

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 FORMER SENATOR
CHRISTOPHER J. DODD AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

Senator Christopher J. Dodd represented the State of Connecticut in the United States House of Representatives from 1975 to 1981 and in the United States Senate from 1981 to 2011. During his tenure in the Senate, Senator Dodd served as Chairman of the Senate Committee on Banking, Housing, and Urban Affairs from 2007 to 2011, overseeing the federal government's response to the worst financial crisis since the Great Depression.

In 2009, Senator Dodd introduced sweeping legislation to reform federal oversight of swaps and other complex financial instruments—the very products whose unregulated proliferation had imperiled the global economy. Working with Representative Barney Frank, then Chairman of the House Financial Services Committee, Senator Dodd helped develop the legislation ultimately enacted as the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The Act represented the most comprehensive overhaul of the nation's financial regulatory architecture since the New Deal.

Senator Dodd submits this brief to explain why the Third Circuit's interpretation of the Commodity Exchange Act ("CEA"), as amended by the Dodd-Frank Act, conflicts with the statute's text, structure,

¹ *Amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* or his counsel made any monetary contributions intended to fund the preparation or submission of this brief. *Amicus* further affirms that all parties were timely provided with the notice required by this Court's Rule 37.2.

purposes, and legislative record. As the Senator who sponsored the legislation, *amicus* is uniquely qualified to address the meaning and scope of the provisions at issue. Senator Dodd has a profound and abiding interest in preserving the work of Congress to modernize the regulation of complex financial instruments while respecting the longstanding role of the States and Tribes in regulating gaming within their borders. That interest is also informed by his longstanding work on issues affecting Connecticut's federally recognized tribes, the Mohegan Tribe of Indians of Connecticut and the Mashantucket Pequot Tribal Nation, including efforts to ensure that tribal gaming in the State is conducted consistent with the framework established by the Indian Gaming Regulatory Act.

INTRODUCTION AND SUMMARY OF ARGUMENT

When Senator Dodd introduced the legislation that became the Dodd-Frank Act, Congress was responding to the worst financial crisis since the Great Depression. As the contemporaneous legislative record confirms, the legislation's "primary purpose" was "to promote the financial stability of the United States" by improving accountability, transparency, and oversight of the financial system, including "regulating the massive over-the-counter derivatives market." S. Rep. No. 111-176, at 2 (2010) (Senate Banking Committee report accompanying S. 3217, which formed the basis for the Dodd-Frank Act). Congress sought to regulate complex financial instruments, curb dangerous speculation, protect consumers, and preserve legitimate markets for businesses to hedge commercial risk. That same

record reflects Congress’s concern that federally regulated markets not become vehicles for gaming untethered to commercial purpose. Congress did not set out to authorize nationwide sports betting through derivatives markets or displace decades of state and tribal primacy over gaming regulation.

The decision below nevertheless attributes those consequences to the Dodd-Frank Act. KalshiEX, LLC (“Kalshi”) offers contracts based on the outcomes of sporting events on a designated contract market (“DCM”) registered with the Commodity Futures Trading Commission (“CFTC”). These contracts are functionally identical to traditional sports wagers, yet the Third Circuit held that sports wagers are “swaps” and that the CFTC’s purported “exclusive jurisdiction” preempts New Jersey’s gaming laws. Pet. App. 6a, 10a–13a.

Nothing in the statutory scheme supports that result. The Dodd-Frank Act amended the CEA to establish the framework at issue here. Read together, those provisions preserve rather than displace state gaming authority.

First, a sports wager is not a swap. The statutory definition requires an underlying event or contingency “associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. § 1a(47)(A)(ii). The payout created by a sports wager cannot itself supply that consequence. Otherwise, every bet would become a swap because money changes hands, and the limiting language Congress enacted would perform no work. And the events underlying sports wagers generally lack the inherent financial, economic, or commercial consequences to make them useful for hedging. Traditional

derivatives manage preexisting financial or commercial risks. A sports wager creates a risk that did not previously exist.

