
**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

DAR No. _____
(Appeals Court No. 2026-P-244)

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff-Appellee,

v.

KALSHIEX, LLC,
Defendant-Appellant.

On Application for Direct Appellate Review of an
Order of the Suffolk County Superior Court

**COMMONWEALTH'S UNOPPOSED
APPLICATION FOR DIRECT APPELLATE REVIEW**

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

M. Patrick Moore (BBO #670323)
First Assistant Attorney General

Jared Rinehimer (BBO #684701)
*Chief, Privacy & Responsible
Technology Division*

Gerard J. Cedrone (BBO #699674)
Deputy State Solicitor

Louisa Castrucci (BBO #692208)

Alda Chan (BBO #705204)

Frances Cohen (BBO #542811)

Joshua R. Edlin (BBO #715110)

Assistant Attorneys General

One Ashburton Place

Boston, MA 02108

(617) 963-2282

gerard.cedrone@mass.gov

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REQUEST FOR DIRECT APPELLATE REVIEW

Chapter 23N of the General Laws allows a business to offer sports wagers in Massachusetts if it obtains a license from the Commonwealth and follows various rules designed to protect the public. Defendant KalshiEX LLC (Kalshi) flouts that statute. Kalshi proclaims itself the “the world’s largest prediction market,” with an online platform that allows users to bet, in Kalshi’s words, “on anything.”¹ Since last year, trading on Kalshi’s platform has centered on sports-related questions like who will win the next Bruins game or how many points the Celtics will score in their next match-up. Kalshi does not dispute that these wagers fall within the scope of Chapter 23N, and that it fails to comply with the statute’s requirements. But Kalshi claims that federal law shields its activities. The Superior Court rejected that contention, barring Kalshi from taking more unlicensed sports wagers while this litigation proceeds—though a single justice of the Appeals Court has stayed that injunction pending Kalshi’s appeal. This Court should grant direct appellate review and affirm.

This case meets multiple criteria for direct appellate review. The legal issue at the heart of this case—whether a federal statute governing

¹ Kalshi, *Kalshi Reaches \$11 Billion Valuation as App Takes Over America*, <https://perma.cc/3PR9-BE3R> (Dec. 2, 2025); Kalshi, *Home Page*, <https://Kalshi.com> (slogan in search bar) (last accessed Feb. 27, 2026).

grain futures and credit-default swaps silently preempts every state’s traditional authority over sports gambling—is a “question[] of first impression” in this jurisdiction. Mass. R. App. P. 11(a)(1). It is, moreover, an issue that Kalshi is currently pressing in courts around the country. *See infra*, at 16-17 & note 9. A decision from this Court will provide needed guidance on this important legal question. Direct appellate review is also warranted because of the “public interest[s]” at stake. Mass. R. App. P. 11(a)(3). Every day that Kalshi continues to operate unlicensed in the Commonwealth, it does so without the safeguards and state supervision that Chapter 23N requires. Kalshi allows 18-, 19-, and 20-year-olds to place bets on its platform. *Contra* G.L. c. 23N, §13(d)(i). Kalshi operates without robust insider-trading restrictions and other protections. *Contra id.* §11(a). And Kalshi pockets substantial sums that properly licensed entities like FanDuel and DraftKings pay in excise taxes. *Contra id.* §14(a). These and other violations of state law should not be allowed to continue without this Court’s prompt review.

Accordingly, the Court should grant this application. To ensure review before the summer recess, the Court should maintain the briefing schedule agreed upon by the parties and adopted by the Appeals Court²

² Kalshi’s principal brief is due by March 18; the Commonwealth’s brief is due by April 17; and Kalshi’s reply, if any, is due by April 27. *See* Order of Feb. 27, 2026, No. 2026-P-244.

and set this case for argument during the Court’s May sitting. Kalshi has stated that does not oppose this relief—that is, granting direct appellate review, maintaining the existing briefing schedule, and setting the case for argument in May.

STATEMENT OF PRIOR PROCEEDINGS

The Commonwealth commenced this enforcement action in the Superior Court on September 12, 2025, and sought a preliminary injunction to bar Kalshi’s violation of Chapter 23N through its ongoing sports-betting operations in Massachusetts.³ Kalshi opposed the injunction and cross-moved to dismiss on November 18. On the merits, Kalshi’s arguments turned exclusively on its preemption defense. *See* Appendix (App.), *infra*, at 147-148. After the motions were fully briefed, the court (Barry-Smith, J.) held a hearing on December 9.

