court’s decision in *Murphy*, the NFL’s very top priority has been preserving the integrity of its games and protecting its fans as legal sports betting spread state by state. To that end, the NFL has proactively engaged with legal sportsbooks and with state gaming authorities to support the enactment and enforcement of legislation and regulations designed to provide core integrity and consumer protections. But now a new form of sports betting has emerged that undermines these efforts and threatens game integrity: sports betting on prediction markets. These prediction-market companies claim that federal law preempts state sports-betting laws, allowing the companies to evade states’ carefully crafted protections, because their sports-related event contracts are “swaps” under the Commodity Exchange Act (CEA), which—they say—gives the Commodity Futures Trading Commission (CFTC) or

² The NFL was a Plaintiff–Respondent in *Murphy* alongside other leagues and the NCAA.

the Commission) exclusive authority over such contracts traded on DCMs.

The Third Circuit below agreed with respondent Kalshi, holding that “Kalshi’s sports-related event contracts” fall within the Commission’s “exclusive jurisdiction” over “swaps ... traded or executed on a [DCM],” and thus that “field preemption” applies to “otherwise applicable state laws that purport to regulate sports-related event contracts on CFTC-licensed DCMs.” App. 9–12. The Sixth and Ninth Circuits have squarely disagreed on both questions. *KalshiEX LLC v. Schuler*, --- F.4th ---, 2026 WL 2884087, at *1, 15 (6th Cir. Sep. 25, 2026) (concluding that “Kalshi’s sports-event contracts do not satisfy the statutory definition of a swap”); *KalshiEX, LLC v. Assad*, --- F.4th ---, 2026 WL 2543846, at *17 (9th Cir. Aug. 28, 2026) (same); see also *Blue Lake Rancheria v. Kalshi, Inc.*, --- F.4th ---, 2026 WL 2728466, at *13–14 (9th Cir. Sep. 16, 2026).

This split of authority, and the consequent uncertainty about the regulatory oversight of sports wagering on DCMs, pose a significant challenge to the NFL’s game-integrity and consumer-protection efforts. If the Commission and DCMs were to adopt the same robust safeguards and engage in the same vigorous oversight as state and tribal gambling regulators and traditional legalized sports betting operators (LSBs), then there might be less cause for concern. In that scenario, having the Commission regulate sports wagering on DCMs and state officials regulate sports wagering on LSBs, would be largely an arcane issue of regulatory jurisdiction, with the essence of regulatory protections being more or less equivalent (akin to the slight differences in traditional gambling regulation between, say, Nevada and Iowa).

But that is not what is happening today. Although the NFL, among others, has encouraged the Commission and the DCMs to adopt safeguards and rules for sports wagering like those in the state-regulated world of traditional LSBs, the Commission and DCMs so far have stuck to a more laissez-faire approach. Some examples:

- The NFL has a list of “prohibited wagers” that it requires its LSB partners to follow. See THE NFL’S APPROACH TO LEGALIZED SPORTS BETTING & GAME INTEGRITY 2 (Aug. 2026), bit.ly/4db9xzM. These bets, in the NFL’s view, pose the greatest threats to game integrity, because many can be manipulated by a single person, especially if known in advance—for instance, a player can alter his performance, a coach can change his team’s lineup, or an official can make (or not make) certain calls. The NFL has publicly urged the DCMs and the Commission to adopt the same list of prohibited wagers, but the DCMs and CFTC thus far have declined to do so.
- State authorities generally impose a minimum age of 21 to place sports wagers. See, e.g., *Schuler*, 2026 WL 2884087, at *3 (Tennessee and Ohio). The NFL has urged the Commission to adopt that same age limit, given the unique dangers of gambling to young Americans. But the Commission thus far has declined, instead allowing 18-year-olds to place sports wagers on DCMs. The Commission’s insistence that its rules preempt state gambling laws anomalously means that, in almost every state, an 18-year-old could *not* bet on a game through Caesars Sportsbook, but *could* bet on the same game through Kalshi. Cf. *Blue Lake Rancheria*, 2026 WL 2728466, at *9.

