No.

In the Supreme Court of the United States

ROBINHOOD DERIVATIVES, LLC,
PETITIONER,

v.

MIKE DREITZER, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Commodity Exchange Act gives the Commodity Futures Trading Commission (CFTC) "exclusive jurisdiction" over "transactions involving swaps or contracts of sale of a commodity for future delivery" that are "traded or executed on a contract market" regulated by the CFTC. 7 U.S.C. § 2(a)(1)(A). Petitioner Robinhood Derivatives, LLC, a federally regulated futures commission merchant, facilitates trading of sports-related event contracts on federally regulated contract markets. Nevada seeks to enforce state gaming laws against this activity on contract markets regulated by the CFTC.

The question presented is whether the Commodity Exchange Act preempts the application of state gaming laws to sports-related event contracts traded on federally regulated contract markets.

PARTIES TO THE PROCEEDING

Petitioner Robinhood Derivatives, LLC, was appellant in the Ninth Circuit Court of Appeals, and plaintiff in the U.S. District Court for the District of Nevada.

Respondents Mike Dreitzer; George Assad; Chandeni K. Sendall; Nevada Gaming Control Board; Jennifer Togliatti; Rosa Solis-Rainey; Brian Krolicki; George Markantonis; Nevada Gaming Commission; and Aaron Ford were appellees in the Ninth Circuit Court of Appeals, and defendants in the U.S. District Court for the District of Nevada.

Nevada Resort Association was appellee in the Ninth Circuit Court of Appeals, and intervenor-defendant in the U.S. District Court for the District of Nevada.

CORPORATE DISCLOSURE STATEMENT

Petitioner Robinhood Derivatives, LLC is a wholly owned subsidiary of Robinhood Markets, Inc., a publicly held corporation (stock ticker symbol: HOOD). There is no other publicly held corporation that owns 10% or more of Robinhood Derivatives, LLC's or Robinhood Markets, Inc.'s stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Robinhood Derivatives, LLC, conditionally petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is available at 2026 WL 2546925. Pet.App.1a-2a. The opinion of the district court is available at 2025 WL 3283308. Pet.App.3a-6a.

JURISDICTION

The judgment of the court of appeals was entered on August 28, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.*, and 17 C.F.R. § 40.11 are included in the Appendix. Pet.App.58a-86a.

STATEMENT

This case presents a question of national importance that has divided two courts of appeals to date: whether the Commodity Exchange Act (CEA) preempts the application of state gaming laws to sports-related event contracts traded on commodity exchanges regulated by the Commodity Futures Trading Commission (CFTC). Event contracts are contracts that pay money tied to the occurrence of "a wide array of events for which no traditional financial instrument otherwise exists, ranging from events concerning macroeconomics, politics, weather, and climate conditions, to cultural trends." Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35806, 35807 (June 12, 2026).

This case involves event contracts related to sports. The question whether federal law preempts application of state gaming laws to these contracts has produced a clash between federal and state regulators. The CFTC permits commodity exchanges to list sports-related event contracts for trading, is actively regulating such contracts, and takes the position that the CEA preempts state laws prohibiting the trading of such contracts. The CFTC recently proposed a rule to clarify that some but not all sports-related event contracts are permissible. State gaming regulators disagree, asserting that they can criminalize the trading of *all* sports-related contracts on federally regulated exchanges as illegal gambling.

Earlier this year, the Third Circuit answered the question presented in favor of preemption. *KalshiEX,* *LLC v. Flaherty*, 172 F.4th 220 (3d Cir. 2026). In the decision below, the Ninth Circuit ruled against preemption for sports-related event contracts and expressly disagreed with the Third Circuit. Pet.App.54a. And the Sixth Circuit, in a preliminary ruling denying a stay motion, doubted that the CEA has preemptive effect for any products, on grounds different from the Ninth Circuit's ruling. *See KalshiEX LLC v. Schuler*, 2026 WL 1295806 (6th Cir. Apr. 24, 2026).

Petitioner Robinhood Derivatives, LLC is a federally regulated futures commission merchant that offers its customers the ability to trade event contracts on federally regulated exchanges (which the CEA calls designated contract markets). As a result of the Third Circuit's decision, Robinhood may facilitate trading of sports-related event contracts for customers in the Third Circuit. After the decision below, however, if Robinhood facilitates such trading for customers in the Ninth Circuit (containing an estimated 20% of the Nation's population), it risks criminal or civil liability under state law.

Although the decision below harms Robinhood's interests and the market more generally, granting certiorari now would be premature. The CFTC is currently engaged in rulemaking, and the forthcoming rule will provide significant clarity to courts, market participants, and state regulators. Many cases remain in the pipeline. Since 2025, more than twenty States have commenced or threatened enforcement actions (including one criminal prosecution) against federally regulated designated contract markets and/or futures commission merchants like Robinhood. Market participants have filed more than thirty lawsuits seeking to clarify their rights under federal law. The CFTC, in turn, has sued nine States, seeking to enforce the CEA to preempt application of state gaming laws to trading on designated contract markets. One or more of these cases will undoubtedly reach the Court soon.

The Court may wish to delay deciding this petition and the question presented until after the CFTC has issued its forthcoming rule. New Jersey, however, filed a petition from the Third Circuit's decision on September 2, 2026. If the Court grants New Jersey's petition from the Third Circuit's decision or any other petition presenting this question, Robinhood conditionally asks this Court to grant this petition as well.

Granting both petitions would ensure the Court has before it the broadest possible array of arguments. The Third Circuit concluded that the CEA preempts state regulation of trading of "swaps" on designated contract markets as a matter of field and conflict preemption and that sports-related event contracts are "swaps." *Flaherty*, 172 F.4th at 227-30. The Third Circuit did not decide whether the CEA *expressly* preempts such state regulation. Below, the Ninth Circuit held that the CEA expressly preempts state regulation of trading of "swaps" on designated contract markets, but concluded that sports-related event contracts are not "swaps." Pet.App.54a. The Ninth Circuit rejected conflict and field preemption. Pet.App.49a-52a. Only the Ninth Circuit case presents the full range of preemption arguments. And granting Robinhood's petition would provide the Court with the broadest possible array of interests, arguments, and market participants.

A. Statutory Background

1. The Commodity Exchange Act is Congress' "comprehensive regulatory structure" for derivatives trading. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356 (1982) (citation omitted). In the 19th century, "farmers and processors" began using "executory contracts" to "fix[] the terms of sale in advance," which "motivated speculators" to begin "buying and selling" these contracts in the hopes they could be resold in the future "at an enhanced price." *Id.* at 357-58.

Because this trading involved a fair "amount of speculation," *id.* at 358, many initially viewed futures contracts as little more than "gambling in grain," *Cothran v. Ellis*, 16 N.E. 646, 647 (Ill. 1888). Some States "enacted statutes … outlaw[ing]" futures altogether as "illegal gambling." John V. Rainbolt II, *Regulating the Grain Gambler and His Successors*, 6 Hofstra L. Rev. 1, 6 & nn. 23-24 (1977) (collecting examples).