Nor is the CEA's grant of "exclusive jurisdiction" to the CFTC an express preemption provision immunizing every contract listed on a DCM from otherwise applicable state and tribal law. Rather, it identifies the CFTC as the federal regulator of covered financial instruments. 7 U.S.C. § 2(a)(1)(A). Had Congress sought to preempt state or tribal law, it knew how: the CEA expressly preempts certain state gaming laws for identified transactions not at issue here, and the Dodd-Frank Act added a provision prohibiting States from regulating swaps as insurance. *See* 7 U.S.C. § 16(e)(2), (h). Congress enacted no comparable provision preempting state gaming laws for contracts offered on DCMs.

Second, the Special Rule, 7 U.S.C. § 7a-2(c)(5)(C), confirms that Congress treated gaming as a subject for exclusion from derivatives markets, not as a federally authorized product. The Rule permits the CFTC to determine that "agreements, contracts, transactions, or swaps" involving "gaming" or activity "unlawful under any Federal or State law" are contrary to the public interest and may not be listed or traded. *Id.* The Rule groups gaming with activity unlawful under federal or state law, terrorism, assassination, and war, *id.*, confirming that Congress identified gaming as a subject for exclusion from federally regulated markets, not as a new product category affirmatively authorized nationwide.

The legislative record confirms that reading. Senator Blanche Lincoln explained on the floor of the Senate that the Special Rule would "prevent gambling

through futures markets” and “strengthen the government’s ability to protect the public interest from gaming contracts and other events contracts.” 156 Cong. Rec. S5906 (daily ed. July 15, 2010). Contracts tied to the “Super Bowl,” “Kentucky Derby,” and “Masters Golf Tournament,” she explained, would “not serve any real commercial purpose” and “would be used solely for gambling.” *Id.* at S5907. Congress enacted the Special Rule to prevent that misuse of derivatives markets, not to authorize it.

Third, the Dodd-Frank Act’s broader context points in the same direction. Congress was responding to opaque financial instruments, inadequate oversight, and speculation that had imperiled the global financial system. Sports betting had nothing to do with that crisis. And federal law already addressed sports betting, tribal gaming, and interstate wagering through statutes directed specifically at those subjects. *See, e.g.*, Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701–2721; Professional and Amateur Sports Protection Act of 1992 (“PASPA”), 28 U.S.C. §§ 3701–3704, *held unconstitutional by Murphy v. NCAA*, 584 U.S. 453 (2018). The Dodd-Frank Act did not repeal those statutes, create a federal sports-betting regime, or delegate responsibility for gambling regulation to the CFTC.

The Third Circuit’s contrary interpretation has consequences far beyond this case. The Dodd-Frank Act makes it unlawful for non-institutional investors to engage in off-exchange swap transactions. 7 U.S.C. § 2(e). If sports-betting contracts are swaps, then all off-exchange sports betting by ordinary sports bettors, including sports betting authorized by the IGRA,

would be illegal. Congress included comprehensive derivatives regulation in the Dodd-Frank Act to address the role unregulated derivatives played in the financial crisis. It did not silently overhaul the nation's gambling laws.

Moreover, the Third Circuit's interpretation makes a platform's federal registration, rather than the substance of the activity, determine whether state gaming laws apply. A sports wager offered by a state-licensed sportsbook remains subject to state law, while a substantively identical wager offered as an event contract on a DCM is exempt from those state laws. Only the label and platform change. The CEA's self-certification process compounds the problem. A DCM may list a contract through self-certification without obtaining an affirmative CFTC determination that the contract is lawful or consistent with the public interest. Under the decision below, an exchange's unilateral decision to characterize and list a sports wager as an event contract may therefore displace state law. Congress did not give regulated exchanges authority to determine the preemptive reach of federal law through their own product-design and listing decisions.

The Third Circuit's decision would transform the CFTC into a national gambling regulator and displace well-established state and tribal authority over gaming. Congress did not intend to take that disruptive step. The CEA is not a gaming statute: it lacks the licensing requirements, minimum-age restrictions, advertising rules, self-exclusion programs, responsible-gaming safeguards, and limitations on permissible wagers that States and

Tribes have developed over decades to regulate gambling.

The Court should grant the petition. The Dodd-Frank Act was enacted to strengthen oversight of financial products, preserve legitimate commercial hedging, restrain dangerous speculation, and protect consumers. It should not be converted into a source of immunity for federally licensed sports gambling under the jurisdiction of an agency with no expertise on that matter.

