

IN THE
Supreme Court of the United States

MARY JO FLAHERTY AND
JENNIFER DAVENPORT,
Petitioners,

v.

KALSHIEX, LLC,
Respondent.

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

**BRIEF OF *AMICUS CURIAE* THE CASINO
ASSOCIATION OF NEW JERSEY, INC.
IN SUPPORT OF PETITIONERS**

ALEX H. LOOMIS
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
111 Huntington Avenue,
Suite 520
Boston, MA 02199
(617) 712-7100
alexloomis@quinnemanuel.com

B. DYLAN PROCTOR
Counsel of Record
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
865 South Figueroa Street,
Los Angeles, CA 90017
(213) 443-3000
dylanproctor@
quinnemanuel.com

JACOB C. BEACH
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
555 13th Street NW,
Suite 600
Washington, D.C. 20004
(202) 538-8000
jacobbbeach@quinnemanuel.com

*Counsel for Amicus Curiae
The Casino Association of New Jersey, Inc.*

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, *amicus curiae* The Casino Association of New Jersey, Inc. certifies that no parent or publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT	7
I. THE THIRD CIRCUIT ERRED IN HOLDING THAT THE CEA PREEMPTS SPORTS BETTING LAWS	7
A. Kalshi Offers Sports Bets, Not “Swaps”.....	7
B. The CEA’s Definition Of “Swaps” Does Not Encompass Sports Bets	12
C. Reading The Term “Swaps” To Encompass Sports Bets Would Federalize The Entire Sports Betting Industry	17
II. THE THIRD CIRCUIT’S INTERPRETATION OF THE CEA UNDERMINES PUBLIC POLICY	18
A. Evasion Of New Jersey Sports Betting Regulations Harms The Public Interest.....	18
B. The CFTC Is Not Fit To Regulate Gambling On Prediction Markets	22
CONCLUSION	25

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Beecham v. United States</i> , 511 U.S. 368 (1994)	14
<i>Bond v. United States</i> , 572 U.S. 844 (2014)	15
<i>Bryan v. Itasca County</i> , 426 U.S. 373 (1976)	16
<i>Christopher v. SmithKline Beecham Corp.</i> , 567 U.S. 142 (2012)	13
<i>Coinbase Fin. Mkts., Inc. v. Raoul</i> , No. 1:25-CV-15406, 2026 WL 2969682 (N.D. Ill. Oct. 2, 2026)	5
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991)	15
<i>KalshiEX LLC v. CFTC</i> , 119 F.4th 58 (D.C. Cir. 2024)	17
<i>KalshiEX LLC v. Orgel</i> , No. 3:26-cv-34, 2026 WL 474869 (M.D. Tenn. Feb. 19, 2026)	9
<i>KalshiEX, LLC v. Assad</i> , -- F.4th --, No. 25-7516, 2026 WL 2543846 (9th Cir. Aug. 28, 2026)	4, 5, 12, 13, 14, 24

<i>KalshiEX, LLC v. Schuler</i> , -- F.4th --, No. 26-3196, 2026 WL 2884087 (6th Cir. Sept. 25, 2026)	4, 5, 8, 9, 13, 14, 17
<i>MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.</i> , 512 U.S. 218 (1994).....	15
<i>Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran</i> , 456 U.S. 353 (1982).....	8
<i>Murphy v. NCAA</i> , 584 U.S. 453 (2018).....	1, 2, 7, 16, 21
<i>United States v. King</i> , 834 F.2d 109 (6th Cir. 1987).....	16
<i>Whitman v. Am. Trucking Ass'ns</i> , 531 U.S. 457 (2001).....	14
<i>Yates v. United States</i> , 574 U.S. 528 (2015).....	14

Rules

Supreme Court Rule 29.6.....	i
Supreme Court Rule 37.6.....	1

Statutes

7 U.S.C. § 1a	12, 14
---------------------	--------

7 U.S.C. § 2	6, 17
7 U.S.C. § 6	17
7 U.S.C. § 6d	17
7 U.S.C. § 7a-2	16
7 U.S.C. § 13	17
18 U.S.C. § 1084	16, 20
18 U.S.C. § 1952	16
18 U.S.C. § 1953	16
18 U.S.C. § 1955	16
25 U.S.C. § 2710	16
28 U.S.C. §§ 3701-04	2
N.J. Stat. Ann. § 5:12A-11	19
N.J. Stat. Ann. § 5:12A-13	19
N.J. Stat. Ann. § 5:12A-16	19
N.J. Stat. Ann. § 5:12A-19	19
N.J. Stat. Ann. § 5:12-71.2	19

Regulations

17 C.F.R. § 40.2	3, 24
17 C.F.R. § 40.11	3, 7, 22, 24

<i>Event Contracts</i> , 89 Fed. Reg. 48968 (June 10, 2024).....	23
---	----

<i>Prediction Markets; Public Interest Determinations</i> , 91 Fed. Reg. 35806, 35826-27 (June 12, 2026).....	25
--	----

Other Authorities

Alexander Osipovich, <i>Prediction Market Kalshi Launches Sports Betting</i> , Wall St. J. (Jan. 23, 2025), https://tinyurl.com/56c4hb9a	3
--	---

Am. Gaming Ass’n, <i>State of the States</i> (May 2026), https://perma.cc/4NB2-42QN	15
---	----

<i>Associated</i> , Merriam-Webster Online, https://tinyurl.com/5n8ux46v	13
--	----

Audio Recording: Oral Argument, <i>KalshiEX LLC v. CFTC</i> , No. 24-5205 (D.C. Cir. Jan. 17, 2025), https://perma.cc/DFZ3-EKAS	3
---	---

<i>Blanch vs Kozlov</i> , Kalshi, https://tinyurl.com/zrz8d2mx	8
--	---

Brief of Appellee, <i>KalshiEX LLC v. CFTC</i> , 2024 WL 4802698 (D.C. Cir. Nov. 15, 2024)	10
--	----