In 1922, Congress began to federalize the derivatives markets. That year, Congress passed the Grain Futures Act, which centralized trading of grain futures on federally designated "contract markets." Pub. L. No. 67-331, 42 Stat. 998, 1000-02 (1922); *see also* Kevin T. Van Wart, *Preemption and the Commodity Exchange Act*, 58 Chi.-Kent L. Rev. 657, 666 (1982). The Grain Futures Act, however, did not "supersede" state law. *Dickson v. Uhlmann Grain Co.*, 288 U.S. 188, 198 (1933).

In 1936, Congress enacted the CEA. Pub. L. No. 74-675, 49 Stat. 1491 (1936). The Act initially covered only certain designated commodities, which constituted a small "fraction of commodity futures." *Hunter v. FERC,* 711 F.3d 155, 157 (D.C. Cir. 2013). The CEA also did not preempt state law. *See Rice v. Bd. of Trade of City of Chi.*, 331 U.S. 247, 255 (1947).

Because "this hodgepodge regulatory system" proved unsustainable, *Hunter*, 711 F.3d at 157, Congress amended the CEA in 1974 to bring "*all* commodities under federal regulation," *FTC v. Ken Roberts Co.*, 276 F.3d 583, 588 (D.C. Cir. 2001). Congress created the CFTC and vested it with "exclusive jurisdiction" over instruments traded on federally designated "contract market[s]." 7 U.S.C. § 2(a)(1)(A).

2. Under the Act, an exchange must be designated by the CFTC as a "contract market" (a designated contract market or DCM) to list derivative contracts. 7 U.S.C. §§ 2(e), 6(a). A DCM is subject to myriad requirements, from recordkeeping obligations to capital reserve requirements. *See, e.g.*, 17 C.F.R. §§ 38.150, 38.151(b), 38.155-156, 38.450, 38.950, 38.1101.

The CEA also regulates futures commission merchants (FCMs), like Robinhood, that facilitate trading by soliciting or accepting orders to buy or sell derivatives. *See* 7 U.S.C. § 1a(28). FCMs are registered with the CFTC and, like DCMs, are subject to extensive federal oversight. *See, e.g.*, 17 C.F.R. §§ 1.10-11, 1.14, 1.18, 1.55.

To list new contracts, DCMs must submit the contracts to the CFTC for pre-approval or self-certify the contracts as complying with CFTC requirements. 7 U.S.C. § 7a-2(c)(1), (4)(A); 17 C.F.R. §§ 40.2(a), 40.3(a), 40.11(c). The CFTC may subject a contract to a 90-day review period in certain circumstances discussed below. 17 C.F.R. § 40.11(c); *see infra* p. 8. Alternatively, if DCMs seek pre-approval, the CFTC "shall approve" new contracts unless it finds they would violate the CEA or applicable regulations. 7 U.S.C. § 7a-2(c)(5)(B).

3. Congress over time has expanded the scope of contracts covered by the CEA. In 2000, Congress introduced the term "excluded commodity," 7 U.S.C. § 1a(19), and provided that certain sophisticated "participant[s]" could enter transactions involving these excluded commodities "over-the-counter," *i.e.*, off a DCM, Pub. L. No. 106-554, 114 Stat. 2763, 2763A-366, 2763A-377 (2000). An excluded commodity includes "an occurrence, extent of an occurrence, or contingency" that is "beyond the control of the parties" to a "transaction" and is "associated with a financial, commercial, or economic consequence." 7 U.S.C. § 1a(19)(iv).

In 2010, as part of the Dodd-Frank Act, Congress amended the CEA to give the CFTC "exclusive jurisdiction" over agreements involving "swaps." 7 U.S.C. § 2(a)(1)(A); *see Flaherty*, 172 F.4th at 226. Congress required "swap[s]" to be traded on a DCM or otherwise subject to a DCM's rules. 7 U.S.C. § 2(e). The Dodd-Frank Act defined "swap" to include, among other things, "any agreement, contract, or transaction … that provides for any … payment[] or delivery … that is 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." *Id.* § 1a(47)(A), (A)(ii). Congress simultaneously enacted ten detailed exclusions from the definition. *See id.* § 1a(47)(B).

The Dodd-Frank Act also included a "Special [R]ule" governing "review and approval" of "[e]vent contracts." *Id.* § 7a-2(c)(5)(C)(i). Under this provision, the CFTC may prohibit contracts in certain categories if it determines they are "contrary to the public interest." *Id.* § 7a-2(c)(5)(C)(ii). The enumerated categories are:

I. activity that is unlawful under any Federal or State law;

II. terrorism;

III. assassination;

IV. war;

V. gaming; or

VI. other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

Id. § 7a-2(c)(5)(C)(i).

A 2011 CFTC regulation currently implements the Special Rule. *See* 17 C.F.R. § 40.11; Provisions Common to Registered Entities, 76 Fed. Reg. 44776, 44785-86 (July 27, 2011). The regulation provides that regulated entities "shall not list" contracts involving gaming, among other subjects, but further states that the CFTC may decide to subject such contracts to a 90-day review, following which the agency will "issue an order approving or disapproving" such contracts. 17 C.F.R. § 40.11(a), (c)(2). According to the CFTC, the "Commission has consistently applied" this regulation as a "discretionary review framework," not a "self-executing *per se* prohibition." *See* 91 Fed. Reg. at 35815. The CFTC takes the view that "sports event contracts fall comfortably within the [CEA's] reach." *See, e.g.*, CFTC Amicus Br. 29, C.A. Dkt. 48. The CFTC has approved various "sporting event[]" contracts on DCMs. Prediction Markets, 91 Fed. Reg. 12516, 12517 n.9 (Mar. 16, 2026); *see Flaherty*, 172 F.4th at 227.

The CFTC has sought to block States' "attempt[s] to … intrude[]" on the agency's "exclusive jurisdiction" by suing to enjoin enforcement of "state laws" against

"CFTC-regulated 'Designated Contract Markets.'" *See, e.g.*, Compl. 4, *United States v. Arizona*, No. 26-cv-2246 (D. Ariz. Apr. 2, 2026), Dkt. 1. The CFTC recently secured a preliminary injunction barring Minnesota from enforcing a newly enacted statute "prohibiting the creation, operation, and advertising of prediction markets in the state" against DCMs. *United States v. Minnesota*, __ F. Supp. 3d __, 2026 WL 2150211, at *1, *18 (D. Minn. July 27, 2026); *see also KalshiEX LLC v. Johnson*, 832 F. Supp. 3d 954, 967 (D. Ariz. 2026) (granting CFTC preliminary-injunction motion as to Arizona gambling laws), *appeal docketed*, No. 26-2978 (9th Cir. May 11, 2026).[1]

In June 2026, the CFTC issued a Notice of Proposed Rulemaking to amend 17 C.F.R. § 40.11. *See* 91 Fed. Reg. at 35806. The notice observes that the CEA "granted the CFTC exclusive jurisdiction" to create "a comprehensive federal regulatory framework that expressly preempts state law" as to event contracts traded on DCMs. *Id.* at 35808. The notice proposes to define "gaming" in the Special Rule to include sports-related event contracts. *Id.* at 35818. The notice also proposes to "remove uncertainty" regarding whether such contracts are categorically prohibited, clarifying that they are subject to a case-by-case public interest review. *Id.* Under that framework, "event contracts based on the aggregate outcomes of professional or collegiate sports events" are "unlikely to be found to be contrary to the public interest." *Id.* at 35836.