- State regulatory bodies have hundreds of employees covering each state’s gambling industry: Nevada and Pennsylvania, for instance, have close to 400 employees each. See Pa. Gaming Control Bd., 2024–2025 ANNUAL REPORT 4 (Oct. 1, 2025), bit.ly/478L5vD; Nev. Gaming Control Bd., INFORMATION SHEET FY25 (2025), bit.ly/47pVi6K. The Commission, meanwhile, has only 543 employees covering the entire country and whose responsibilities include a broad range of derivatives beyond event contracts. Memorandum from Jeffrey Sutton, Exec. Dir., CFTC, to Off. Mgmt. & Budget, at 2 (Sep. 29, 2025), bit.ly/4ykS9Rg. Without adequate staff engaged in oversight and enforcement, even the best regulations cannot meaningfully ensure game integrity and consumer protection.

Given this wide divergence in the degree of regulatory oversight and safeguards between state regulators/LSBs and the Commission/DCMs, the split between the Third, Sixth, and Ninth Circuits—and the attendant uncertainty about the applicable regulatory framework for sports-wagering DCMs—pose real challenges to game integrity and consumer protection. The Commission’s and DCMs’ *laissez-faire* status quo, which states like New Jersey, Nevada, Tennessee, and Ohio have sought to rein in, presents greater opportunities for unscrupulous actors to cause mischief, trade on inside information, and harm game integrity. See, e.g., Tim Reynolds, *NBA Bans Jontay Porter After Gambling Probe Shows He Shared Information, Bet on Games*, ASSOCIATED PRESS (Apr. 17, 2024), bit.ly/4ye1kDk; Wyatt Grantham-Philips, *A \$400,000 Payout After Maduro’s Capture Is Putting Prediction Markets in the Spotlight*, ASSOCIATED PRESS (Jan. 11, 2026), bit.ly/4rzeGrr.

It is important that this Court grant certiorari now to provide clarity before another NFL season goes by. Billions of dollars will be bet on NFL games through prediction markets each season, and any delay from the Court will result in increasing consumer harm and risk to game integrity. If the Court agrees with the Sixth and Ninth Circuits that sports wagering on DCMs is *not* subject to the exclusive jurisdiction of the Commission, but rather is to be overseen by traditional state regulators, then the full panoply of state regulatory protections will apply to DCMs, thus reassuring the NFL and others concerned about game integrity and responsible gambling. By contrast, if the Court were to agree with the Third Circuit and conclude that the Commission is in fact the exclusive regulator of sports wagering on DCMs, then the NFL (and other concerned entities) could redouble their efforts this year to persuade the Commission, DCMs, and Congress to adopt more robust integrity and consumer-protection measures before the 2027 NFL season begins.

As between the two approaches, the NFL believes the Sixth and Ninth Circuits got it right, given the current landscape. Read in its statutory and historical context, Dodd-Frank’s definition of “swap” reaches only instruments created and used for the purpose of hedging preexisting risk—not wagers that *create* risk primarily for gambling purposes. In responding to the 2008 financial crisis, at a time when the Professional and Amateur Sports Protection Act of 1992 (PASPA) effectively *prohibited* sports betting nationwide, Congress did not preempt states from prohibiting or regulating sports bets offered on DCMs—and thereby federalize a multi-billion-dollar sports-betting industry—through a single definition in Dodd-Frank. Accordingly, as the Sixth and Ninth Circuits correctly held,

sports-related event contracts are not naturally considered swaps under the CEA.

ARGUMENT

I. THE COURT SHOULD GRANT REVIEW TO PRESERVE GAME INTEGRITY AND TO PROTECT CONSUMERS.

The NFL has “no greater priority ... than protecting the integrity of our sport.” *NFL Commissioner Roger Goodell Issues Statement on Gambling* (May 21, 2018), bit.ly/4gH9s99. Game integrity is essential to the fair and orderly administration of sports-related event contracts that trade on, or in connection with, NFL games, and to the protection of participants in these markets—often NFL fans—from fraudulent or manipulative behavior. But despite the NFL’s urging, the Commission and operators like respondent Kalshi have thus far failed to implement appropriate safeguards to protect the integrity of sporting events and consumers.