Carousel posted by Front Office Sports (@frontofficesports) and Kalshi (@kalshi_official), <i>Instagram</i> (June 12, 2025), https://tinyurl.com/2ma6ye7k	10
<i>CFTC Designates KalshiEX LLC as a Contract Market</i> , CFTC (Nov. 4, 2020), https://perma.cc/Q6D7-4EKN	3
<i>Chicago WS vs Cleveland</i> , Kalshi, https://tinyurl.com/4xhre2rh	6, 9
<i>Commodity Futures Trading Commission (CFTC)</i> , EEOC, https://perma.cc/MD4B-FFRA	24
Daniel Wallach, <i>Kalshi's Nevada Court Win May Be Short-Lived Due to Federal Wire Act Ban on Sports Betting</i> , <i>Forbes</i> (Apr. 15, 2025), https://perma.cc/W2J7-4JVF	10
<i>DET Lions vs BUF Bills</i> , Kalshi, https://tinyurl.com/3bn7brvy	9
Dustin Gouker, <i>Kalshi Launches NBA Player Props</i> , <i>Event Horizon</i> (Nov. 18, 2025), https://perma.cc/XEV8- VM64	9
Dustin Gouker, <i>Kalshi Rolls Out Same- Game Parlays for Monday Night Football Games</i> , <i>Event Horizon</i> (Sept. 30, 2025), https://perma.cc/9MC7-P6Y6	9

Dustin Gouker, <i>Kalshi Was Promoting A 30-Leg Parlay To Users On Tuesday, Event Horizon</i> (Apr. 1, 2026), https://perma.cc/WX39-NBHL	6
Dustin Gouker, <i>Ten Times Kalshi Said People Could Bet On Things, Event Horizon</i> (Apr. 3, 2025), https://tinyurl.com/5a6x8kan	6, 10
<i>Gambling & Young Adults, Responsible Gambling</i> , https://perma.cc/P7MS-J8AL	20
Katherine Hamilton, <i>DraftKings Is Using Its Sports-Betting Playbook to Win Prediction Markets Race</i> , Wall St. J. (Mar. 3, 2026), https://tinyurl.com/vrunvx5w	21
Katherine Long et al., <i>'Is This Insider Information?' The Prediction Market Bets Driving a Campus Frenzy</i> , Wall St. J. (Mar. 5, 2026), https://tinyurl.com/2jpnsmfX	20
Jeff Edelstein, <i>EKG Report: California, Texas Drive 43% of Sports Event Contract Volume</i> , InGame (Apr. 29, 2026), https://perma.cc/3XK8-MBFV	21

Jessica Welman, <i>Kalshi's Lawyer Goes Hard at State-Regulated Gambling</i> , SBCAmericas (July 11, 2025), https://tinyurl.com/3razm22v	20
Letter from Am. Gaming Ass'n to CFTC, Re: Prediction Markets Roundtable, (Feb. 20, 2025), https://perma.cc/4N2M-PX9J	23
Letter from NBA to CFTC, Re: Sports Prediction Markets (May 1, 2025), https://perma.cc/A5RS-227D	23
<i>New Jersey Division of Gaming Enforcement Announces December 2025 Total Gaming Revenue Results</i> , N.J. Div. of Gaming Enf't (Jan. 16, 2026), https://tinyurl.com/2s3jnkxz	19
<i>Responsible Trading Tools</i> , Kalshi, https://tinyurl.com/4nn7j3np	20
<i>Securities and Exchange Commission (SEC)</i> , EEOC, https://perma.cc/2MH8-HTG3	24
Sharon LaFraniere & David Yaffe-Bellany, <i>How Prediction Markets and Crypto Firms Steamrolled a Watchdog Agency</i> , N.Y. Times (May 26, 2026), https://tinyurl.com/54cy-fazk	25

<i>Signing Up as an Individual</i> , Kalshi, https://perma.cc/YE4V-WG9D	20
Sol Fayerman-Hansen, <i>U.S. Sports Betting Revenue & Statistics 2026</i> , RG, https://perma.cc/2WSA-CUA2	15
<i>Swaps Report Data Dictionary</i> , CFTC, https://perma.cc/V7AW-B4SL	8
Tom Joyce, <i>Most Americans Say Prediction Markets Resemble Gambling, Poll Finds</i> , Ctr. Square (Apr. 1, 2026), https://perma.cc/8DWP-5AHY	4
Video Recording: Oral Argument, <i>N. Am. Derivatives Exch., Inc. v. Nevada</i> , No. 25-7187 (9th Cir. Apr. 16, 2026), https://tinyurl.com/n5b7wnen	9, 25
<i>WATCH: Rep. Gabe Vasquez Calls on Regulator to Close Gambling Loophole</i> , U.S. Rep. Gabe Vasquez, N.M.'s 2d Dist. (Apr. 17, 2026), https://perma.cc/R5ZL-RVGS	10
<i>Worst Regular Season Record?</i> , Kalshi, https://tinyurl.com/39jn85ve	6

INTEREST OF AMICUS CURIAE¹

The Casino Association of New Jersey (CANJ) speaks for the Atlantic City casino industry by facilitating the exchange of ideas between industry stakeholders, small businesses, and the public. Its overarching mission is advocating for the ongoing revitalization of Atlantic City, which in turn drives economic growth, job creation, tax revenue, and overall prosperity in Atlantic City and beyond.

The CANJ offers a directly relevant perspective. New Jersey and the CANJ's members have long led the charge in defending the States' primacy over gambling regulation—the “Murphy” in *Murphy v. NCAA*, 584 U.S. 453 (2018), which invalidated the Professional and Amateur Sports Protection Act (PASPA), was then-New Jersey Governor Philip Murphy. And as a trade organization whose members operate licensed gaming facilities in New Jersey, the CANJ has developed deep expertise in the regulatory frameworks—state and federal—that govern sports wagering. That expertise informs the CANJ's view that the Third Circuit's interpretation of the Commodity Exchange Act (CEA) undermines the comprehensive state regulatory structures that protect consumers, safeguard competitive integrity, and fund public services. The CANJ has a concrete interest in ensuring that all gaming operators—including new market

¹ Pursuant to this Court's Rule 37.6, the CANJ states that no counsel for any party authored this brief in whole or in part, and no person or entity other than the CANJ made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received timely notice of the CANJ's intention to file this brief.

entrants like Kalshi—compete on equal regulatory footing.