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[1] *See also United States v. Illinois*, No. 26-cv-3659 (N.D. Ill.); *United States v. Connecticut*, No. 26-cv-498 (D. Conn.); *United States v. New York*, No. 26-cv-3404 (S.D.N.Y.); *United States v. Wisconsin*, No. 26-cv-749 (E.D. Wis.); *United States v. Minnesota*, No. 26-cv-2661 (D. Minn.); *United States v. New Mexico*, No. 26-cv-1912 (D.N.M.); *United States v. Kentucky*, No. 26-cv-49 (E.D. Ky.); *KalshiEX LLC v. Furcolo*, No. 26-cv-327 (D.R.I.) (CFTC intervened).

As of the date of this petition, the CFTC has not yet issued a final rule.

B. Factual and Procedural Background

1. This case involves sports-related event contracts traded on DCMs. Event contracts generally identify a future "event with multiple possible outcomes, a payment schedule for those outcomes, and an expiration date." *Flaherty*, 172 F.4th at 224-25 (citation omitted). Such contracts are typically traded on a binary basis—*i.e.*, a "purchaser" can place a "trade on either 'yes' or 'no'" with respect to a particular outcome. *Id.* at 225. An event contract's market value "fluctuates" based on the market's "perceptions about the event's likelihood." *Id.* (citation omitted).

2. Petitioner Robinhood offers customers the ability to trade event contracts on DCMs. Robinhood is a subsidiary of Robinhood Markets, Inc. C.A. E.R. 195. The Robinhood companies seek to democratize finance by removing barriers to financial markets so individuals can access these markets directly. C.A. E.R. 195.

In March 2025, Robinhood launched a prediction markets hub through which customers can place orders for event-contract trades. C.A. E.R. 195. Robinhood is registered with the CFTC as an FCM. C.A. E.R. 195. Although Robinhood customers submit orders through their Robinhood accounts, trades are executed on DCMs. C.A. E.R. 195-196. When Robinhood commenced this lawsuit, it facilitated trades on KalshiEX, a DCM. C.A. E.R. 195-196.[2]

On March 4, 2025, the Nevada Gaming Control Board sent Kalshi a cease-and-desist letter, contending that

[2] Since then, Robinhood also has partnered with other DCMs as well.

Kalshi was "operating as an unlicensed sports pool" in violation of Nevada's gaming laws by offering sports-related event contracts. Pet.App.20a (citation omitted); C.A. E.R. 196. "[T]he Board warned that it would pursue criminal or civil enforcement action" if Kalshi did not cease this activity. Pet.App.20a.

Kalshi sued the Board, its members, the Nevada Gaming Commission, and Nevada's Attorney General in the U.S. District Court for the District of Nevada, seeking an injunction permitting it to offer both sports- and election-related event contracts. In April 2025, the district court granted Kalshi a preliminary injunction, holding that Kalshi was likely to prevail on its claim that the CEA preempts application of state law to these contracts. *KalshiEX, LLC v. Hendrick*, 2025 WL 1073495, at *1 (D. Nev. Apr. 9, 2025).

Shortly thereafter, in May 2025, the Board sent Robinhood a letter stating that it would consider Robinhood's allowing Nevada customers to trade sports-related event contracts to violate Nevada law. C.A. E.R. 230-231. After discussions between Robinhood and the Board broke down, in August 2025, Robinhood initiated this action in the district court, seeking to enjoin Nevada's enforcement of preempted state gaming law against Robinhood. C.A. E.R. 200-225. Robinhood moved for a temporary restraining order and preliminary injunction. Dist. Ct. Dkt. 7. The Nevada Resort Association intervened on the State's behalf. Dist. Ct. Dkt. 68.

Meanwhile, another DCM, Crypto.com, brought suit in the same district court. In October 2025, the district court denied Crypto.com's motion for a preliminary injunction, concluding that sports-related event contracts are not "swaps" as defined by the CEA. *N. Am. Derivatives Exch., Inc. v. Nevada ex rel. Nev. Gaming Control*

Bd., 815 F. Supp. 3d 1169, 1179-87 (D. Nev. 2025). In November 2025, the district court denied Robinhood's motion for a preliminary injunction, Pet.App.6a, and dissolved the preliminary injunction it had granted in Kalshi's case, *KalshiEX, LLC v. Hendrick*, 817 F. Supp. 3d 1014, 1037 (D. Nev. 2025).

3. Robinhood, Kalshi, and Crypto.com appealed. The Ninth Circuit set all three appeals for argument before the same panel. C.A. Dkt. 45. The CFTC filed an amicus brief supporting the plaintiffs, *see* CFTC Amicus Br., C.A. Dkt. 48, and participated in the oral argument, C.A. Dkt. 70.

While the appeal was pending, in April 2026, the Third Circuit decided *KalshiEX, LLC v. Flaherty*, affirming a district court order preliminarily enjoining New Jersey from enforcing state law to prohibit Kalshi's sports-related event contracts. 172 F.4th at 332. The Third Circuit concluded that Kalshi was likely to prevail "on its argument that the [Commodity Exchange] Act preempts New Jersey law from reaching into CFTC-licensed DCMs." *Id.* at 226. According to the Third Circuit, "Kalshi's sports-related event contracts are traded on a CFTC-licensed DCM and depend on event outcomes associated with economic consequences" and thus "fit within the Act's definition of 'swaps' subject to the CFTC's jurisdiction." *Id.* at 228. Moreover, the court concluded, the CEA preempts the field of "regulation of trading on a DCM," *id.* at 229, and application of state law to on-DCM trading would present an obstacle to Congress' goal of avoiding a "patchwork of state regulations," *id.* at 230.

On August 28, 2026, the Ninth Circuit ruled against Robinhood and the other plaintiffs, affirming the district court's orders denying (or dissolving) a preliminary injunction and expressly splitting from the Third Circuit. In an opinion issued in Kalshi's appeal, the Ninth Circuit first held that 7 U.S.C. § 2(a)(1)(A) is "an express preemption provision granting the CFTC 'exclusive jurisdiction' over all 'transactions involving swaps' that are 'traded or executed on a market designated' by the CFTC," rejecting Nevada's argument that Section 2(a)(1)(A) lacks preemptive effect. Pet.App.26a (quoting 7 U.S.C. § 2(a)(1)(A)).

The court observed, however, that the CFTC's exclusive jurisdiction is limited to "the enumerated transactions in § 2(a)(1)(A)." Pet.App.29a. Those transactions include, as relevant here, "accounts, agreements …, and transactions involving swaps." Pet.App.29a (alteration in original) (quoting 7 U.S.C. § 2(a)(1)(A)). Thus, the court observed that "the dispositive issue is whether the sports event contracts are 'swaps' under the CEA[]." Pet.App.29a.