A. Clarity In The Sports Prediction Market Is Critical To Preserving The Integrity Of Professional Sporting Events And Protecting Market Participants.

The Court’s decision in *Murphy* recognized that the “legalization of sports gambling requires an important policy choice,” and that—unless Congress regulates sports gambling directly—“each State is free to act on its own.” 584 U.S. at 486. After *Murphy*, most states did exactly that, passing laws authorizing sports gambling, including wagering on sporting events. The NFL has long engaged with state gaming authorities to support core integrity protections in the sports gambling market, including rules prohibiting certain wagers that are highly susceptible to manipulation or are otherwise inherently objectionable. Without

comparable protections in prediction markets, sports-related event contracts present significant and immediate threats to the integrity of sporting events and to market participants.

Sports-related event contracts allow individuals to “buy and sell contracts based on nearly anything related to a sporting event, including who will win the Super Bowl, who will be the first pick in the NFL Draft, and what song will open the Super Bowl halftime show.” *Assad*, 2026 WL 2543846, at *4. Operators like Kalshi also allow individuals “to essentially place prop bets—bets based on outcomes within a game”—and “parlays” that link trades for a “larger payout if each leg hits.” *Id.*

The NFL has made clear—to states, the Commission, and operators like Kalshi—that certain categories of sports event contracts that are highly susceptible to manipulation or otherwise inherently objectionable threaten game and market integrity and should be prohibited. Those categories include:

- *First*, contracts that are easily manipulable by a single person. This category includes game-related contracts, like whether a kicker will miss a field goal, and non-game-related contracts, like broadcast mentions.
- *Second*, contracts that are inherently objectionable, such as those involving player injuries, fan safety, and player or fan misconduct.
- *Third*, contracts related to officiating, such as contracts concerning the timing, number, or types of penalties.
- *Fourth*, contracts involving events whose outcome is knowable in advance, like whether the first play of the game will be a run or pass.

Prohibiting contracts that fall within these categories, which the NFL has long referred to as “objectionable bets,” protects the game, players, coaches, officials, and consumers.

The NFL has also stressed the need for guardrails on *who* is allowed to trade sports-related event contracts. Indeed, the potential for event manipulation or the misuse of material non-public information makes this determination a key component of both game and market integrity. Cf. *United States v. O’Hagan*, 521 U.S. 642, 656 (1997). Unless operators like Kalshi coordinate with sports leagues to obtain and maintain current, league-specific prohibited bettor lists, their nominal insider-trading policies or prohibitions are paper tigers³—they have no practical way to prevent trading by individuals with material non-public information if they do not know who they are (e.g., league employees or medical personnel treating player injuries).⁴ That presents a serious and unjustifiable risk to game and market integrity.

All told, sports-related event contracts, which are predominantly marketed directly to retail consumers, present unique risks to game integrity and market

³ Commission regulations and guidance prohibit insider trading and require self-certifying DCMs to combat insider trading, but Kalshi thus far has not engaged with the NFL to facilitate compliance. See 17 C.F.R. § 180.1(a); 76 Fed. Reg. 41,398, 41,403 (July 14, 2011); CFTC Staff Letter No. 26-08 (Mar. 12, 2026).

⁴ Although several DCMs have voluntarily partnered with Integrity Compliance 360 to monitor for prohibited bettors via ProhibiBet, e.g., Press Release, Presswire, *Kalshi Boosts Compliance Infrastructure by Partnering with IC360* (Mar. 24, 2025), tinyurl.com/mswuv3wh, it remains unclear how this system could be effective without engaging sports leagues like the NFL.

participants that are aggravated by the uncertainty produced by the split below.

B. The Commission And Operators Like Kalshi Have So Far Resisted The NFL's Requests To Implement Appropriate Safeguards For Sports-Related Event Contracts.