The CANJ submits this brief to address the disruptive effects that prediction markets’ unlicensed sports wagers have had, and will continue to have, on the longstanding regulatory framework in New Jersey and other states. The CANJ and its members also have a strong interest in orderly application of federal law, which complements and facilitates state gaming laws—rather than preempts them, as the Third Circuit wrongly held.

SUMMARY OF ARGUMENT

Until a few years ago, sports betting was illegal in all but four States. *See Murphy*, 584 U.S. at 462. In 1992, Congress enacted PASPA, 28 U.S.C. §§ 3701-04, which required the other 46 States to maintain their bans on sports betting. *See Murphy*, 584 U.S. at 466-68. In 2018, this Court struck down PASPA, returning the power to regulate the “controversial issue” of gambling back to the hands of each State. *Id.* at 484. Congress had, through a raft of legislation, “implement[ed] a coherent federal policy” under which each State is “free to act on its own.” *Id.* at 486.

Following *Murphy*, dozens of States, including New Jersey, enacted comprehensive statutory schemes for sports betting that protect minors, curb problem gambling, preserve the integrity of sports leagues, and fund schools, roads, and other public goods through taxes. The CANJ’s members work assiduously to comply with these laws.

Historically, prediction markets and futures exchanges regulated by the Commodity Futures Trading Commission (CFTC) kept sports betting off their platforms. Longstanding CFTC regulations prohibited such exchanges from offering any “gaming” contracts. 17 C.F.R. § 40.11(a)(1). Prediction markets and exchanges embraced these regulations. Respondent KalshiEX, LLC (Kalshi), for example, argued to the D.C. Circuit that a contract on “whoever wins the Super Bowl” cannot trade on a CFTC-regulated exchange because it lacks “economic consequences,” and thus is not a CFTC-regulated swap. *See* Audio Recording: Oral Argument at 63:15-65:00, *KalshiEX LLC v. CFTC*, No. 24-5205 (D.C. Cir. Jan. 17, 2025), <https://perma.cc/DFZ3-EKAS>.

Just six days after that argument, Kalshi went back on its word and began offering sports bets—what its lawyers call “sports event contracts”—in violation of dozens of States’ gaming laws. *See* Alexander Osipovich, *Prediction Market Kalshi Launches Sports Betting*, Wall St. J. (Jan. 23, 2025), <https://tinyurl.com/56c4hb9a>. Kalshi then convinced the Third Circuit that federal law makes sports betting legal nationwide and subject only to the CFTC’s jurisdiction under the CEA. On that view, all a sports betting company must do is follow three steps. First, register with the CFTC as a designated contract market. *See CFTC Designates KalshiEX LLC as a Contract Market*, CFTC (Nov. 4, 2020), <https://perma.cc/Q6D7-4EKN>. Second, notify the CFTC that it intends to allow sports betting on its website. Third, wait one business day. *See* 17 C.F.R. § 40.2(a)(2). If the CFTC does not intervene at this stage, Kalshi maintains that the company then has

free license to offer sports betting nationwide, ignoring state regulations that restrict sports betting, and flouting state laws that ban it.

Most courts have seen this argument for the ploy that it is. As unanimous panels on the Sixth and Ninth Circuits have explained, prediction markets’ “sports event contracts” are nothing like the futures instruments within the CFTC’s traditional regulatory purview. *See KalshiEX, LLC v. Schuler*, -- F.4th --, No. 26-3196, 2026 WL 2884087, at *8-16 (6th Cir. Sept. 25, 2026); *KalshiEX, LLC v. Assad*, -- F.4th --, No. 25-7516, 2026 WL 2543846, at *9-12 (9th Cir. Aug. 28, 2026). The bets Kalshi lists on its exchange are classic sports bets with little to no financial or risk-management utility. And “*everyone*, including Kalshi, knows it when they see it.” *Assad*, 2026 WL 2543846, at *10; *see, e.g.*, Tom Joyce, *Most Americans Say Prediction Markets Resemble Gambling, Poll Finds*, Ctr. Square (Apr. 1, 2026), <https://perma.cc/8DWP-5AHY> (81% of Americans consider sports event contracts to be gambling).

The Third Circuit’s affirmance of a preliminary injunction for Kalshi against New Jersey gaming regulators is an unpersuasive outlier. A two-judge majority, over a careful dissent by Judge Roth, implausibly held that the 2010 Dodd-Frank Amendments to the CEA, giving the CFTC jurisdiction over “swaps,” empowered the CFTC both to legalize and to regulate sports bets across the country, including in States that ban all sports betting. *See* Pet.App.7a-9a. That interpretation defies the CEA’s most natural reading and disregards Dodd-Frank’s clear purpose: to police the risky swaps

that fueled the 2008 financial crisis. As the Ninth Circuit put it, Dodd-Frank was a “Wall Street Reform Bill,” not a sports-betting law. *Assad*, 2026 WL 2543846, at *10, 15. And regulation of sports betting has always been a traditional state police power. Nothing in the text, structure, or history of the CEA suggests that Congress meant to make the CFTC a national gaming czar, with the power to legalize sports betting around the country.

Review by this Court is needed because, notwithstanding the Sixth and Ninth Circuits’ persuasive opinions, lower courts remain intractably split. *See, e.g., Schuler*, 2026 WL 2884087, at *4 (noting “numerous lawsuits that have yielded mixed results”). Just last week, for example, a district judge in the Northern District of Illinois enjoined Illinois from enforcing gaming laws against prediction markets, finding that “Congress assigned . . . to the CFTC” responsibility for assessing the risks of sports betting, including teenage gambling addiction. *Coinbase Fin. Mkts., Inc. v. Raoul*, No. 1:25-CV-15406, 2026 WL 2969682, at *18 (N.D. Ill. Oct. 2, 2026). Both this case and the parallel cases seeking review of the Ninth Circuit’s opinion, Nos. 26-344 & 26-338, present excellent vehicles for resolving the question presented, and the Court would benefit from considering all these cases together. This Court should grant certiorari in all three cases, affirm the Ninth Circuit’s opinion, and reverse the Third Circuit’s, for the reasons stated in the Petition, and for two more reasons outlined herein.