On January 20, 2026, the Superior Court granted the Commonwealth’s motion for a preliminary injunction and denied Kalshi’s motion to dismiss. Applying “the presumption that Congress did not intend to displace state law,” App. 216, the Superior Court explained that, even if the applicable federal statute “evidences an intent to preempt *some* state law,” the statute’s preemptive reach does not “extend[] as far as state

³ At the Commonwealth’s request, the Superior Court expedited briefing and set a hearing for September, but Kalshi’s unsuccessful attempt to remove the case to federal court delayed the proceedings. *See* App. 33-35.

gaming laws.” App. 218. The court also found that the public interest supported entry of an injunction. App. 223-224. As the court explained, Chapter 23N reflects the Legislature’s judgment that legalized sports wagering requires strict guardrails, and “[t]here is no real question” that those guardrails “serve both public health and safety.” App. 223. And “any hardship [that Kalshi might] face[]” in complying with the injunction was “of its own making”; Kalshi “well understood that its business model . . . came into direct conflict” with state law, and it “chose to take that risk head-on.” App. 224.

After receiving further submissions from the parties on the scope of the injunction, the Superior Court formally entered the injunction on February 6. In several ways, the court’s order accounted for the burdens that Kalshi claimed it would face from complying with Chapter 23N. For example, the Superior Court applied the injunction only to future sports wagers, and it gave Kalshi 30 days to come into compliance. App. 226; *see* App. 230. The court also allowed Kalshi to continue collecting fees arising out of wagers that predate the injunction. App. 231 n. 2. The court denied Kalshi’s request for a stay the same day. App. 228-229.

Kalshi filed noticed its appeal the same day, *see* App. 37, and sought a stay pursuant to Mass. R. App. P. 6 on February 9, *see* App. 233. On February 17, before receiving the Commonwealth’s opposition, a single

justice of the Appeals Court (Singh, J.) stayed the Superior Court’s preliminary injunction “pending further order of [that] court or a single justice thereof.” App. 234. The single justice’s brief order stated that it was entered “[w]ithout suggesting any view on the merits or the disposition of this litigation.” *Id.*

STATEMENT OF THE FACTS

I. Chapter 23N and State Regulation of Gambling

Although the regulation of gambling is “within the core [of a state’s] police power,” *Abdow v. Attorney General*, 468 Mass. 478, 489 (2014), the federal Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. §3702, long barred states from authorizing most sports wagering. In 2018, however, the U.S. Supreme Court invalidated PASPA in relevant part. *See Murphy v. NCAA*, 584 U.S. 453 (2018). Since then, more than three dozen states—including Massachusetts—have authorized sports wagering in some form.

To operate in Massachusetts, a sports-wagering outfit must obtain a license from the Massachusetts Gaming Commission. G.L. c. 23N, §5. Before issuing a license, the commission conducts a rigorous investigation of an applicant’s “suitability”—including the applicant’s past business practices, integrity, and financial condition. *Id.* §6(d). Successful applicants must pay various fees and assessments, including a \$5 million

licensing fee (due up front and every five years thereafter) and a 20% excise on revenues from online wagers. *Id.* §§6(f), 14.

Chapter 23N and its implementing regulations place several important limitations on the scope of a licensee’s privileges. For example, licensees may not accept credit-card wagers or wagers from people under 21. *Id.* §13(d)(i)-(ii). Licensees must take steps to stop insider betting. *Id.* §11(a). And licensees must implement measures to prevent problem gambling, such as allowing users to set deposit limits and barring access and refraining from advertising to anyone enrolled in the commission’s “Voluntary Self-Exclusion Program.” *Id.* §4(c)(ii)(B), (d)(2); *see also* 205 C.M.R. §§248.16, 256.07.

All of this is big business. In 2024 alone, licensed operators settled \$7.4 billion in wagers in Massachusetts, yielding \$661 million in gross sports-wagering revenue. App. 108 (¶6).

II. Kalshi’s Sports-Wagering Business

Kalshi allows customers to place bets on its website and mobile app by purchasing what it calls “event contracts.” *See* App. 49 (¶49). Each event contract is structured as a binary, yes-or-no option (*e.g.*, will Jessie Buckley win the best actress Oscar?).⁴ Bettors purchase one or more

⁴ Kalshi, *Oscar for Best Actress?*, <https://Kalshi.com/markets/kxoscaractr/oscar-for-best-actress/kxoscaractr-26> (last accessed Feb. 27, 2026).

shares in the “Yes” or “No” position; they receive a fixed, \$1-per-share payout if they are correct, and nothing if they are not. App. 49 (¶50). The price of the Yes and No positions fluctuates in real time—from 1¢ to 99¢—until the event resolves. App. 49-50 (¶51). According to Kalshi, this dynamic pricing “correlates with the market’s perceived probability of a specific event occurring” in any given moment.⁵ In other words, as the perceived likelihood of a Yes outcome increases—*i.e.*, as more people have purchased the Yes option—the corresponding Yes contract price increases. App. 50 (¶53).⁶

Kalshi formally launched its platform in July 2021 with event contracts focused on topics like inflation, unemployment, and macroeconomic benchmarks. App. 52 (¶64). In October 2024, Kalshi expanded into political event contracts. *Id.* (¶65). Then, starting in January 2025, Kalshi began offering sports wagers on its platform—including in the Commonwealth. App. 158 (¶9). Initially limited to moneyline bets (*i.e.*,

⁵ Kalshi, *How Are Prices Determined?*, <https://perma.cc/592H-GX4J>.