Amid the uncertainty over whether sports wagering on DCMs is subject to Commission or traditional state regulation, the NFL has urged the Commission and DCMs to adopt sensible safeguards like many states already have. If the Commission and DCMs did so, this case would present a largely academic question with little practical consequence. But that is not what has happened. Despite the NFL's repeated overtures, the Commission and DCMs like Kalshi thus far have resisted the commonsense measures that the NFL has requested.

For example, in May 2026, the NFL submitted a comment letter in response to the Commission's advance notice of proposed rulemaking regarding event contract derivatives. See 91 Fed. Reg. 12,516 (Mar. 16, 2026). That letter provided detailed information concerning measures—including those set out above, *supra* Part I.A—that the Commission should adopt in developing a comprehensive regulatory framework for sports-related prediction markets to protect game integrity and market participants. NFL, Comment Letter on Prediction Markets (May 15, 2026), bit.ly/4gQphcs (App. I). The NFL has also repeatedly urged prediction-market operators, including Kalshi, to refrain from offering the sorts of easily manipulable or inherently objectionable event contracts described above. See *supra* Part I.A.

Unfortunately, the Commission and market operators have not implemented core aspects of the NFL’s proposals. See 91 Fed. Reg. 35,806 (June 12, 2026). Indeed, as the NFL explained in a July 2026 letter submitted in response to the Commission’s proposed amendments to its rules concerning event contract derivatives, the Commission’s proposed rules—like its current rules—“fall significantly short of protecting the integrity of sports events and the fans who participate in these markets.” NFL, Comment Ltr. on Prediction Markets 2 (July 27, 2026), bit.ly/4gQphcs.

To start, the Commission has not adopted a flat prohibition on *any* of the categories of event contracts that the NFL identified in its May 2026 letter—those (i) that are easily manipulable by a single person, (ii) that are inherently objectionable, (iii) that depend on discretionary officiating choices, and (iv) that are known or knowable in advance of settlement. Although the Commission has stated that *some* such contracts may be contrary to the public interest, allowing *any* of these objectionable contracts increases the risk that players, referees, and coaches will be threatened and harassed, and are detrimental to the long-term health of these markets, the public, and professional sports leagues.

The Commission currently allows many contracts that fall within these categories. Troublingly, the Commission’s proposed amendments do not address an entire category of contracts—“knowable in advance” contracts—that present a grave threat to game integrity. The Commission’s failure even to reference such objectionable contracts that the NFL identified months ago—contracts that have been and continue to be listed as contracts by operators like Kalshi—is deeply concerning and creates significant risks for the

NFL’s players, coaches, and officials, and market participants.

This concern is exacerbated by the ease with which operators like Kalshi may list sports-related event contracts. The Commission’s current system permits operators to self-certify that an event contract complies with the CEA and applicable regulations and to begin trading of that contract the very next business day. See 17 C.F.R. § 40.2. Although the Commission may initiate a review and stay a contract to determine compliance, given the novel nature of many sports-related event contracts and the high volume of self-certifications, this current approach fails to provide even the most basic integrity protections.

The Commission’s proposed system of review—a ten-day review window—likewise does not provide adequate protections. Under the proposed system, the Commission may commence review of an event contract only by a “written determination” within 10 days after listing of the event contract. 91 Fed. Reg. at 35,861. But the volume of event contracts has grown exponentially in recent years. On just *one* prediction market,⁵ for example, the daily average number of event contracts rose from 1,600 in April 2025 to 162,000 in April 2026. 91 Fed. Reg. at 35,844 n.298.

Given this tremendous surge in contract listing volume, it is concerning that the proposed rulemaking does not assess the Commission’s ability to screen an adequate number of certified contracts in just ten calendar days with its lean, 500-person staff.⁶ Just as

⁵ As of June 2026, there were 25 DCMs operating within the Commission’s regulatory framework. 91 Fed. Reg. at 35,844 n.298.

⁶ To take on the responsibilities currently undertaken by state gambling regulators, the Commission would need *substantially*

troubling as the Commission’s lack of resources, its current and proposed rules do not offer the NFL or other sports leagues any defined pathway to request emergency review and suspension of a sports-related event contract or class of contracts when there is credible evidence of actual or potential integrity compromise. In sum, it is—at best—unclear whether the Commission has the appropriate regulatory framework, oversight capacity, and enforcement resources to ensure that prediction markets do not jeopardize game integrity.