Parting ways from the Third Circuit, the Ninth Circuit held that sports-related event contracts are not "swaps." Pet.App.54a. As noted above, the CEA defines a "swap" in relevant part as "any agreement, contract, or transaction … that provides for any purchase, sale, payment, or delivery … that is 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); *see supra* p. 7. The court of appeals noted that Kalshi's interpretation of this language to include sports-related event contracts had "cursory plain-language appeal, which the Third Circuit majority adopted." Pet.App.30a-31a; *see also* Pet.App.44a ("colorable textual basis" (citation omitted)). But the court found that dictionary definitions of "event," "contingency," and "occurrence" did not resolve the question, and so the court looked to the broader "context." Pet.App.30a-31a.

The broader context, according to the court, included "legislation involving gambling, which weighs against giving the words in § 1a(47)(A)(ii) the broadest possible reading because … Kalshi's sports event contracts have the hallmarks of sports betting." Pet.App.32a. Invoking the major questions doctrine, the court reasoned that "[i]t [was] difficult … to conclude that Congress intended to upend its decades of careful regulation of gambling based on broad definitions of the words used in [the Dodd-Frank Act]." Pet.App.33a.

Turning to the phrase "associated with a potential financial, economic, or commercial consequence" in the statutory definition of "swap," the Ninth Circuit acknowledged the Third Circuit's holding that "[t]he outcome of [a] sports event certainly can be associated with a potential financial, economic, or commercial consequence." Pet.App.38a (first alteration in original) (citation omitted). But the Ninth Circuit agreed with the district court that the financial consequence "must be *inherently* associated with" the at-issue event or contingency. Pet.App.38a-39a (emphasis added) (citation omitted).[3]

The Ninth Circuit then addressed the plaintiffs' argument that the Special Rule, *see supra* pp. 7-8, demonstrates "that Congress intended the CFTC—not 50 states—to make a public-interest determination regarding swaps and event contracts involving 'gaming.'"

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[3] For similar reasons, the court also rejected Kalshi's argument that sports-related event contracts are "futures or options in 'excluded commodities.'" Pet.App.48a-49a; *see* 7 U.S.C. § 1a(19)(iv)(II).

Pet.App.40a. The court held—disagreeing with the CFTC's interpretation of its own regulation—that the Special Rule does not help the plaintiffs because the relevant regulation, 17 C.F.R. § 40.11, categorically bars contracts involving gaming. Pet.App.40a-41a.

Having concluded that the CEA does not expressly preempt application of state law to sports-related event contracts because those contracts are not "swaps," the Ninth Circuit then rejected Kalshi's alternative conflict and field preemption arguments. Pet.App.49a-52a.

Finally, the court of appeals observed that the remaining preliminary-injunction factors "turn[] on [its] resolution of the likelihood of success on the merits." Pet.App.53a. The court thus affirmed the district court's order in Kalshi's case insofar as it dissolved the preliminary injunction enjoining Nevada from enforcing state law against Kalshi's sports-related event contracts. Pet.App.54a. The court remanded "for the district court to consider Nevada's challenges to Kalshi's election contracts consistent with this opinion." Pet.App.54a; *see also* Pet. App.48a n.7.

In a concurring opinion, Judge Lee wrote that the Special Rule gave him "pause," because that provision "appears to give the CFTC discretion whether to ban altogether gaming contracts," meaning that "the statute does not seem to categorically bar all gaming contracts." Pet.App.56a. According to Judge Lee, "perhaps some unique sports events can be part of a swap trade if they meet the statutory requirements." Pet.App.56a. Judge Lee found it unnecessary "to resolve this thorny statutory interpretation question right now" because in his view 17 C.F.R. § 40.11, the regulation implementing the Special Rule, "bars gaming contracts." Pet.App.56a. He noted, however, that the CFTC has proposed to revise that regulation. Pet.App.56a-57a; *see supra* p. 9.

The Ninth Circuit simultaneously issued a decision in Robinhood's appeal, affirming the district court's denial of a preliminary injunction and "[i]ncorporating" the reasoning from its Kalshi opinion. Pet.App.2a.

Kalshi petitioned for rehearing in its case on September 9, 2026.

4. On September 2, 2026, New Jersey petitioned for a writ of certiorari from the Third Circuit's decision in *Flaherty*.

REASONS FOR GRANTING THE PETITION

The courts of appeals have split 1-1 regarding whether the CEA preempts the application of state law to sports-related event contracts traded on designated contract markets regulated by the CFTC. Nevertheless, the Court may wish to wait for additional developments—the CFTC's promulgation of its forthcoming rule and additional court decisions on the question presented—before granting certiorari in this case. But if the Court grants New Jersey's petition, it should grant this petition as well.

I. The Courts of Appeals Are Divided on the Question Presented

The decision below created a split among the courts of appeals on the question presented.

1. In *Flaherty*, which also arose in a preliminary-injunction posture, the Third Circuit held that Kalshi was likely to prevail on the argument that the CEA preempts New Jersey's application of state gaming law to sports-related event contracts. 172 F.4th at 226. The court ruled for Kalshi on both steps of the preemption analysis. It first held that sports-related event contracts are "swaps"

and thus are "subject to the CFTC's jurisdiction." *Id.* at 228. The Third Circuit noted the many "stakeholders" for whom sporting events can produce economic consequences, such as "sponsors, advertisers, television networks, franchises, and local and national communities." *Id.* at 227-28. Accordingly, the court concluded, "[t]he outcome of a sports event certainly can be associated with a potential financial, economic, or commercial consequence." *Id.* at 227.

The Third Circuit then held that the CEA preempts state regulation of "trading on a DCM." *Id.* at 229-30. The Third Circuit reached its preemption conclusion on field and obstacle preemption grounds, *id.*, but relied heavily on Section 2(a)(1)(A), which, as relevant here, grants the CFTC "exclusive jurisdiction" over "swaps ... traded or executed on a [DCM]," *id.* at 229 (alteration in original) (quoting 7 U.S.C. § 2(a)(1)(A)). The court also invoked a long body of circuit-level case law holding that "the Act preempts state law purporting to regulate futures trading." *Id.* (citing cases).

Judge Roth dissented. Addressing the definition of "swap," Judge Roth observed that "[a] plain reading of the Act's text suggests that Kalshi's sports-event contracts fit comfortably within the statutory definition." *Id.* at 233. But she nonetheless found the question "thorny," "with the potential to radically upend the legal landscape governing the gambling industry." *Id.* Ultimately, she found it unnecessary to resolve that question. *Id.*

Turning to the CEA's preemptive effect, Judge Roth invoked the presumption against preemption in rejecting field preemption, holding that the CEA at most occupies the "subfield" of "DCM trading" and thus does not trigger field preemption. *Id.* at 236. Judge Roth also invoked two savings clauses in Section 2(a)(1)(A) as evidence that the

CEA lacks field-preemptive effect. *Id.* at 237-38. She concluded by rejecting the Third Circuit majority's conclusions regarding obstacle preemption. *Id.* at 238-41.