First, Kalshi’s sports event contracts are not “swaps” subject to CFTC regulation. *Contra*

Pet.App.4a, 8a. The bets it lists on its exchange—who will win a regular season baseball game between the Chicago White Sox and Cleveland Guardians, or which team will have the NFL’s worst record in 2026, or a parlay that pays off only if the bettor guesses the statistics of 30 different NBA players—are indistinguishable from bets available at any licensed sportsbook.² Kalshi itself repeatedly called its sports event contracts “sports betting” in public advertising. See Dustin Gouker, *Ten Times Kalshi Said People Could Bet on Things*, Event Horizon (Apr. 3, 2025), <https://tinyurl.com/5a6x8kan>. Kalshi’s sports bets are not “swaps,” so they fall outside the CFTC’s “exclusive jurisdiction.” 7 U.S.C. § 2(a)(1)(A). A broader reading of “swaps” would disregard the term’s plain meaning, ignore the major-questions doctrine and the federalism canon, and impliedly repeal several federal statutes. It would also criminalize everyday wagering. Because a swap may be traded *only* on a CFTC-registered exchange, the decision below would make placing a sports bet anywhere else a felony, turning the millions of Americans who wager at licensed casinos and sportsbooks into federal criminals.

Second, the decision below guts the public policies that state gaming laws serve—protecting minors and problem gamblers, safeguarding the integrity of sporting events, and funding public services. Worse,

² *Chicago WS vs Cleveland*, Kalshi, <https://tinyurl.com/4xhre2rh>; *Worst Regular Season Record?*, Kalshi, <https://tinyurl.com/39jn85ve>; Dustin Gouker, *Kalshi Was Promoting A 30-Leg Parlay To Users On Tuesday*, Event Horizon (Apr. 1, 2026), <https://perma.cc/WX39-NBHL>.

it hands the CFTC power to nullify those regimes, and to override the choices of some States to ban sports betting, by choosing not to enforce its own rules. See 17 C.F.R. § 40.11(a) (prohibiting event contracts involving gaming). As a practical matter, that regulatory hand-off means that sports betting will receive no oversight at all. The CFTC is small, has no gaming expertise, and has shown neither the ability nor the will to police prediction markets, having declined to enforce its own rules even as it defends these markets in court.

This Court should grant certiorari, reverse the Third Circuit’s opinion, and return “the controversial issue of gambling” back to the States. *Murphy*, 584 U.S. at 484.

ARGUMENT

I. THE THIRD CIRCUIT ERRED IN HOLDING THAT THE CEA PREEMPTS SPORTS BETTING LAWS

The decision below wrongly concludes that Kalshi’s “sports event contracts”—including its prop bets and parlays—qualify as “swaps.” Pet.App.8a. In fact, these contracts are traditional sports bets, and the CEA does not preempt state sports betting regulations.

A. Kalshi Offers Sports Bets, Not “Swaps”

The decision below accepts at face value Kalshi’s self-description as a “financial services company that operates” as a CFTC-designated contract market (DCM). Pet.App.2a. But Kalshi’s “sports event

contracts” are nothing like traditional event contracts. They are sports bets, not “swaps.”

The CEA was originally enacted to regulate agricultural commodity futures. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 360-66 (1982). As a result, classic CFTC-regulated swaps are based on events tied to financial instruments and physical commodities. *See, e.g., Swaps Report Data Dictionary*, CFTC, <https://perma.cc/V7AW-B4SL>. Such contracts track economic, corporate, and agricultural outcomes, and like futures contracts, can be used to hedge those outcomes. “By entering into a currency swap . . . and trading dollars for euros, the importer can hedge against [the] risk” that the value of the dollar falls compared to the euro. *Schuler*, 2026 WL 2884087, at *2.

Kalshi’s sports event contracts are very different. Last month, for example, sports contracts listed on Kalshi included “Blanch vs Kozlov,” a live event contract based on who would win a tennis match.³ Kalshi also offers “prop” bets on individual player statistics within a single game (like which players will score a touchdown in a game between the Lions and Bills) and parlays that allow users to combine several different wagers on the same game (like a bet that pays off only if the Guardians beat the White Sox, the

³ *Blanch vs Kozlov*, Kalshi, <https://tinyurl.com/zrz8d2mx>.

Guardians win by over 2.5 runs, and the teams combine for over 8.5 runs).⁴

These bets are all standard fare at online sportsbooks, but they are far afield from hedging services offered by financial markets. A multi-leg sports parlay is entertainment, not an economic hedge. Kalshi’s attempt to recast its sports bets as event contracts is like an unauthorized casino calling its craps games “Dice Contracts” or its blackjack tables “Card Contracts.”⁵ Spending \$50 on an event contract taking the position that the Commanders will win a football game, with the possibility of a \$100 payout, is no different than placing a \$50 bet on that same outcome at a sportsbook with 1:1 odds. On both sportsbooks and Kalshi, bettors stake money on the result of sports games. Even the Middle District of Tennessee, which ruled *for* Kalshi, acknowledged “that a user would find Kalshi’s offerings similar, if not identical, to a sportsbook.” *KalshiEX LLC v. Orgel*, No. 3:26-cv-34, 2026 WL 474869, at *5 (M.D. Tenn. Feb. 19, 2026), *vacated sub nom. Schuler*, 2026 WL 2884087. Indeed, at a recent hearing, the CFTC

⁴ See, e.g., Dustin Gouker, *Kalshi Launches NBA Player Props*, Event Horizon (Nov. 18, 2025), <https://perma.cc/XEV8-VM64>; Dustin Gouker, *Kalshi Rolls Out Same-Game Parlays for Monday Night Football Games*, Event Horizon (Sept. 30, 2025), <https://perma.cc/9MC7-P6Y6>; *Chicago WS vs Cleveland*, Kalshi, <https://tinyurl.com/4xhre2rh>; *DET Lions vs BUF Bills*, Kalshi, <https://tinyurl.com/3bn7brvy>.