All this stands in stark contrast to state gaming authorities, which have engaged with the NFL for years to establish structural safeguards that provide core integrity protections. Thousands of state gaming regulators monitor legalized sports betting for suspicious activity and collaborate with the NFL and other sports governing bodies to preserve game and market integrity. While states vary in their sports gambling restrictions, there is a substantial gulf between state and federal integrity-protection measures.

This state of affairs creates significant integrity concerns. In 2025, the total trading volume across Commission-registered prediction markets “exceeded \$25 billion.” 91 Fed. Reg. at 35,807. As of late August 2026, Kalshi *alone* had cleared “more than \$173 billion in overall trading volume so far this year.” Marshall Cohen, *Young Adults Under 21 Traded \$5 Billion on Kalshi This Year, Amid Prediction Market Frenzy*, CNN Business (Aug. 28, 2026), bit.ly/4r4RtwP. And as a recent Pew Research Center analysis found, “[s]ports trading dominates on Kalshi,” making up 80% of its total trading volume since 2024. Kaitlyn Radde,

increased staffing and resources—in reality, it would require essentially a whole new agency.

Trading Volume on Prediction Markets Has Soared In Recent Months, Pew Rsch. Ctr. (May 27, 2026), bit.ly/4gLSp5O.

Absent the clarity that only this Court can provide, DCM operators will continue exploiting the gap between state and federal regulation, endangering consumers and the integrity of sports events across the country.

II. READING TEXT IN CONTEXT, THE WORD “SWAP” IN DODD-FRANK DOES NOT NATURALLY ENCOMPASS SPORTS-RELATED EVENT CONTRACTS.

The split between the Third, Sixth, and Ninth Circuits over the proper “interpretation of the word ‘swap’ in Dodd-Frank,” Pet. 16, presents a conflict with extraordinary implications for the integrity of sporting events and the multi-billion-dollar sports-betting industry. Dodd-Frank was not drafted, and cannot be construed, “in a vacuum.” *Schuler*, 2026 WL 2884087, at *11 (citation omitted). Rather, it “can be sensibly understood only ‘by reviewing text in context.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 n.4 (2024) (citation omitted); see also Antonin Scalia, *A Matter of Interpretation* 37 (1997) (“In textual interpretation, context is everything....”). Interpreting the term “swap” in Dodd-Frank thus requires a close examination of its statutory context, which emerged through a series of federal statutes enacted over almost a century to regulate derivatives markets nationwide.

A. Federal Derivatives Regulation Historically Treats Derivatives As Instruments For Risk Hedging And Price Discovery.

Federal derivatives regulation built upon Congress’s understanding in the 1920s that “persons engaged in

the business” of certain commodities—at the time, grain—often used derivatives as “means of hedging themselves against possible loss through fluctuations in price.” Grain Futures Act of 1922, ch. 369, § 3, 42 Stat. 998, 999. But these instruments were “susceptible to speculation, manipulation, and control.” *Id.* Even so, speculation was a necessary evil—speculators served as counterparties “willing to assume the market risk” that legitimate hedgers “want[ed] to avoid.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 358 (1982).

Over the years, Congress tamped down on “[e]xcessive speculation,” Commodity Exchange Act, ch. 545, § 4a, 49 Stat. 1491, 1492 (1936) (codified as amended at 7 U.S.C. § 6a), while tolerating *some* speculation to make a market for legitimate hedging and price-discovery purposes. As Congress explained more recently, derivatives transactions “are affected with a national public interest by providing a means for managing and assuming price risks”—that is, hedging—and “discovering prices.” Commodity Futures Modernization Act (CFMA), Pub. L. No. 106-554, § 1(a)(5), 114 Stat. 2763A-383, sec. 108 (2000) (codified at 7 U.S.C. § 5(a)). Speculation—betting on risk without prior exposure—merely facilitates these legitimate functions, which arise out of other parties’ exposure to preexisting risk.