2. In rejecting preemption as to sports-related event contracts below, the Ninth Circuit expressly disagreed with the Third Circuit.

As noted above, the Ninth Circuit held that Section 2(a)(1)(A) expressly preempts the application of state law to "'transactions involving swaps' that are 'traded or executed on a market designated' by the CFTC." Pet.App.26a (quoting 7 U.S.C. § 2(a)(1)(A)). Addressing the first of Section 2(a)(1)(A)'s savings clauses, the Ninth Circuit—unlike Judge Roth—held that the savings clause *supported* preemption. As the court of appeals observed, "[a]fter the sentence conferring 'exclusive jurisdiction' on the CFTC, § 2(a)(1)(A) provides that '*[e]xcept as hereinabove provided*, nothing contained in this section shall … supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States *or any State*.'" Pet.App.28a (omission and second alteration in original) (quoting 7 U.S.C. § 2(a)(1)(A)). The Ninth Circuit explained that "[i]f the exclusive jurisdiction provision was not intended to have preemptive effect, the '[e]xcept as hereinabove provided' clause would be superfluous." Pet.App.28a (second alteration in original).

The Ninth Circuit parted ways from the Third Circuit, however, in holding that sports-related event contracts are not swaps—eschewing what it called the Third Circuit's "plain-language" approach. Pet.App.30a-31a. The Ninth Circuit questioned whether outcomes of sporting events are themselves "events." Pet.App.31a. And, expressly disagreeing with the Third Circuit, the Ninth Circuit held that the outcomes of sporting events are not "associated with a potential financial, economic, or commercial consequence" because the consequences of sporting events are not "inherently associated" with such events. Pet.App.38a-39a (citations omitted).

3. The Sixth Circuit preliminarily addressed the question presented in April 2026 when it denied a motion by Kalshi to stay an adverse decision by the U.S. District Court for the Southern District of Ohio pending appeal.[4] *See Schuler*, 2026 WL 1295806. That preliminary decision, too, diverges from both the Third and Ninth Circuits' approaches.

The Sixth Circuit noted that the then-existing "split" in the lower courts "leaves no doubt that Kalshi has raised serious questions on the merits." *Id.* at *3. The Sixth Circuit assumed that sports-related event contracts are "swaps" under the CEA. *Id.* But the court found the preemption arguments "largely in equipoise (if not favoring Ohio)" and thus denied a stay. *Id.* According to the Sixth Circuit, Section 2(a)(1)(A) "would represent an unusual express-preemption provision" because it does not use words like "preempt" or "supersede." *Id.* at *4. The court further invoked the Act's savings clauses and other preemption provisions as evidence that Section 2(a)(1)(A) is not an express-preemption provision. *Id.*

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[4] The Tenth Circuit recently denied a similar motion by Kalshi to stay an adverse decision by the U.S. District Court for the District of Utah pending appeal, but did not provide any reasoning on the question presented in its order. *See* Order, *KalshiEX LLC v. Cox*, No. 26-4100 (10th Cir. Sep. 8, 2026), Dkt. 19.

II. The Question Presented Is Important and Squarely Presented, but Resolution Should Wait

1. The question presented is important. In 2025, the trading volume on CFTC-registered prediction markets totaled more than $25 billion. 91 Fed. Reg. at 35807. That amount has only grown since then. The question whether States can apply their gaming laws to this multi-billion-dollar industry is important to the industry, consumers, the CFTC, and state regulators.

Many courts are currently deciding whether sports-related event contracts (and other event contracts) qualify as "swaps" and whether the CEA preempts state regulation of such contracts. The Ninth Circuit (where an estimated 20% of the Nation's population resides)[5] has now split from the Third Circuit, and district courts in other circuits have reached different answers.[6]

The question presented has unleashed a tidal wave of litigation in the lower courts. As noted above, more than twenty States (and one city) have threatened or commenced enforcement actions against DCMs or FCMs in

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[5] *See* U.S. Census Bureau, *Table 2. Resident Population for the 50 States, the District of Columbia, and Puerto Rico: 2020 Census* (2020).

[6] *Compare, e.g.*, *Minnesota*, 2026 WL 2150211, at *9 (finding preemption); *KalshiEX LLC v. Orgel*, 2026 WL 474869, at *7 (M.D. Tenn. Feb. 19, 2026) (same), *appeal filed*, No. 26-5235 (6th Cir.), *with, e.g.*, *KalshiEx LLC v. Cox*, 2026 WL 2241564, at *7-11 (D. Utah Aug. 4, 2026) (rejecting preemption), *appeal filed*, No. 26-4100 (10th Cir.); *Robinhood Derivatives, LLC v. Nessel*, 2026 WL 2454883, at *2-13 (W.D. Mich. June 17, 2026) (same), *appeal filed*, No. 26-1542 (6th Cir.); *KalshiEX, LLC v. Schuler*, 2026 WL 657004, at *4-10 (S.D. Ohio Mar. 9, 2026) (same), *appeal filed*, No. 26-3196 (6th Cir.).

connection with sports-related event contracts.[7] Enforcement proceedings are pending in at least twelve States.[8] DCMs and FCMs, in turn, have brought more than thirty federal-court actions seeking to enjoin application of state law to sports-related event contracts traded on DCMs.[9] Robinhood is the subject of two enforcement proceedings,[10] and has commenced five lawsuits, including this one.[11] For its part, the CFTC has commenced nine lawsuits seeking to enjoin application of state law to event contracts traded on DCMs. *See supra* p. 9 n.1. A large number of private-plaintiff lawsuits also have been filed

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[7] *See, e.g.*, *City of Baltimore ex rel. Thompson v. KalshiEX LLC*, No. 26-cv-03217 (D. Md.) (enforcement action); Letter from John A. Martin, Secretary, Md. Lottery & Gaming Ctrl. Comm'n, to KalshiEX, LLC (Apr. 7, 2025), https://www.mdgaming.com/wp-content/uploads/2025/04/Kalshi-4-7-25.pdf.

[8] *See, e.g.*, *Commonwealth v. KalshiEX LLC*, No. 2854-CV-02525 (Mass. Super. Ct.), *appeal filed*, No. SJC-13906 (Mass.); *Nevada v. Coinbase Fin. Mkts, Inc.*, No. 26-OC-30-IB (Nev. Dist. Ct.).

[9] *See, e.g.*, *Robinhood Derivatives, LLC v. Campbell*, No. 25-cv-12578 (D. Mass.), *appeal filed*, No. 26-1247 (1st Cir.); *QCX LLC d/b/a Polymarket US v. Nessel*, No. 26-cv-710 (W.D. Mich.), *appeal filed*, No. 26-1552 (6th Cir.).

[10] *See Wisconsin v. Kalshi Inc.*, No. 26-cv-00378 (W.D. Wis.); *Kentucky v. KalshiEX LLC*, No. 26-cv-48 (E.D. Ky.).