ARGUMENT

I. The Decision Below Conflicts with the Commodity Exchange Act's Text, Structure, and Purposes.

The Third Circuit's holding cannot be reconciled with the statutory framework enacted by Congress. The Dodd-Frank Act amended the CEA to bring the previously unregulated swaps market under the CFTC's supervision, define the instruments subject to regulation, and add the Special Rule governing certain event contracts. Those provisions must be read together with the CEA's existing jurisdictional and preemption provisions. Considered as a whole, the amended CEA regulates financial instruments in the commodity markets without silently displacing state and tribal authority over gambling.

A. The Statutory Text and Structure Preserve State Gaming Authority.

The Third Circuit's preemption conclusion depended on two holdings: that sports wagers are "swaps" under the CEA, and that the CFTC's

“exclusive jurisdiction” over swaps displaces state gaming law. Both are incorrect.

1. Sports Wagers Are Not Swaps.

The Third Circuit’s threshold conclusion that sports wagers qualify as “swaps” rests on a “ cursory plain-language” approach that fails to read the CEA’s provisions together as a harmonious whole. *KalshiEX, LLC v. Assad*, No. 25-7516, --- F.4th ---, 2026 WL 2543846, at *8 (9th Cir. Aug. 28, 2026).

As relevant here, the Dodd-Frank Act defines a “swap” to include an agreement, contract, or transaction that “provides for any purchase, sale, payment, or delivery” 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).

Congress enacted that language against the settled understanding that derivatives are instruments for managing financial or commercial risks that exist independently of the contracts themselves. That understanding permeated the Senate Banking Committee Report accompanying the bill that would form the basis of the Act, which described the derivatives reforms as a response to risks arising from the “unregulated over-the-counter derivatives market” and repeatedly emphasized the role of derivatives as tools through which legitimate businesses manage commercial risk. S. Rep. No. 111-176, at 29.

Congress’s objective was to bring risk-management instruments onto transparent and

regulated markets, not to authorize speculative wagering on sporting events. As Senator Dodd explained during the Senate debates, derivatives are “a useful way that legitimate businesses hedge risk.” 156 Cong. Rec. S2772, S2778 (daily ed. Apr. 29, 2010). When “used responsibly as a way to hedge a commercial risk, they are tremendously important” to the economy. 156 Cong. Rec. S3601 (daily ed. May 12, 2010) (statement of Senator Christopher Dodd). Senator Saxby Chambliss likewise explained that “[b]usinesses rely on swaps as a very legitimate option to help them alleviate risk inherent to their business.” 156 Cong. Rec. at S2777. The statutory definition reflects that understanding by requiring the event or contingency underlying a swap to be “associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. § 1a(47)(A)(ii).

Sports wagers work differently. Consider a parlay tied to the outcomes of several unrelated games. Those athletic outcomes do not independently expose the bettor to financial loss. The bettor creates that exposure only by combining the outcomes into a wager and staking money on the result. Treating the wager’s own payout as the requisite “financial, economic, or commercial consequence” therefore allows the contract to manufacture the statutory predicate for its own treatment as a swap.

The statutory definition does not permit that circular reasoning. It imposes distinct requirements. The “contract” must provide for a specified form of exchange. That exchange must depend on an “event or contingency.” And the underlying “event or contingency” must be “associated with a potential financial, economic, or commercial consequence.” The

consequence produced by entering into the contract cannot itself establish that the underlying event possesses the character Congress required.

The Third Circuit asserted that downstream effects for sponsors, television networks, franchises, and local communities are sufficient to satisfy this requirement. Pet. App. 8a. But if such attenuated effects were sufficient to satisfy the economic-consequence requirement, it would render superfluous the rest of Dodd-Frank’s six-part swap definition, *see, e.g.*, 7 U.S.C. § 1a(47)(A)(iii) (listing 22 specific types of swaps), and expand the definition of swap well beyond the types of contracts that are actually useful for hedging risk—the essential attribute of transactions subject to the CEA, *see* 7 U.S.C. § 5(a). Read in context, it is clear that the potential financial, economic, or commercial consequence “must instead be . . . necessarily associated with the event . . . such that [one] can reasonably understand why contracts dependent on that event would be beneficial for hedging financial risk and deriving pricing information.” *KalshiEX LLC v. Schuler*, Nos. 26-3196, 26-5235, --- F.4th ---, 2026 WL 2884087, at *10 (6th Cir. Sept. 25, 2026).