Like the grain futures of the 1920s, modern “swaps” are hedging instruments. “In short, a ‘swap’ is a transaction where two parties agree to exchange payments to mitigate financial risk.” *Schuler*, 2026 WL 2884087, at *2. Prudent businesses use swaps to mitigate preexisting risks that are outside their control. Commonly, they use swaps to lock in prices for their products or critical inputs—a hedge against price volatility. They also use swaps to hedge against other significant

shocks, like movements in currency exchange rates or interest rates, that weigh heavily on their operations. *Id.* (example of importer using currency swap).

Over the past two decades, a new kind of swap has emerged: event contracts. These swaps pay out if an event occurs—a simple binary, rather than a reciprocal exchange of payment streams. But these swaps too serve a hedging function. For example, a property insurer might use a catastrophe swap to hedge against the possibility that a severe hurricane makes landfall in its territory. Or a bank might enter an index credit-default swap to hedge against the risk that some of its debtors will default.

Although swaps’ precise mechanics vary, one thing is clear: Just like any other derivative that Congress has countenanced over the past century, swaps address *preexisting* commercial risk. They do not create it. Cf. *id.* at *15 (noting Kalshi’s prior concession that “sports-event contracts ... carry no [preexisting] economic risks” (quotation omitted)); *Assad*, 2026 WL 2543846, at *10 (similar).⁷

⁷ It is no answer to say that a sportsbook might “hedge” its exposure through prediction market bets: A sportsbook artificially *creates* its risk by setting odds and inducing consumers to gamble. Regardless, a few “isolated examples” should not divert attention from the obvious: Prediction markets are *overwhelmingly* used for consumer sports gambling. See *Schuler*, 2026 WL 2884087, at *13. Indeed, the vast majority of NFL-related contracts are multi-leg parlays that have no conceivable hedging function vis-à-vis some financial, economic, or commercial consequence. Cf. Ananya Chetia & Davis Giangulio, *How Even Contract Bundles Are Boosting Volume on Prediction Markets*, CNBC (Oct. 6, 2026), bit.ly/475AlbO.

B. The Third Circuit Failed To Consider the Historical Function of Swaps.

In construing the meaning of “swap” in Dodd-Frank, the decision below ignored this important historical backdrop. The Third Circuit quickly concluded that “sports-event contracts fit comfortably within the statutory definition” because “[t]he outcome of a sports event certainly can be associated with a potential financial, economic, or commercial consequence,” App. 8 (citation omitted). “The analysis,” it added, “need not go further.” *Id.*

The Sixth and Ninth Circuits, meanwhile, did go further, factoring in “crucial context” that counseled against “the broadest possible reading” of Dodd-Frank’s definition of “swap.” *Assad*, 2026 WL 2543846, at *10; *Schuler*, 2026 WL 2884087, at *13. The Sixth and Ninth Circuits considered the traditional understanding of swaps as derivatives used to manage preexisting risk—an understanding inlaid within neighboring provisions of the statutory text. See *Assad*, 2026 WL 2543846, at *10; *Schuler*, 2026 WL 2884087, at *12. In the end, these courts correctly concluded that “sports event contracts” do not qualify as swaps because they “do not help institutions or investors hedge against risk.” *Assad*, 2026 WL 2543846, at *10. Rather, in “substance” the contracts are “sports gambling” because “they *create* risk, largely for ordinary consumers, where none previously existed.” *Id.*

Notably, the Sixth and Ninth Circuits’ historically grounded interpretation tracks the Commission’s prior approach to “further defin[ing]” the term “swap.” See 15 U.S.C. § 8302(d)(1). In 2012, the Commission (together with the SEC) issued a rule rejecting “a *broad* reading of the swap ... definition[]” that would “cover certain consumer and commercial arrangements that

historically have not been considered swaps.” Further Definition of “Swap,” 77 Fed. Reg. 48,208, 48,246 (Aug. 13, 2012) (emphases added). The rule clarified that many ordinary consumer and commercial transactions that might appear to fall within the literal text of § 1a(47)(A)(ii) should not be considered “swaps” under Dodd-Frank because they do “not involve risk-shifting arrangements with financial entities, as would be the case for swaps.” *Id.* at 48,248; see *id.* at 48,246–50. Thus, as the Commission’s own previous interpretation shows, “histor[y]” and “tradition[.]” are critical context that inflect the meaning of the statutory text. *Id.* at 48,212; see also *Schuler*, 2026 WL 2884087, at *13–14 (discussing the Commission’s earlier interpretation in 73 Fed. Reg. 25,669 (May 7, 2008)).