⁶ Kalshi maintains that it is merely an exchange that “facilitates trades between different users on the platform,” rather than “a casino or sports pool” where participants bet against “the house.” App. 164-165 (¶¶35-36). Whether that characterization is factually accurate is currently being litigated around the country. *See, e.g.*, Complaint ¶¶41-42, *Josephson v. Kalshi, Inc.*, No. 26-cv-220 (N.D. Ill.) (Dkt. No. 1) (class-action complaint alleging Kalshi serves as the house); Complaint ¶¶52-65, *Pelayo v. Kalshi Inc.*, No. 25-cv-9913 (S.D.N.Y.) (Dkt. No. 1) (same).

bets on which team will win a game), Kalshi’s sports-related offerings expanded over the course of 2025 to include point-spread bets (*i.e.*, bets on whether a team will win or lose by a certain amount), over/under bets (*i.e.*, bets on whether a team’s score will be above or below a specific number), proposition bets (*i.e.*, bets on a specific eventuality in a game, like whether a given player will score a touchdown in the first half), and parlays (*i.e.*, bets on whether a combination of events will occur). App. 60-66 (¶¶83-104).

These sports-related offerings have quickly eclipsed Kalshi’s other business. Since Kalshi began listing sports wagers, the number of active monthly users on its platform has surged from 600,000 to 5.1 million.⁷ Revenues have exploded, too: Kalshi reportedly “increased its annualized trading volume from \$300 million to \$40-50 billion” between August and December of 2025, and sports-related wagers now make up 90% of its annualized estimated revenues.⁸ Figures like these “suggest that Kalshi makes a larger percentage of its money from sports than DraftKings or FanDuel—businesses that are almost synonymous with sports betting in

⁷ Grant Mitchel, *Kalshi, Prediction Markets Stealing Market Space from Top Sportsbooks*, Covers (Feb. 16, 2026), <https://perma.cc/8B35-PCJE>.

⁸ Timothy Keane et al., *Kalshi Posts Record Volumes as the Surging Online Sports Betting World Enters the New Year with a Bang*, Nat’l L. Rev. (Jan. 6, 2026), <https://perma.cc/4CHY-LZT7>; see Mitchel, *supra* note 7.

the U.S.” App. 42 (¶11) (citation omitted).

III. Kalshi’s Legal Theory and Resulting Litigation

Kalshi does not have (and has not sought) a license from the Commonwealth, and it does not pay the fees or taxes imposed by Chapter 23N. App. 107 (¶¶4-5); App. 110 (¶¶9-10). Instead, Kalshi claims that, because it is registered with the federal Commodity Futures Trading Commission (CFTC), the federal Commodity Exchange Act (CEA) preempts any state gaming laws that might apply.

In fact, the CEA has nothing to do with the regulation of sports wagering. Enacted in 1936, the CEA governs the trading of commodity futures contracts called derivatives. *See* Pub. L. No. 74-675, §3, 40 Stat. 1491, 1491. Congress established the CFTC in 1974 to oversee derivatives markets, *see* Pub. L. No. 93-463, 88 Stat. 1389, and it vested the agency with what the statute refers to as “exclusive jurisdiction” over specified transactions on registered exchanges, 7 U.S.C. §2(a)(1)(A).

As particularly relevant here, Congress amended the CEA in 2010 to cover “swaps”—that is, agreements between two parties to exchange financial obligations. *Id.* §1a(47); *see* Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Pub. L. No. 111-203, pt. II, 124 Stat. 1376, 1658-754; *see also generally* *Thrifty Oil Co. v. Bank of Am. NT&SA*, 322 F.3d 1039, 1043 (9th Cir. 2003) (explaining swaps). As a

result of these amendments, swaps must now be traded on CFTC-registered exchanges; under the amended statute, it is generally “unlawful for any person . . . to enter into a swap” otherwise. 7 U.S.C. §2(e). In making these changes, Congress sought to bring transparency to the opaque derivatives markets that precipitated the then-recent 2008 financial crisis. *See* Dodd-Frank preamble, 124 Stat. at 1376. Although Congress debated Dodd-Frank for the better part of a year—with widespread coverage in both the traditional and financial press—nothing in the contemporaneous record suggests that any member of Congress or the public thought adding “swaps” to the CEA would legalize sports betting nationwide or authorize the CFTC to displace states’ decisions about sports wagering.