That conclusion is particularly clear for parlays. *See id.* at *13. Parlays that chain together multiple wagers—often on point spreads or player performances in different games, in different cities, in different sports—do not facilitate hedging or price discovery. Nor are they “associated with” the type of “potential financial, economic, or commercial consequences” required to qualify as swaps under the CEA. *See id.* at *12–16.

A comparison between sports wagers and traditional derivatives illustrates this distinction. A bank is exposed to changes in interest rates; an importer is exposed to currency fluctuations; and a farmer is exposed to changes in commodity prices caused by weather and other conditions. Those parties may enter derivatives to transfer or mitigate risks already inherent in their economic activity. *See id.* at *2–3, *11–12. By contrast, a bettor ordinarily has no preexisting financial exposure to whether every leg of a parlay will hit. The wager creates the bettor’s exposure rather than hedges an independently existing risk. *See Assad*, 2026 WL 2543846, at *10. That is simply not the kind of transaction Congress meant to reach when it passed Dodd-Frank.²

2. The “Exclusive Jurisdiction” Provision Does Not Displace State Gaming Law.

The Third Circuit embraced a sweeping form of field preemption, concluding that the CEA supersedes all state laws with respect to “trading on a DCM.” Pet. App. 11a. That conclusion puts more weight on the CEA’s “exclusive jurisdiction” provision than the statutory text can bear.

² The contrast between sports wagers and the instruments identified in other portions of the swap definition reinforces this point. Section 1a(47) separately identifies options involving currencies, commodities, and securities; instruments used to hedge financial risk; interest-rate swaps; foreign-exchange swaps; and other familiar financial products. *See* 7 U.S.C. § 1a(47)(A)(i), (iii). These instruments have clear utility for hedging commercial risk. Sports bets do not.

The provision states that the CFTC “shall have exclusive jurisdiction . . . with respect to accounts, agreements . . . and transactions involving swaps or contracts for sale of a commodity for future delivery (including significant price discovery contracts), traded or executed on a [designated] contract market” or other CFTC-registered market. 7 U.S.C. § 2(a)(1)(A). The main “purpose of” this language “was to separate the functions of the [CFTC] from those of the Securities and Exchange Commission and other regulatory agencies.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 386 (1982).

Read as a whole and in light of the surrounding statutory context, Section 2(a)(1)(A) does not make the CEA the only body of law applicable to every activity embodied in a DCM-listed contract or immunize such contracts from otherwise applicable state or tribal law.

To start, Section 2(a)(1)(A) makes clear that the CFTC’s “exclusive jurisdiction” is not, in fact, exclusive. The provision includes two savings clauses, the latter of which expressly preserves “the jurisdiction conferred on courts of the United States or any State.” 7 U.S.C. § 2(a)(1)(A). That language allows aggrieved parties to seek state “common law remedies” even when the dispute involves options, swaps, or other covered transactions. *Kerr v. First Commodity Corp. of Boston*, 735 F.2d 281, 288 (8th Cir. 1984). The Third Circuit acknowledged this carveout, *see* Pet. App. 15a, but never explained how a statute that expressly allows state law claims can preempt the field in which those claims arise.

Other provisions of the CEA show that Congress knew how to displace state authority and did so selectively rather than across the board. Indeed, when Congress passed the Dodd-Frank Act, the CEA already contained a provision that preempted state gaming laws with respect to certain enumerated transactions not at issue here. *See* 7 U.S.C. § 16(e)(2). But Congress did not amend Section 16(e)(2) to cover sports-betting contracts listed on DCMs. The inference is clear: Congress did not intend to preempt state gaming laws with respect to such contracts.³

Other parts of the Dodd-Frank Act underscore this point. Congress *did* amend Section 16 to provide that a swap “shall not be considered to be insurance” and “may not be regulated as an insurance contract under the law of any State.” *Id.* § 16(h). But it enacted no comparable prohibition on state gaming regulation of swaps in the Dodd-Frank Act.