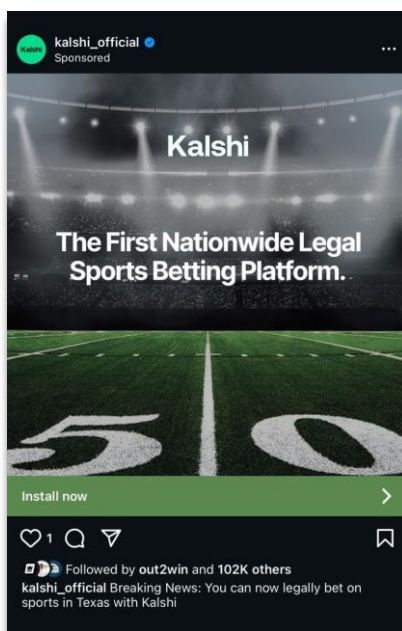
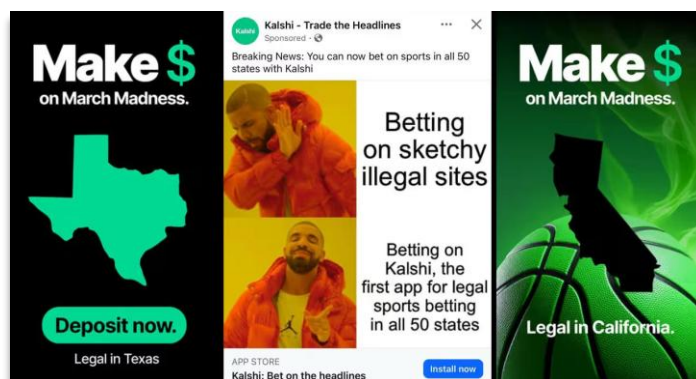
⁵ See Video Recording: Oral Argument at 39:22-41:15, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 25-7187 (9th Cir. Apr. 16, 2026), <https://tinyurl.com/n5b7wnen>.

Chair himself could not tell a sportsbook’s bet apart from a prediction market’s sports event contract.⁶

Even Kalshi understands that its sports event contracts are entertainment, rather than hedging tools. In late 2024, Kalshi acknowledged in a D.C. Circuit brief that “Congress did not want sports betting to be conducted on derivatives markets.” Brief of Appellee, *KalshiEX LLC v. CFTC*, 2024 WL 4802698, at *41 (D.C. Cir. Nov. 15, 2024). Yet Kalshi consistently advertised its offering as “sports betting,” telling the public that it provides “The First Nationwide Legal Sports Betting Platform” and “the first app for legal sports betting in all 50 states,” and that “Sports Betting [is] Legal in all 50 States on Kalshi.”⁷

⁶ *WATCH: Rep. Gabe Vasquez Calls on Regulator to Close Gambling Loophole*, U.S. Rep. Gabe Vasquez, N.M.’s 2d Dist. (Apr. 17, 2026), <https://perma.cc/R5ZL-RVGS>.

⁷ Daniel Wallach, *Kalshi’s Nevada Court Win May Be Short-Lived Due to Federal Wire Act Ban on Sports Betting*, *Forbes* (Apr. 15, 2025), <https://perma.cc/W2J7-4JVF>. See also Dustin Gouker, *Ten Times Kalshi Said People Could Bet On Things*, *Event Horizon* (Apr. 3, 2025), <https://tinyurl.com/5a6x8kan>; Carousel posted by Front Office Sports (@frontofficesports) and Kalshi (@kalshi_official), Instagram (June 12, 2025), <https://tinyurl.com/2ma6ye7k>.



In the lawsuits that inevitably ensued, Kalshi has offered only hollow technicalities to distinguish itself from sportsbooks. It claims that its DCM “is not [a] counterparty to any trade, does not set betting odds, does not profit when its customers lose, and has no incentives to favor itself at customers’ expense.”

Assad, 2026 WL 2543846, at *11. That claim is “tenuous” as a factual matter, and also irrelevant. *Id.* at *11 n.5 (noting evidence, which Kalshi has tried to scrub from its website, that Kalshi does in fact take the other side of most trades). That sportsbooks “are ‘market makers,’ which Kalshi supposedly is not, is not relevant to the CEA’s definition of ‘swap’ or of the ordinary meaning of ‘bet’ or ‘wager.’” *Id.* at *11.

Kalshi, in short, is a sportsbook like any other, albeit one that operates illegally, without a license, across the country.

B. The CEA’s Definition Of “Swaps” Does Not Encompass Sports Bets

The Third Circuit erred in holding that the CEA preempts state gaming laws as applied to Kalshi’s sports bets. Central to the court’s holding was its conclusion that sports bets qualify as “swaps” under the CEA. Pet.App.2a, 8a. The CEA offers six alternative definitions of “swap,” 7 U.S.C. § 1a(47)(A)(i)-(vi), but the Third Circuit held that Kalshi’s bets satisfy only clause (ii), which reaches a contract that turns on an event “associated with a potential financial, economic, or commercial consequence.” Pet.App.8a. The court then ruled that a sports outcome fits that description and that Congress, when it gave the CFTC jurisdiction over “swaps” in Dodd-Frank, handed all authority over sports betting from the States to a small agency with no gaming experience. *Id.* The Third Circuit’s decision was erroneous, for five reasons.

First, sports outcomes are not “associated with a potential financial, economic, or commercial

consequence.” *See Schuler*, 2026 WL 2884087, at *10-12. The term “associated with” means, as a matter of plain language, “related, connected, or combined together.” *Associated*, Merriam-Webster Online, <https://tinyurl.com/5n8ux46v>. The phrase, as used in the statute, thus implies a direct, predictable relationship between the occurrence that is the subject of an event contract and a financial, commercial, or economic consequence. Such direct relationships are generally missing for gaming outcomes, as no economic consequences hinge on the average sports game, let alone multi-leg parlays and proposition bets that comprise a significant portion of trading volume on prediction markets.