[11] *See Campbell*, No. 25-cv-12578; *Robinhood Derivatives, LLC v. Nessel*, No. 26-cv-730 (W.D. Mich.), *appeal filed*, No. 26-1542 (6th Cir.); *Robinhood Derivatives, LLC v. Flaherty*, No. 25-cv-14723 (D.N.J.); *Robinhood Derivatives, LLC v. Griffin*, No. 26-cv-5311 (W.D. Wash.).

against DCMs and FCMs.[12] Appeals involving the question presented are pending in six circuits and one state supreme court.[13]

Resolution of the question presented also has consequences for the application of state law to other event contracts traded on DCMs, such as election-related contracts. *See supra* p. 15. As the CFTC has observed, market participants trade on DCMs event contracts tied to a wide variety of events, ranging from "macroeconomics, politics, weather, and climate conditions, to cultural trends." 91 Fed. Reg. at 35807 (footnote omitted). For example, one might purchase a contract tied to whether humans will colonize Mars before 2050; whether the FDA will approve a cure for Type 1 diabetes before 2033; whether Democrats will regain control of Congress in the midterms; whether the United States will take back the Panama Canal; whether another country will leave OPEC this year; and whether the Federal Reserve will have an emergency meeting in 2026.

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[12] *See, e.g.*, *Ohio Gambling Recovery LLC v. Kalshi, Inc.*, No. 2025 CV 01517 (Ohio Ct. C.P.).

[13] *See KalshiEX LLC v. Williams*, No. 26-1835 (2d Cir.); *KalshiEX v. Cafferelli*, No. 26-2239 (2d Cir.); *Coinbase Fin. Mkts., Inc. v. Tong*, No. 26-2297 (2d Cir.); *KalshiEX LLC v. Martin*, No. 25-1892 (4th Cir.); *Robinhood Derivatives, LLC v. Nessel*, No. 26-1542 (6th Cir.); *QCX, LLC dba Polymarket US v. Nessel*, No. 26-1552 (6th Cir.); *KalshiEX LLC v. Schuler*, No. 26-3196 (6th Cir.); *KalshiEX LLC v. Orgel*, No. 26-5235 (6th Cir.); *United States v. Wisconsin*, Nos. 26-2636, 26-2675, 26-2696 (7th Cir.); *KalshiEX LLC v. Johnson*, No. 26-2978 (9th Cir.); *CFTC v. Johnson*, No. 26-4281 (9th Cir.); *KalshiEX LLC v. Cox*, No. 26-4100 (10th Cir.); *Massachusetts v. KalshiEX LLC*, SJC-13906 (Mass.).

Trading of these and other contracts on DCMs serves a core purpose of the CEA: dissemination of "pricing information," 7 U.S.C. § 5(a), which conveys the market's "perceptions about the event's likelihood," *Flaherty*, 172 F.4th at 225 (citation omitted). Seventy percent of visitors to Kalshi's website use it to "view forecasts" of future events without trading.[14] Whether these non-sports-related event contracts are swaps under the decision below, which does not articulate a clear test—and thus whether States may ban these contracts too—is anyone's guess.

The CFTC's forthcoming rule, *see supra* p. 9, will provide significant clarity to the market and state regulators regarding the CFTC's understanding of "swaps" and the kinds of event contracts that the CFTC views as contrary to the public interest under the Special Rule. As noted above, there is reason to think that one member of the Ninth Circuit panel that decided this case might have decided the case differently had the proposed rule been in effect. *See supra* pp. 15-16. The Court could benefit from waiting for the CFTC to promulgate its rule before granting certiorari to decide this case.

2. That said, if the Court is inclined to grant certiorari now, this case squarely presents this question. The Ninth Circuit decided the preemption question on the merits, holding that "the district court did not err in its interpretation of the definition of swap." Pet.App.54a. And the court expressly acknowledged that its holding on the likelihood of success on the merits drove its analysis of the remaining preliminary-injunction factors. Pet.App.53a. The court then expressly "[i]ncorporate[d]" its reasoning

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[14] *FOX to Integrate Kalshi Forecasts Across FOX News Media and FOX One Platforms*, Reuters (Apr. 7, 2026), https://bit.ly/4eCXACL.

in Kalshi's appeal in its order disposing of Robinhood's appeal. Pet.App.2a.

Accordingly, if the Court grants New Jersey's petition now from the Third Circuit's decision in *Flaherty* or grants another petition presenting this question, it should also grant this petition without waiting for the CFTC's rulemaking. The Third Circuit decided *Flaherty* on field and conflict preemption grounds. Here, Robinhood and the other plaintiffs argued express preemption (in addition to field and conflict preemption), and the Ninth Circuit agreed that Section 2(a)(1)(A) of the CEA is an express preemption provision. Only the Ninth Circuit case presents a complete array of preemption arguments.

Robinhood's petition presents an optimal vehicle for resolution of the question presented if the Court is inclined to grant certiorari now. Robinhood preserved the relevant arguments below. Robinhood—unlike Kalshi and Crypto.com—is an FCM, not a DCM, meaning that Robinhood facilitates trading by its customers on designated contract markets without listing the contracts itself. If the Court grants a petition from a case involving a DCM, it also should grant Robinhood's petition to have the broadest possible range of interests, arguments, and market participants before it.

III. The Decision Below Is Wrong

The Ninth Circuit erred in holding that the CEA does not preempt application of state gaming laws to sports-related event contracts traded on DCMs.

1. As an initial matter, the Ninth Circuit correctly held that Section 2(a)(1)(A) expressly "preempts state regulation of swaps that are 'traded or executed' on a DCM." Pet.App.27a. Section 2(a)(1)(A) vests the CFTC with "exclusive jurisdiction … with respect to accounts,

agreements …, and transactions involving swaps or contracts of sale of a commodity for future delivery" that are "traded or executed on a contract market designated pursuant to [the Act]." 7 U.S.C. § 2(a)(1)(A). "[T]he plain meaning of 'exclusive'" "necessarily denies jurisdiction" to all other entities. *Mississippi v. Louisiana*, 506 U.S. 73, 77-78 (1992) (discussing 28 U.S.C. § 1251(a)). Thus, when statutes grant a federal agency "'exclusive'" "'jurisdiction,'" "the matters regulated by the Federal Act cannot be regulated by the States." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 233-34 (1947) (quoting 7 U.S.C. § 269 (1940)).

As the Ninth Circuit understood, Pet.App.28a, the savings clause in the next sentence of Section 2(a)(1)(A) reinforces this conclusion. That clause provides that *"[e]xcept as hereinabove provided*, nothing contained in this section shall … supersede or limit the jurisdiction at any time conferred on … regulatory authorities under the laws of the United States or of any State." 7 U.S.C. § 2(a)(1)(A) (emphasis added). The "hereinabove" clause refers to the "exclusive jurisdiction" sentence, confirming that the Act "supersede[s]" (*i.e.*, preempts) matters within Section 2(a)'s grant of "exclusive jurisdiction." *Id.*

Although the Sixth Circuit in its preliminary decision found Section 2(a)(1)(A)'s language "unusual" for a preemption provision, *see supra* p. 19, the CEA's backdrop explains why Congress chose that language. In 1947, this Court held that a grant of "exclusive" "jurisdiction" under the Warehouse Act preempted state law. *See Santa Fe Elevator*, 331 U.S. at 233-36. On the same day, the Court relied on that decision in concluding that the original CEA did not preempt state law because it lacked a similar "declaration" that its "federal scheme" for "trading on contract markets [wa]s exclusive of state regulation." *Rice*, 331 U.S. at 253. Nearly three decades later, Congress desired to bring "all futures trading … under a single regulatory umbrella." H.R. Rep. No. 93-975, at 41-42 (1974). It is hardly a coincidence that Congress chose the "exclusive" "declaration" that this Court held in *Rice* was missing in the pre-1974 CEA.