That omission is significant. Both insurance and gambling have traditionally been regulated by the States, but Congress displaced only the former. The Third Circuit’s interpretation effectively writes into the CEA a gaming-preemption provision that Congress omitted.

³ Congress’s express preservation of state “antifraud provisions of general applicability,” 7 U.S.C. § 16(e)(2), and the savings clause covering “the jurisdiction conferred on courts of . . . any State,” *id.* § 2(a)(1)(A), show that the CEA’s grant of authority to the CFTC is not so “comprehensive” that it leaves “no room” for operation of state law. *Arizona v. United States*, 567 U.S. 387, 399 (2012). As the dissent below observed, “[a] Swiss cheese-like field that allows for enclaves of state authority cannot” result in field preemption. Pet. App. 31a (Roth, J., dissenting).

The Third Circuit’s interpretation also deprives the CEA’s express-preemption provisions of much of their significance. If Section 2(a)(1)(A)’s grant of “exclusive jurisdiction” already displaced every state law affecting a DCM transaction, Congress would have had little reason to include more specific preemption provisions.

The States’ traditional authority over gambling reinforces that conclusion. Congress is well aware that it must be clear when it intends to “significantly alter the balance between federal and state power.” *United States Forest Serv. v. Cowpasture River Pres. Ass’n*, 590 U.S. 604, 622 (2020) (citing *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991)).

No such clear statement exists here. The CEA does not say that offering sports bets on DCMs immunizes them from state gaming law, substitutes for state gaming licensure, or assigns the CFTC comprehensive authority over sports gambling. Congress does not “hide elephants in mouseholes,” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001), or “delegate a decision of such economic and political significance to an agency in so cryptic a fashion,” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000). If Congress intended the Dodd-Frank Act to displace the States’ traditional authority over sports gambling, it would have said so.

B. Congress Designed the Special Rule to Prevent Gambling Through Derivatives Markets.

The Special Rule for event contracts confirms that Congress addressed gaming as a danger to derivatives

markets, not as a federally authorized product. The Rule applies to “agreements, contracts, transactions, or swaps in excluded commodities.” 7 U.S.C. § 7a-2(c)(5)(C)(i). It provides that the CFTC “may determine” that those instruments “are contrary to the public interest” if they involve activity that is unlawful under any federal or state law, terrorism, assassination, war, gaming, or other similar activity determined by the Commission to be contrary to the public interest. *Id.* That determination bars registered entities from listing or making the instrument available for clearing or trading. *Id.* § 7a-2(c)(5)(C)(ii).

The Special Rule’s operation yields two related conclusions. First, it grants the CFTC a negative power to exclude gaming from federally regulated markets—not affirmative authority to legalize gaming nationwide. Second, because the Special Rule applies to “agreements, contracts, transactions, or swaps in excluded commodities,” it does not prove that Congress contemplated gaming swaps.

The first conclusion follows from the consequence Congress attached to a public-interest determination: the CFTC may prevent the contract from being listed or traded. *See id.* The Special Rule does not confer a federal right to offer gaming contracts whenever the Commission has not prohibited them. Nor does it suggest that Congress sought to preempt state gaming laws. Indeed, the Special Rule says nothing about preemption at all.

The Special Rule’s express reference to activity “unlawful under any Federal or State law” makes the Third Circuit’s interpretation especially implausible. 7 U.S.C. § 7a-2(c)(5)(C)(i)(I). Congress recognized

state law as a source of the substantive policies relevant to the CFTC's public-interest inquiry. It would make little sense to treat that same provision as silently extinguishing the state laws it expressly recognizes. To the contrary, "by lumping 'gaming' together with 'terrorism,' 'assassination,' 'war,' and other 'unlawful' conduct, Congress clearly viewed 'gaming' contracts as a bad thing." *KalshiEX LLC v. Bird*, No. 4:26-cv-00109-SHL-HCA, 2026 WL 2691009, at *8 (S.D. Iowa Sept. 8, 2026).