The industry’s own conduct confirms that the Third Circuit’s reading fails as a matter of plain meaning. Before 2025, no one had ever offered a sports bet on a futures exchange or prediction market. Sportsbooks have long had every financial incentive to press Kalshi’s argument—federal preemption would eliminate the substantial costs of state licensing and compliance—yet none did. *See Assad*, 2026 WL 2543846, at *14. That uniform, decades-long understanding of the regulatory framework is strong evidence of what the statute means. *See Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 157-58 (2012) (rejecting agency interpretation that contravened “the industry’s decades-long practice”).

Second, the *noscitur a sociis* canon disfavors the Third Circuit’s reading. Courts “rely on the principle of *noscitur a sociis*—a word is known by the company it keeps—to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying

words.” *Yates v. United States*, 574 U.S. 528, 543 (2015) (plurality opinion) (cleaned up). Where “several items in a list share an attribute,” the canon favors reading the remaining item to share it too. *Beecham v. United States*, 511 U.S. 368, 371 (1994). The other clauses of § 1a(47)(A) define a swap by reference to recognized financial instruments—the prices or volatility of currencies, commodities, and securities. *Schuler*, 2026 WL 2884087, at *12; *Assad*, 2026 WL 2543846, at *10. Clause (ii) must be read in that financial company, not as a catch-all for any contingent outcome.

Third, reading “swaps” to encompass gaming contracts would banish any limiting principle and leave clause (ii) unbounded. If any event with any conceivable monetary impact, no matter how speculative or indirect, could be considered a swap, then the definition of a “swap” would lose all meaning, as all human events could be said to have *some* potential economic consequence. Such an expansive interpretation of § 1a(47)(A)(ii) would also render all the other subparts of the CEA’s “swap” definition superfluous. *See Schuler*, 2026 WL 2884087, at *13. Any contract that turns on “currencies” or “commodities” under § 1a(47)(A)(i), for instance, would also be associated with a “potential financial, economic, or commercial consequence” under § 1a(47)(A)(ii).

Fourth, the Third Circuit’s reading offends the precept that Congress does not “hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). Under the major questions doctrine, a court must be wary of any claim that a

statute works a change of “enormous importance” through a “subtle device.” *MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 231 (1994). Sports betting is a roughly \$17-billion industry that generated \$1.18 billion in New Jersey alone in 2025, and a fifth of American adults placed a sports bet that year.⁸ Congress does not work so sweeping a change over an area of traditional state concern without saying so explicitly. It is especially doubtful that Congress would have given such regulatory authority to the CFTC—which, at the time Dodd-Frank was enacted, was an independent agency. If sports bets are “swaps” immune from state regulation once they are listed by CFTC-regulated exchanges, the CFTC could de facto legalize sports betting nationwide by failing to enforce its own regulations. Congress could not possibly have intended to authorize an independent agency to legalize (or ban) gaming contracts nationwide without any meaningful checks.

Fifth, construing the CEA to preempt state regulation of sports betting would flout several clear-statement canons. This Court has long cautioned, for example, that courts should “presume federal statutes do *not* . . . preempt state law,” and be “certain of Congress’ intent before finding that federal law overrides’ the ‘usual constitutional balance of federal and state powers.’” *Bond v. United States*, 572 U.S. 844, 858 (2014) (emphasis added) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991)). Gambling

⁸ See Am. Gaming Ass’n, *State of the States* 10, 98 (May 2026), <https://perma.cc/4NB2-42QN>; Sol Fayerman-Hansen, *U.S. Sports Betting Revenue & Statistics 2026*, RG, <https://perma.cc/2WSA-CUA2>.

regulation is a traditional state police power, not a matter regulated by the federal government. *E.g.*, *United States v. King*, 834 F.2d 109, 111 (6th Cir. 1987). Indeed, over the last several decades, Congress has enacted several laws designed to “respect the policy choices of the people of each State on the controversial issue of gambling.” *Murphy*, 584 U.S. at 484. Multiple federal statutes, including the Wire Act, the Illegal Gambling Business Act, and the Travel Act, proscribe gaming and gaming-related conduct when that conduct is illegal under state law. *See, e.g.*, 18 U.S.C. §§ 1084(a)-(b), 1952(b), 1953(b), 1955(a)-(b). The Indian Gaming Regulatory Act (IGRA), in turn, prohibits sports betting on Tribal lands unless, among other things, the State in which the casino is situated permits it. *See* 25 U.S.C. § 2710(d)(1)(B). The Third Circuit’s ruling impliedly repeals those statutes by creating a regime in which federal law provides a categorical defense to state gaming laws. It is also at variance with the Indian canon, which requires courts to resolve statutory ambiguities in favor of Tribes. *See, e.g.*, *Bryan v. Itasca County*, 426 U.S. 373, 392 (1976).

The Third Circuit largely disregarded this statutory context. It instead reasoned that, because the CEA’s Special Rule empowers the CFTC to prohibit swaps involving “gaming,” 7 U.S.C. § 7a-2(c)(5)(C)(i)(V), the agency’s failure to act against Kalshi’s sports contracts amounts to preemptive federal legalization of sports betting. Pet.App.6a-7a. Not so. The Special Rule authorizes the CFTC to order prediction markets to stop offering contracts involving unlawful activity, terrorism, war, assassination, or gaming. 7 U.S.C. § 7a-

2(c)(5)(C)(i)(I)-(VI). The Special Rule thus operates as “a backstop that supplements state law.” *Schuler*, 2026 WL 2884087, at *25 (citation omitted). It does not suggest that agency inaction as to such contracts preempts all state regulations.

C. Reading The Term “Swaps” To Encompass Sports Bets Would Federalize The Entire Sports Betting Industry

Finally, the Third Circuit’s interpretation of the CEA would have extreme consequences that Congress plainly did not intend. The CEA makes it unlawful to trade a swap anywhere but a CFTC-regulated exchange. For those who are not eligible contract participants, a swap may be entered into only “on, or subject to the rules of, a board of trade designated as a contract market,” 7 U.S.C. § 2(e); soliciting or accepting swap orders without registering with the CFTC is separately barred, *id.* § 6d(a)(1), (f); and any “contract for the purchase or sale of a commodity for future delivery” must also be “conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market,” *id.* § 6(a)(1). So, “only federally regulated exchanges, known as ‘Designated Contract Markets’ . . . can offer event contracts.” *KalshiEX LLC v. CFTC*, 119 F.4th 58, 61 (D.C. Cir. 2024). A knowing and willful violation is a felony punishable by a fine up to \$1 million and ten years’ imprisonment. 7 U.S.C. § 13(a)(5).