The Sixth and Ninth Circuits looked to other federal statutes as key context, too. They considered federal “legislation involving gambling” to be a “relevant backdrop” that “weigh[ed] against giving the words in § 1a(47)(A)(ii) the broadest possible reading.” *Assad*, 2026 WL 2543846, at *9. When “Congress has spoken on gambling repeatedly, deliberately, and specifically,” the court noted, “[i]t is difficult ... to conclude that Congress intended to upend its decades of careful regulation of gambling based on broad definitions of the words used in a Wall Street Reform Bill.” *Id.* at *9–10. Indeed, when Congress drafted and enacted Dodd-Frank, PASPA effectively banned sports betting nationwide. See *id.*; cf. *Schuler*, 2026 WL 2884087, at *3, 14; see also, e.g., Wire Act, Pub. L. No. 87-216, § 2, 75 Stat. 491 (1961).

Given that backdrop, it is inconceivable that Congress, responding to the 2008 financial crisis, effectively enabled nationwide legalization of sports bets dressed up as “swaps.” Cf. *Fischer v. United States*, 603 U.S. 480, 492, 498 (2024) (considering it “unlikely

that Congress responded” to “the Enron disaster” with a “provision that reaches far beyond the ... scenarios that prompted the legislation in the first place”). At bottom, although the Third Circuit’s “all-encompassing interpretation” that sweeps in sports event contracts “may be literally permissible,” it is hardly “the most plausible understanding” of the text in “the context from which the statute arose.” *Id.* at 498; see App. 21–22 (Roth, J., dissenting).⁸

III. THE THIRD CIRCUIT’S BROAD READING OF “SWAP” RAISES SERIOUS CONSTITUTIONAL AND MAJOR QUESTIONS ISSUES.

“[T]his Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative.” *United States v. Lopez*, 514 U.S. 549, 562 (1995) (quoting *United States v. Five Gambling Devices*, 346 U.S. 441, 448 (1953) (Jackson, J.) (plurality)). Because the Third Circuit’s broad interpretation of “swap” implicates serious constitutional questions, this Court should adopt the Sixth and Ninth Circuits’ narrower construction that avoids these challenging constitutional questions.

A. A Broad Interpretation Of “Swap” Poses Difficult Commerce Clause Questions.

The decision below concluded that sports-related event contracts are “swaps” because of sports’ downstream economic effects. App. 8. But the Third Circuit’s elastic view of economic consequences lacks any

⁸ The so-called “Special Rule,” 7 U.S.C. § 7a-2(c)(5)(C), too, accords with the narrower reading of the § 1a(47)(A)(ii) definition. It enables the Commission to forbid listing instruments that do not serve appropriate hedging and price-discovery functions—not because those instruments *are* “swaps,” but rather, because they are *not* “swaps” and do not belong on a federal DCM.

clear limiting principle: The same reasoning would require *all* sports betting to occur on a federal DCM, lest participants “commit a felony.” *Id.* at 22 (Roth, J., dissenting); see 7 U.S.C. § 2(e) (“unlawful” to enter a swap outside a federal DCM); *Assad*, 2026 WL 2543846, at *11; *Schuler*, 2026 WL 2884087, at *14.

It is well established, however, that regulating gambling is among states’ sovereign police powers. See *Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905). Congress itself has said as much. See, e.g., 15 U.S.C. § 3001(a)(1). And unlike the states, Congress has no roving police power to regulate purely intrastate gambling conduct without some warrant from its enumerated powers in Article I, § 8 of the Constitution.