As for the second conclusion, the Special Rule's broad description of covered instruments also undermines any inference that "Kalshi's sports-event contracts are *necessarily* swaps." *Schuler*, 2026 WL 2884087, at *15. The provision applies to "agreements, contracts, transactions, *or* swaps in excluded commodities," 7 U.S.C. § 7a-2(c)(5)(C)(i) (emphasis added), and therefore reaches instruments whether or not they independently satisfy the statutory definition of "swap." The Special Rule responds to the danger that market participants might attempt to characterize sports wagers as financial instruments and conduct gambling on federally regulated exchanges. It provides a safeguard against that attempt, not a basis for placing the resulting contracts beyond state law.

The contemporaneous legislative record reflects this purpose. Senator Blanche Lincoln explained that the Special Rule was designed "to prevent the creation of futures and swaps markets that would allow citizens to profit from devastating events," "prevent gambling through futures markets," and "strengthen the government's ability to protect the public interest

from gaming contracts and other events contracts.” 156 Cong. Rec. S5906 (daily ed. July 15, 2010).

Discussing contracts tied to sporting events, Senator Lincoln explained that “an ‘event contract’ around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament” would “not serve any real commercial purpose,” but instead “would be used solely for gambling.” *Id.* at S5907; *see also id.* at S5906–07.

These statements confirm what is evident from the text of the Rule itself. Congress included “gaming” in the Special Rule to prevent registered markets from being exploited for gambling, not to authorize it.⁴ The Third Circuit’s decision turns that design on its head.

⁴ The CFTC’s implementation of the Special Rule shortly after enactment underscores this understanding. Rule 40.11(a) provides that registered entities “shall not” list contracts involving, relating to, or referencing gaming and the other subjects enumerated in the Special Rule. 17 C.F.R. § 40.11(a). The regulation—which has been in effect continuously since 2011—treats gaming as a subject to be excluded from federally regulated markets, not as an activity that DCM registration places beyond state law.

C. Congress Passed the Dodd-Frank Act to Address the Financial Crisis, Not to Create a Federal Sports-Betting Regime.

Statutory language must be read “in [its] context and with a view to [its] place in the overall statutory scheme.” *United States v. Miller*, 604 U.S. 518, 533 (2025). Both the problem Congress addressed and the existing law governing gambling confirm that the Dodd-Frank Act did not create a federal sports-betting regime.

Congress enacted the Dodd-Frank Act to respond to a financial crisis caused in part by opaque financial instruments, inadequate oversight, and excessive speculation in derivatives markets. The Committee Report described the Senate Banking Committee legislation as a “direct and comprehensive response to the financial crisis” and emphasized that a “major contributor to the financial crisis was the unregulated over-the-counter derivatives market.” S. Rep. No. 111-176, at 2, 29 (2010). The Act sought “[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ‘too big to fail,’ to protect the American taxpayer by ending bailouts, [and] to protect consumers from abusive financial services practices.” Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); *see Consumer Fin. Prot. Bureau v. Community Fin. Servs. Ass’n of Am., Ltd.*, 601 U.S. 416, 421 (2024).

Congress understood both the value and the danger of derivatives. Legitimate businesses relied on

them to hedge commercial risk. *See United States v. Phillips*, 155 F.4th 102, 113 (2d Cir. 2025); 156 Cong. Rec. S2777–78 (daily ed. Apr. 29, 2010). But “[t]he status quo” was “unacceptable,” and Congress could not “leave the American people vulnerable to the present construct of our financial regulatory system.” 156 Cong. Rec. S2772 (daily ed. Apr. 29, 2010) (statement of Senator Christopher Dodd).

Congress therefore brought derivatives onto transparent, regulated markets subject to clear rules and safeguards. *See* 156 Cong. Rec. S3601–02 (daily ed. May 12, 2010) (statement of Senator Christopher Dodd). As Senator Dodd explained at the time, Congress sought to “bring the derivatives market out of the shadows and into the sunlight” by enacting new central clearing, exchange trading, capital margin, and reporting requirements “critical to reducing systemic risk and ensuring that taxpayers would not have to clean up the mess” from another crisis caused by unregulated derivatives. *Id.* at S3601.