It follows that “any individual who engages in gambling outside of a DCM would commit a felony were we to take the definition of swaps to its logical

extreme.” Pet.App.22a (Roth, J., dissenting); *accord Schuler*, 2026 WL 2884087, at *14. In the context of a bona fide event contract, that makes sense: the purpose of Dodd-Frank was to bring all true swaps, which had been traded in “unregulated ‘over-the-counter’ markets,” under the CFTC’s jurisdiction following the 2008 financial crisis. *Schuler*, 2026 WL 2884087, at *3.

But that outcome makes no sense when it comes to sports betting. If sports bets truly are “swaps” subject to the CFTC’s “exclusive jurisdiction,” it would be illegal for anyone to offer them outside a CFTC-designated exchange. Law-abiding casinos and their customers would be branded felons and state gaming regulators branded usurpers. “Congress could not have intended for such a rationality-defying outcome.” Pet.App.22a (Roth, J., dissenting).

II. THE THIRD CIRCUIT’S INTERPRETATION OF THE CEA UNDERMINES PUBLIC POLICY

A. Evasion Of New Jersey Sports Betting Regulations Harms The Public Interest

The gaming regulations that the Third Circuit found preempted safeguard sporting and gaming integrity, deter unlawful conduct, and fund government services. Exempting Kalshi from these regulations has harmed the public and will continue harming them if the decision below stands.

Consider two bettors, John and Jane, who wanted to bet on NFL over/under win totals for the 2026 season. John placed a wager with a traditional

sportsbook that complies with all New Jersey gaming laws and regulations. Jane bought a sports event contract on Kalshi.

John's experience tracks standard practice. An advertisement drew him to the sportsbook and, as New Jersey law requires, carried a problem-gambling disclaimer. *See* N.J. Stat. Ann. § 5:12A-13(a)(11). Before taking his bet, the sportsbook confirmed that he was at least 21, checked his name against the roster of athletes, coaches, referees, directors, and owners barred from betting, verified that he had not self-excluded as a problem gambler, confirmed that he sat in a State that has legalized sports betting, and screened for threats to game integrity, money laundering, and false identification. *See* N.J. Stat. Ann. §§ 5:12A-11(e), (f)(1), (i), (l); *id.* § 5:12A-19; *id.* § 5:12-71.2.

At the end of the year, the sportsbook tallied up all the sports bets and paid proportionate taxes plus other fees to New Jersey. *See* N.J. Stat. Ann. § 5:12A-16. All told, New Jersey has received hundreds of millions of dollars in taxes and fees. *See New Jersey Division of Gaming Enforcement Announces December 2025 Total Gaming Revenue Results*, N.J. Div. of Gaming Enft (Jan. 16, 2026), <https://tinyurl.com/2s3jnkxz>. And fees from licensing renewals for casinos and racetracks are assessed based on “expenses associated with” public expenses including “gambling addiction programs.” N.J. Stat. Ann. § 5:12A-11(a).

Jane's experience with Kalshi differed vastly.

Jane was drawn to Kalshi by an advertisement that, though much like a sportsbook's, carried no problem-gambling disclaimer because no law required one. Kalshi asserts that it offers "responsible trading tools" for problem gamblers, but no regulator has ever reviewed those tools or their efficacy. *See Responsible Trading Tools*, Kalshi, <https://tinyurl.com/4nn7j3np>. As one attorney for Kalshi put it, if problem gamblers trading on its platform "lose their shirt, that's on them." Jessica Welman, *Kalshi's Lawyer Goes Hard at State-Regulated Gambling*, SBCAmericas (July 11, 2025), <https://tinyurl.com/3razm22v>.

When Jane went to buy a "sports event contract," Kalshi confirmed only that she was 18 years or older. *Signing Up as an Individual*, Kalshi, <https://perma.cc/YE4V-WG9D>. Studies show that 18-to 20-year-olds are "significantly more likely to have chased their losses and bet more than they could afford." *Gambling & Young Adults*, Responsible Gambling, <https://perma.cc/P7MS-J8AL>. Kalshi has "aimed marketing" at "college students." Katherine Long et al., *'Is This Insider Information?' The Prediction Market Bets Driving a Campus Frenzy*, Wall St. J. (Mar. 5, 2026), <https://tinyurl.com/2jpnsmfx>.

Kalshi is not required to confirm whether Jane is an athlete, coach, referee, or manager (or an agent for the same) who might be able to influence the outcome of her bets. Nor did Kalshi confirm whether Jane lived in a State where sports gambling was illegal. *But see* 18 U.S.C. § 1084(a)-(b) (making it a crime to transmit bets or wagers or other information assisting in the placing of bets or wagers "on any sporting event

or contest” unless sports betting is legal in the State where it takes place).

Last, Kalshi paid no portion of its sports-gambling revenues to any State government at year’s end. Other companies offering sports event contracts have told investors that, “[b]ecause prediction markets aren’t subject to state taxes, they are expected to have margins that are 10 to 30 percentage points higher than traditional sports betting.” Katherine Hamilton, *DraftKings Is Using Its Sports-Betting Playbook to Win Prediction Markets Race*, Wall St. J. (Mar. 3, 2026), <https://tinyurl.com/vrunvx5w>.

* * *

These examples illustrate the harm that prediction markets are already inflicting on the dozens of States and Tribes that regulate sports betting in furtherance of critical public policies—not to mention the many States that have chosen to ban such gambling outright. Casinos and sportsbooks that play by the rules suffer too, because they now compete against operators that do not.