2. The Ninth Circuit erred, however, in holding that sports-related event contracts are not swaps.

a. The CEA's text and structure demonstrate that sports-related event contracts are swaps. The statute contains a six-part, disjunctive definition of "swap." 7 U.S.C. § 1a(47)(A). Under subparagraph (ii), a swap is "any agreement, contract, or transaction … that provides for any purchase, sale, payment, or delivery … that is 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." *Id.* § 1a(47)(A)(ii). That broad language readily covers all manner of event contracts.

First, the opening language—"any agreement … for any … payment"—admits of no exceptions.

Second, the payment must be dependent on "the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency." An "event" is "something that happens." *Event*, Merriam-Webster's Collegiate Dictionary (11th ed. 2009). A "contingency" is "something liable to happen as an adjunct to or result of something else"—in other words, a possible future event. *Contingency*, Merriam-Webster's Collegiate Dictionary (11th ed. 2009). An occurrence is "something that occurs." *Occurrence*, Merriam-Webster's Collegiate Dictionary (11th ed. 2009).

Congress thus broadly defined swaps as agreements to make payments tied to the happening ("occurrence" or "nonoccurrence") of something that happens ("event") or something liable to happen ("contingency"). And Congress also covered agreements to make payments tied to "the extent of" the happening of something that happens. "Extent" means "the point, degree, or limit to which something extends." *Extent*, Merriam-Webster's Collegiate Dictionary (11th ed. 2009).

Sporting events readily qualify as events. The World Cup and the NBA championship are events. So too, the outcomes of sporting events are "something that happens" or the "degree" of the occurrence of "something that happens." The Seattle Seahawks' 2026 Super Bowl victory was itself an event, and it produced another event: a Super Bowl parade in downtown Seattle. Whether it took the Knicks four, five, six, or seven games to win the NBA Championship determined the "extent" of the occurrence of the event. A sporting event or its outcome may also be a "contingency." New York City's co-hosting of the NBA Championship was contingent on the Knicks winning the Eastern Conference Finals.

Third, the event or contingency must be "associated with a potential financial, economic, or commercial consequence." 7 U.S.C. § 1a(47)(A)(ii). "Associated" means "connect[ed] or join[ed] together." *Associate*, The American Heritage Dictionary of the English Language (4th ed. 2006). "Potential" means "existing in possibility." *Potential*, Merriam-Webster's Collegiate Dictionary (11th ed. 2009). A consequence, in turn, is anything "produced by a cause or necessarily following from a set of conditions." *Consequence*, Merriam-Webster's Collegiate Dictionary (11th ed. 2009).

Consequences follow from sporting events and "certainly can be associated" with them. *Flaherty*, 172 F.4th at 227-28. Sports teams are "economic enterprises … that generate economic activity and materially affect both regional and national markets." 91 Fed. Reg. at 35830. Sporting events and their outcomes produce a wide range of financial and economic consequences, such as merchandise sales, hotel stays, ticket sales, and advertising revenue.

The CEA's Special Rule dispels any doubt that sports-related event contracts constitute "swaps." Congress added the "swap" definition to the CEA simultaneously with the "Special rule for review and approval of event contracts and swaps contracts." 7 U.S.C. § 7a-2(c)(5)(C); *see* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, 1736-37 (2010). This Rule applies "[i]n connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency … by a" DCM. 7 U.S.C. § 7a-2(c)(5)(C)(i). Congress authorized the CFTC to ban listings involving one of seven enumerated activities, including "terrorism," "assassination," "war," and "gaming," if it determines they are "contrary to the public interest." *Id.* § 7a-2(c)(5)(C)(i), (C)(i)(II)-(V). If contracts involving "gaming" could never be swaps, this provision giving the CFTC *discretion* to ban such contracts makes no sense.

b. The Ninth Circuit erred in rejecting this plain-language interpretation of "swap." The court of appeals doubted that "outcomes" of sporting events are themselves "events." *See* Pet.App.31a. But any line between "events" and "outcomes" would be arbitrary, as "outcomes" of events could be rephrased as "events" themselves. For example, to reprise the examples above, whether the Seattle Seahawks will win the Super Bowl could be rephrased as whether Seattle will host a Super Bowl victory parade (undoubtedly an event). Whether the Knicks will win the Eastern Conference Finals could be rephrased as whether New York City will co-host the NBA finals (also an event). The Ninth Circuit grappled with none of this.

The Ninth Circuit also rejected the plain-language interpretation of "associated with," reasoning that the financial or economic consequence "must be inherently associated" with the event. Pet.App.38a-39a (citation omitted). The word "inherently," however, is not in the statute. Consequences are not "inherent" to events; they *follow* events. And the statute sweeps broadly to cover even "potential" consequences—which are the opposite of inherent.

An "inherent" limitation, like an "outcome" limitation, is also subject to endless manipulation. Contracts can be reframed to attach inherent financial features. For example, a contract asking whether the Washington Capitals will compete for the Stanley Cup this season could be reframed to turn on whether Capital One Arena will sell tickets for the Stanley Cup. Moreover, as even the Ninth Circuit acknowledged, other subparagraphs of the "swap" definition do not involve inherent financial consequences; for example, "weather" is not inherently financial. *See* Pet.App.39a; 7 U.S.C. § 1a(47)(A)(iii)(XVII).

The Ninth Circuit expressed concern that ruling for the plaintiffs would mean that "swaps" also would include "other sports bets such that anyone who places an off-DCM sports bet that fits within § 1a(47)(A)(ii)'s definition of a swap would be violating the CEA," Pet.App.37a, which requires swaps to be traded on DCMs, *see* 7 U.S.C.

§ 2(e). The court failed to appreciate, however, that its interpretation produces the same quandary. "[W]eather swaps" are swaps. *See* 7 U.S.C. § 1a(47)(A)(iii)(XVII). If two brothers bet on the weather, they have entered an agreement to make a payment contingent on the weather—which, on the Ninth Circuit's view, would need to be traded on a DCM.

The reason neither weather bets nor ordinary sports bets are "swaps"—under anyone's interpretation of that term—is that, as the CFTC and SEC have explained, "consumer and commercial transactions" are not swaps if "[t]hey are not traded on an organized market or over-the-counter." Further Definition of "Swap," 77 Fed. Reg. 48208, 48247 (Aug. 13, 2012); *see id.* at 48217 (swaps "are traded on organized markets and over the counter"); *id.* at 48247-48 (identifying tradability as "key component[]" in distinguishing everyday "agreements, contracts, and transactions from swaps and security-based swaps"). The notion that swaps (and futures) must be tradeable runs throughout the CEA. The CFTC's exclusive jurisdiction extends to "transactions involving swaps … traded or executed on a" DCM. 7 U.S.C. § 2(a)(1)(A) (emphasis added). Congress addressed this for other types of contracts, making clear that insurance contracts are not swaps, *id.* § 16(h)(1)-(2), even though insurance contracts provide for payment upon "the occurrence … of an event," *id.* § 1a(47)(A)(ii).