Sports betting had nothing to do with the problem Congress was addressing. Nothing in the legislative record suggests that wagers on sporting events contributed to the financial crisis, that Congress sought to turn the CFTC into a national gaming regulator, or that the Dodd-Frank Act would permit federally registered exchanges to offer gambling in violation of state and tribal law.

The legal framework in place when Congress enacted the Dodd-Frank Act reinforces that conclusion. Federal and state law already regulated gaming through statutes directed specifically at traditional gambling and sports betting.

For example, the IGRA established a federal-state-tribal framework for gaming on Indian lands. *See, e.g.*, 25 U.S.C. §§ 2703(7)(B), (8), 2710(d). The Professional and Amateur Sports Protection Act—which was in effect when Congress enacted the Dodd-Frank Act in 2010—relied on state law to prohibit most sports betting, with the exception of Nevada casinos and a few state lotteries. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 462 (2018); 28 U.S.C. §§ 3701–3704. And the Wire Act regulates interstate transmissions involving “bets or wagers on any sporting event or contest,” while also allowing “transmission of information assisting in the placing of” wagers “from a State . . . where betting on [a] sporting event or contest is legal into a State . . . in which such betting is legal.” *See* 18 U.S.C. § 1084(a)–(b).

The Dodd-Frank Act did not amend those statutes. It did not establish a federal sports-betting regime. And it did not direct the CFTC to assume responsibility for gambling regulation.

In the Dodd-Frank Act, Congress also directed the CFTC and the Securities and Exchange Commission to engage in rulemaking to further define terms used in the Dodd-Frank Act, including “swap.” 15 U.S.C. § 8302(d)(1). The Commissions used that authority to define “swap” by reference to Congress’s purposes in enacting the Dodd-Frank Act. Instruments that might have met the technical definition of “swap,” but that had nothing to do with the financial crisis that led to the enactment of the Dodd-Frank Act, were determined to be outside of the scope of the definition of the term. *Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”*;

Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208, 48211 (Aug. 13, 2012). The same contextual analysis applies to whether “swap” could encompass gambling contracts.

The Third Circuit’s interpretation therefore does more than extend the statute beyond the immediate causes of the financial crisis. It assigns the Dodd-Frank Act a function unrelated to the financial markets Congress was regulating and inconsistent with the Special Rule Congress enacted.

Congress does not make a change of such sweeping economic and political significance through oblique provisions concerning swaps and derivatives. *See Brown & Williamson*, 529 U.S. at 159–60. Nor does it transform a specialized financial regulator into a national gaming authority through such statutory “mousehole[s].” *Whitman*, 531 U.S. at 468. If Congress had sought to authorize nationwide sports betting, it would have done so expressly through a comprehensive regulatory scheme, not snuck such a seismic change into a law concerning oversight of financial markets.

II. The Third Circuit’s Reading Would Transform the CFTC and Undermine Consumer Protection Objectives.

The Third Circuit’s errors warrant review because they do more than misconstrue isolated statutory provisions. The decision below transforms the CFTC from a specialized regulator of complex financial instruments into a national gaming regulator. It also displaces gaming-specific protections that Congress neither addressed nor replaced.

A. The CFTC Is Not a Gaming Regulator.

Gaming has long been regulated principally by the States and Tribes. States decide whether gambling may occur within their borders, what forms it may take, who may offer it, and under what conditions. Tribal gaming operates within a related framework involving federal, state, and tribal authority. *See* 25 U.S.C. § 2710.

The CFTC performs a different function. Congress charged it with regulating commodity markets, including futures, swaps, and related instruments, and with protecting market integrity and managing financial risk. It did not create the Commission as a national licensing authority for sports betting.

The decision below erases that distinction. Under the Third Circuit’s reasoning, a prediction market’s federal registration, rather than the substance of the transaction, determines whether state gaming laws apply. A sports wager offered by a state-licensed sportsbook remains subject to state law. But a materially identical wager offered as an event contract on a DCM becomes exclusively federal.