And that is only half the story. States that have chosen to ban sports betting, for moral or other reasons, *see, e.g., Murphy*, 584 U.S. at 486, are seeing those laws thwarted. Indeed, although prediction markets have often framed these cases as posing a conflict between traditional sportsbooks and new market entrants, the fact remains that a whopping 69% of sports event contracts are traded in States where *all* sports betting is illegal. *See* Jeff Edelstein, *EKG Report: California, Texas Drive 43% of Sports*

Event Contract Volume, InGame (Apr. 29, 2026), <https://perma.cc/3XK8-MBFV>. The decision below wrongly entrenches this affront to the police power of the States.

B. The CFTC Is Not Fit To Regulate Gambling On Prediction Markets

The Third Circuit’s decision portrayed this case as involving a choice between a “patchwork of state regulations” for sports event contracts and unified regulation under the “exclusive jurisdiction of the CFTC.” Pet.App.12a. In reality, the choice is between state regulation and no regulation of those contracts at all. The CFTC has proven that it is unable and unwilling to effectively police Kalshi and other prediction markets.

The CFTC has neither the personnel nor the expertise to act as a national sports betting regulator. Even if the CFTC were able to regulate sports betting on its markets, it has shown no willingness to do so. Through its self-certification regime, the agency has permitted Kalshi and other prediction markets to offer sports contracts that violate the CFTC’s own explicit regulations. *See* 17 C.F.R. § 40.11(a) (prohibiting “registered entit[ies]” from “list[ing] for trading” any “agreement, contract, transaction, or swap based upon an excluded commodity” that “involves, relates to, or references . . . gaming, or an activity that is unlawful under any State or Federal law”). Indeed, the CFTC has not just failed to take action against “gaming” contracts, but has also sought to protect them against state regulation.

The CFTC’s existing regulatory structure is designed for agricultural futures, not sports bets. The agency has said so itself. In a 2024 Federal Register notice, the CFTC acknowledged that it “is not a gaming regulator” and lacks the specialized knowledge needed to oversee gambling. *Event Contracts*, 89 Fed. Reg. 48968, 48982-83 (June 10, 2024). Just so. For instance, commodity traders might at times trade on inside information, but unlike professional athletes, they cannot *influence* the outcomes they trade by, for example, throwing games. The CFTC does not mandate that “either exchanges or brokers report potentially suspicious trades or trading patterns to an affected league or cooperate with any league-run investigations into such suspicious activity;” nor does it “require ongoing information sharing between exchanges and affected leagues.” Letter from NBA to CFTC, Re: Sports Prediction Markets, at 2 (May 1, 2025), <https://perma.cc/A5RS-227D>. Absent such controls, leagues have little ability to catch sports insiders who are placing improper bets. Likewise, the CFTC has not developed the same types of “Know Your Customer (KYC) and anti-money laundering (AML) protocols, . . . and integrity monitoring” that many States mandate. See Letter from Am. Gaming Ass’n to CFTC, Re: Prediction Markets Roundtable, at 2 (Feb. 20, 2025), <https://perma.cc/4N2M-PX9J>. And the CFTC has no experience in combating problem gambling. It has no regulations, for instance, pertaining to the required provision of problem-gambling information or resources. It also lacks the detailed self-exclusion protocols employed by New Jersey and many other States.

There is no reason to think that any of this will change if courts accept Kalshi's position. The CFTC has fewer than 700 employees.⁹ For comparison, the SEC has nearly 4,000.¹⁰ The CFTC does not have nearly enough staffing or funding to fulfill its traditional primary responsibility (regulating derivatives markets) while also transforming itself into a national gaming commission.

Even if the CFTC had the expertise and practical ability to regulate sports betting nationwide, there are serious questions about its political will to do so. The agency has not enforced the few regulations specific to event contracts that are on its books. The CFTC permits contract markets like Kalshi to self-certify to the CFTC that their contracts comply with the CEA and CFTC regulations. 17 C.F.R. § 40.2(a)(3)(iv). Such regulations include a prohibition on the listing of any contract that "involves . . . gaming[.]" *Id.* § 40.11(a); see *Assad*, 2026 WL 2543846, at *14. Although Kalshi's sports contracts plainly violate this regulation, the CFTC has not delisted these or other prediction markets' contracts. See 17 C.F.R. § 40.11(c).

The CFTC's explanation for why it has failed to enforce its regulation barring gaming contracts changes from month to month. Initially, it submitted briefs that omitted any mention of its regulatory ban on "gaming" contracts. Then, when pressed on the

⁹ *Commodity Futures Trading Commission (CFTC)*, EEOC, <https://perma.cc/MD4B-FFRA>.

¹⁰ *Securities and Exchange Commission (SEC)*, EEOC, <https://perma.cc/2MH8-HTG3>.

regulation by the Ninth Circuit, the CFTC took the confounding position that sports event contracts do not constitute “gaming” contracts. *See* Video Recording: Oral Argument at 1:01:07-1:02:20, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 25-7187 (9th Cir. Apr. 16, 2026), <https://tinyurl.com/n5b7wnen>. Just a few months later, the CFTC withdrew that erroneous view and acknowledged in a proposed rule that sports event contracts are, in fact, “gaming” contracts under the Special Rule and Rule 40.11. *See Prediction Markets; Public Interest Determinations*, 91 Fed. Reg. 35806, 35826-27 (June 12, 2026).

The CFTC’s fervent defense of sports contracts that remain illegal under federal law is puzzling. *But see* Sharon LaFraniere & David Yaffe-Bellany, *How Prediction Markets and Crypto Firms Steamrolled a Watchdog Agency*, N.Y. Times (May 26, 2026), <https://tinyurl.com/54cyfazk>. But whatever the reason for its inaction, the agency has shown neither the ability nor the will to rein in sports betting on prediction markets.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ALEX H. LOOMIS
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
111 Huntington Avenue
Suite 520
Boston, MA 02199
(617) 712-7100
alexloomis@quinnemanuel.com

B. DYLAN PROCTOR
Counsel of Record
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
865 South Figueroa Street,
Los Angeles, CA 90017
(213) 443-3000
dylanproctor@quinnemanuel.co
m

JACOB C. BEACH
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
555 13th St NW
Suite 600
Washington, D.C. 20004
(202) 538-8000
jacobbeach@quinnemanuel.com

*Counsel for Amicus Curiae
The Casino Association of
New Jersey, Inc.*

October 8, 2026