On the Third Circuit’s view, then, a troubling question arises: What constitutional power allows Congress to override states’ traditional police powers to regulate intrastate gambling?

The CEA, as amended by Dodd-Frank, was enacted under the Commerce Clause. See 7 U.S.C. § 5(a). To be sure, this Court has held that Congress may regulate the *intrastate* trading of futures already on an *interstate* exchange because futures manipulation affects nationwide commodity prices and disrupts “justifiable hedging.” *Bd. of Trade v. Olsen*, 262 U.S. 1, 39 (1923). But what affords Congress the more intrusive power to force intrastate gambling *onto* federal exchanges, or else deem ordinary off-DCM sports-betting transactions “unlawful”? See 7 U.S.C. § 2(e); cf. *NFIB v. Sebelius*, 567 U.S. 519, 555 (2012) (opinion of Roberts, C.J.) (“The Framers gave Congress the power to *regulate* commerce, not to *compel* it”).

This “far-reaching question as to the extent of congressional power over matters internal to the individual states” “cannot be dismissed as frivolous, nor as

unimportant to the nature of our federation.” *Five Gambling Devices*, 346 U.S. at 446–47. Under this Court’s precedents, a “reasonable alternative” interpretation should be preferred when we cannot “be sure Congress has intentionally put its power in issue.” *Id.* at 448–49; *see id.* at 449–50. That is especially so when the broader interpretation would override states’ “historic police powers” to regulate gambling. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

The Sixth and Ninth Circuits offer a “reasonable alternative” reading of Dodd-Frank’s definition of “swap.” *Five Gambling Devices*, 346 U.S. at 448. Relying on “the plain meaning of ‘associate,’” they “concluded that ... the event or contingency” underlying a § 1a(47)(A)(ii) swap “must be *inherently* associated with a potential financial or economic consequence, not just that the event or contingency have some potential downstream financial consequence.” *Assad*, 2026 WL 2543846, at *12 (quotation modified); *Schuler*, 2026 WL 2884087, at *8, 11–12, 15. That sound reading imposes a necessary limiting principle on Congress’s regulatory ambit, lest the malleable concept of a “financial, economic, or commercial consequence” be used to reach an area “where States historically have been sovereign.” *Lopez*, 514 U.S. at 564; *cf. id.* at 565 (“[D]epending on the level of generality, any activity can be looked upon as commercial.”).

B. Federalizing Sports Betting Regulation Is A Major Question.

The Third Circuit’s broad interpretation of “swap” also raises a “major question.” *See* Pet. 2–3. If sports event contracts—and by logical extension, ordinary sports bets—are “swaps,” they must be entered on federal DCMs subject to federal oversight by the Commission. 7 U.S.C. § 2(e); *see id.* §§ 2(a)(1)(A), 12a(5). This federalization-by-implication of a multi-billion-dollar

state-by-state industry under the asserted “exclusive jurisdiction” of a federal administrative agency calls for close scrutiny under the major questions doctrine. See *West Virginia v. EPA*, 597 U.S. 697, 724 (2022).

Under that doctrine, this Court scrutinizes significant assertions of federal administrative power that appear to lack clear statutory warrant. The Commission’s recent discovery of “unheralded power” nestled in a single definition in a “long-extant statute”—one enacted when PASPA effectively banned sports betting nationwide—should be “greet[ed] ... with a measure of skepticism.” *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014); see CFTC Amicus Br. 2, 19–20, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 25-7187, Dkt. No. 37.2 (9th Cir. Feb. 17, 2026). All the more when, as here, the administrative power in question “intrudes into an area that is the particular domain of state law.” *Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 764 (2021).

The Ninth Circuit recognized this “major-questions problem,” while the Third Circuit dismissed it as “far-fetched.” Compare *Assad*, 2026 WL 2543846, at *14, with App. 8–9. Considering the extraordinary implications of such a broad interpretation. It could only be this Court, not the Third Circuit, that could adopt such an expansive interpretation that alters the “usual constitutional balance between the States and the Federal Government.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

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