What’s more, the Third Circuit’s reasoning would render off-exchange sports betting unlawful. Section 2(e) of the CEA prohibits a person who is not an eligible contract participant from entering into a swap outside a DCM. 7 U.S.C. § 2(e). Ordinary sports bettors are not “eligible contract participants”—a category reserved for well-resourced and sophisticated investors. *See id.* § 1a(18) (defining “eligible contract participant”). Thus, if sports wagers are swaps, ordinary bettors placing bets with state or

tribally regulated sportsbooks would be participating in illegal off-DCM transactions. *See Assad*, 2026 WL 2543846, at *12. That result is both implausible and wrong. Congress did not silently convert the CFTC into the nation’s sole sports-betting regulator when it passed the Dodd-Frank Act.

B. The Decision Below Undermines Important Consumer Protection Goals.

The regulatory consequences of the Third Circuit’s decision are significant. State and tribal gaming regimes address risks specific to gambling through licensing requirements and rules concerning minimum age, advertising, self-exclusion, responsible-gaming programs, anti-money-laundering controls, know-your-customer practices, and permissible wagers. Those rules reflect important “policy choices of the people of each State on the controversial issue of gambling.” *Murphy*, 584 U.S. at 484.

The CEA does not establish an equivalent gaming code. Congress designed it to regulate commodities markets and financial instruments, not the full range of risks arising from sports betting. It does not follow that a product regulated as a financial instrument is also adequately regulated as gambling.

The CFTC itself has recognized the institutional distinction. In considering event contracts, the Commission acknowledged the relevant expertise of state gaming regulators and the differences between gambling regulation and the federal commodities framework. *See Event Contracts*, 89 Fed. Reg. 48968, 48982–83 (June 10, 2024), *withdrawn*, 91 Fed. Reg.

5386 (Feb. 6, 2026). And the agency further acknowledged that it “is not a gaming regulator” and lacks the “specialized experience appropriate to oversee” the sports-betting market. *Id.*

State and tribal gaming laws thus complement the federal commodities framework rather than obstruct it. The CFTC regulates qualifying financial instruments and the markets on which they trade.

The Third Circuit replaced that complementary framework with federal exclusivity. It allowed DCM registration to eliminate state gaming regulation even though Congress enacted no federal gaming code and provided no indication that state safeguards should be inoperative. The result is not the substitution of equivalent federal protections for state and tribal protections—it is the removal of one regulatory framework without any evidence that Congress intended the CEA to replace it.

That result is especially difficult to reconcile with the Dodd-Frank Act’s consumer-protection objectives. As Senator Dodd explained during the Senate debates, “[w]e put cops on the beat with consumer protection so Americans can make smart decisions based on full information when they are planning for their financial futures.” 156 Cong. Rec. S2772, S2773 (daily ed. Apr. 29, 2010). Congress did not pursue that objective by eliminating rules directed specifically at gambling without providing comparable protections in their place.

III. The Decision’s National Consequences Warrant This Court’s Review.

The Third Circuit’s rule extends beyond any single contract, sporting event, or State. Whenever a DCM offers a sports wager that qualifies as a swap under the court’s interpretation, the operator may invoke federal registration as a basis for resisting state gaming law. The same statutory question therefore affects the authority of States and Tribes throughout the country—as evidenced by petitions presenting the same issue in litigation arising from Nevada’s enforcement actions. *See* Petition for Writ of Certiorari, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 26-344 (Sept. 11, 2026); Petition for Writ of Certiorari, *Robinhood Derivatives, LLC v. Dreitzer*, No. 26-338 (Sept. 10, 2026).

That question requires a uniform national answer. The scope of the CFTC’s “exclusive jurisdiction” and the continuing force of state gaming law turn on provisions that apply across derivatives markets. Resolving those questions through successive challenges to individual products and state enforcement actions would prolong uncertainty over the respective authority of the CFTC, the States, and Tribes.

The Court should grant review before the decision below reshapes the national market. The Dodd-Frank Act was enacted to strengthen oversight of financial products, preserve legitimate commercial hedging, restrain dangerous speculation, and protect consumers. It should not be converted into a source of immunity for sports betting merely because the bets are placed on a federally registered exchange.

CONCLUSION

The Court should grant the petition to resolve this nationally consequential statutory question, preserve the state-tribal regulatory framework for gaming, and prevent the Dodd-Frank Act from being expanded beyond Congress's financial-regulatory design.

Respectfully submitted,

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