The court of appeals further erred in dismissing the relevance of the Special Rule. *See* Pet.App.41a-43a. According to the court, "[t]he Special Rule did not give the CFTC any more preemptive authority over gaming than it gave the CFTC authority over terrorism or assassination." Pet.App.42a. But, of course, the Rule does not give the CFTC authority over gaming or assassinations themselves. Rather, by its plain text, it authorizes the CFTC to decide whether to disallow event *contracts* tied to gaming or assassinations. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i). As Judge Lee recognized in his concurring opinion, the Rule assumes that such contracts otherwise fall within the CFTC's jurisdiction. *See* Pet.App.56a. The Ninth Circuit's reading of the Special Rule improperly gives it no work to do.

The Ninth Circuit's reliance on the major questions doctrine to accept Nevada's interpretation of the statute is backwards. Congress imbued the definition of "swap" with breadth to ensure the broadest possible coverage of the CFTC's jurisdiction. Nevada's argument reads extra-textual exceptions into the statute. Had Congress intended Nevada's limitation, it would have said so—as it did in ten other express exclusions to the "swap" definition. *See supra* p. 7. The absence of a gambling exception is particularly glaring in light of the contemporaneous Special Rule. Congress *expressly* empowered the CFTC in the Special Rule to determine which kinds of "gaming" event contracts should be allowed on DCMs. This is not a case where an agency reads "oblique or elliptical language to empower [the] agency to make a radical or fundamental change to a statutory scheme." *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (citation omitted).

The Ninth Circuit appears to have applied the major questions doctrine to avoid what it viewed as federal intrusion in the field of "sports betting—an area that has long been regulated by the States and Tribes." Pet.App.45a. Again, that reasoning is backwards. The federal government has regulated the derivatives markets for more than a century. *See supra* pp. 5-6. Congress viewed the derivatives markets as "affected with a national public interest," and aimed "to promote responsible innovation" and to provide a "means for … discovering prices." 7 U.S.C. § 5. Even as States for decades resisted all manner of derivatives trading and invoked their police powers to regulate it as gambling, *see supra* p. 5, Congress gave "exclusive jurisdiction" to the CFTC to regulate derivatives. *See supra* p. 6. This litigation is just the latest example of state hostility to derivatives markets.

c. Sports-related event contracts also satisfy another (equally expansive) definition of "swap" because they are "commonly known to the trade as a swap." 7 U.S.C. § 1a(47)(A)(iv). According to the CFTC, "[o]ver the last two years, DCMs have self-certified *hundreds* of sports event contracts as swaps." CFTC Amicus Br. 24, *KalshiEX, LLC v. Schuler*, No. 26-3196 (6th Cir. June 24, 2026), Dkt. 68. Such broad agreement among DCMs evidences the trade's acceptance of sports-related event contracts as swaps.

3. Sports-related event contracts independently fall within the CEA's express-preemption provision because they are "option" agreements for future sale of an "excluded commodity." Section 2(a)(1)(A) gives the CFTC "exclusive jurisdiction" not only over swap transactions but also over "agreements" (including "options") and "transactions involving … contracts of sale of a commodity for future delivery." 7 U.S.C. § 2(a)(1)(A). "An event contract is … a binary option." CFTC Amicus Br. 26, C.A. Dkt. 48. Commodities include what the statute (counterintuitively) calls "excluded commodities." *See United States v. Wilkinson*, 986 F.3d 740, 745 (7th Cir. 2021). Excluded commodities include "an occurrence, extent of an occurrence, or contingency" that is "beyond the control of

the parties to the relevant contract, agreement, or transaction" and "associated with a financial, commercial, or economic consequence." 7 U.S.C. § 1a(19)(iv). Just as sports-related event contracts satisfy these requirements under the definition of "swap," they do so here as well. A cash settlement is a form of future delivery, *see Chi. Mercantile Exch. v. SEC*, 883 F.2d 537, 542 (7th Cir. 1989), so agreements to pay cash upon the future occurrence of an "excluded commodity" fall within the CFTC's exclusive jurisdiction.

4. Alternatively, the CEA preempts state regulation of sports-related event contracts as a matter of field or obstacle preemption, as the Third Circuit held. The Ninth Circuit erred in holding otherwise.

Congress' intent to preempt the field is confirmed by the "comprehensive regulatory structure" the CEA imposes over the "futures trading complex." *Curran*, 456 U.S. at 356 (citation omitted). The CEA empowers only the CFTC to review and delist swaps on DCMs. *See* 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. §§ 40.2(c), 40.11(c). And the Special Rule charges the CFTC, not States, with deciding whether "event contracts" involving "gaming" or conduct contrary to state law should not be listed as "contrary to the public interest." 7 U.S.C. § 7a-2(c)(5)(C). Courts have long understood the CEA to preempt the field of futures trading on DCMs. *See Flaherty*, 172 F.4th at 229 (collecting cases).

The Ninth Circuit recognized that the CEA preempts the field of swap trading, observing that "a state would be both field and expressly preempted from regulating weather or interest rate swaps." Pet.App.51a. It rejected field preemption as to sports-related event contracts because it views such event contracts as "gambling" and not "swaps." Pet.App.51a-52a. That holding was error for the reasons already discussed.

At a minimum, conflict preemption applies. The CEA's purpose was to bring derivatives "markets under a uniform set of regulations." *Am. Agric. Movement, Inc. v. Bd. of Trade of City of Chi.*, 977 F.2d 1147, 1156 (7th Cir. 1992). Accordingly, "[w]hen application of state law would directly affect trading on or the operation of" a DCM, it poses "an obstacle to the accomplishment and execution of [Congress'] full purposes and objectives" in enacting the CEA "and hence is preempted." *Id.* at 1156-57 (citation omitted).

Moreover, allowing States to ban sports-related event contracts and to subject FCMs and DCMs to civil and criminal penalties would also produce a "conflict" with Congress' chosen "method of enforcement." *See Arizona v. United States*, 567 U.S. 387, 406 (2012). The Special Rule gives the CFTC, not States, authority to decide whether to prohibit trading of event contracts involving "gaming" or "activity" barred by "State law." 7 U.S.C. § 7a-2(c)(5)(C). In rejecting conflict preemption, the Ninth Circuit invoked the Special Rule as evidence "that state law and the CEA can coexist." Pet.App.50a. But, as just discussed, Congress gave the decision whether to ban swaps that violate state law to the CFTC. The judgment below unlawfully gives that decision to the States.

CONCLUSION

If the Court grants a writ of certiorari in another case to decide the question presented, it also should grant this petition.

Respectfully submitted,

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