Kalshi’s activities have drawn the attention of a bipartisan swath of state regulators. In the past year, at least ten states—including Arizona, Connecticut, Illinois, Maryland, Montana, Nevada, New Jersey, New York, Ohio, and Tennessee—have sent Kalshi cease-and-desist letters ordering it to stop offering sports wagers within their borders in violation of state law. Kalshi has responded by suing seven of those states, plus one other, Utah, that Kalshi believed would imminently seek to enforce state law against it. So far, two federal courts have preliminarily enjoined states from enforcing their gaming laws against Kalshi, while two others have rejected Kalshi’s legal theories and denied a preliminary

injunction.⁹ To date, no federal appellate court has spoken to these issues, though appeals in Kalshi’s lawsuits are currently pending before the Third, Fourth, and Ninth Circuits. *See supra*, note 9.

In contrast to these Kalshi-initiated lawsuits, this lawsuit was brought by the Commonwealth after discussions with Kalshi about its operations and legal theory. App. 128. At least one other state, Nevada, has also initiated an enforcement action against Kalshi for offering sports wagers in violation of state law.¹⁰

STATEMENT OF THE ISSUE

Kalshi’s docketing statement presents a single issue for appellate review: whether the CEA preempts Chapter 23N as applied to the sports-related contracts offered on Kalshi’s platform. App. 238. That issue was properly raised and preserved in the Superior Court.¹¹

⁹ *KalshiEX LLC v. Flaherty*, No. 1:25-cv-2152, 2025 WL 1218313 (D.N.J. April 28, 2025), *on appeal*, No. 25-1922 (3d Cir.) (granting P.I.); *KalshiEX LLC v. Orgel*, No. 3:26-cv-34, 2026 WL 474869 (M.D. Tenn Feb. 9, 2026) (granting P.I.); *KalshiEX LLC v. Hendrick*, No. 2:25-cv-575, 2025 WL 3286282 (D. Nev. Nov. 24, 2025), *on appeal*, No. 25-7516 (9th Cir.) (denying P.I.); *KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667 (D. Md. 2025), *on appeal*, No. 25-1892 (4th Cir.) (denying P.I.).

¹⁰ *Nevada v. KalshiEX LLC*, No. 260000050-1B (Nev. Dist. Ct. Dep’t I), *removed*, No. 2:26-cv-406 (D. Nev.).

¹¹ *See, e.g.*, App. 98-105, 186-202. Because this appeal arises out of the entry of a preliminary injunction, the question above will be decided through the prism of the likelihood-of-success standard. *See, e.g., Packaging Indus. Grp., Inc. v. Cheney*, 380 Mass. 609, 615-616 (1980).

ARGUMENT ON THE ISSUE

Kalshi argues that the CEA’s “exclusive jurisdiction” provision, §2(a)(1)(A), expressly preempts the field of trading on CFTC-registered exchanges. In the alternative, Kalshi maintains that the CEA impliedly preempts Chapter 23N because state oversight of sports wagering impedes congressional objectives. Neither contention is correct, and the Superior Court properly rejected them.

I. The CEA does not expressly preempt Chapter 23N.

A. The presumption against preemption and related clear-statement rules inform §2(a)(1)(A).

“[I]n *all* pre-emption cases,” the U.S. Supreme Court has held, courts must “start with the assumption that the historic police powers of the States were not [preempted] unless that was the clear and manifest purpose of Congress.” *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (emphasis added). That presumption applies here, because the regulation of sports gambling is indisputably “within the core [of a state’s] police power.” *Abdow*, 468 Mass. at 489. To prevail in its express field-preemption argument, therefore, Kalshi must show—as the Superior Court held (App. 216)—that Congress *unmistakably* displaced traditional state authority over gambling and sports wagering.

In the proceedings below, Kalshi insisted that this presumption does not apply “where, as here, a statute expressly preempts state law.”

App. 130. But Kalshi does not rely on one of the CEA’s express preemption clauses—such as 7 U.S.C. §16(e)(2), which expressly “supersede[s] and preempt[s] the application of any State or local law” on certain topics. Instead, Kalshi invokes §2(a)(1)(A), a provision that governs the scope of the CFTC’s “jurisdiction.” And even if that provision could be viewed as an express preemption clause, Kalshi is wrong that it is exempt from the presumption against preemption. As the Supreme Court has explained, courts “begin [their] analysis” with the presumption even “[w]hen addressing questions of express . . . pre-emption” *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008); *see also id.* (“When the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily accept the reading that disfavors pre-emption.” (quotation marks omitted)).

Two other doctrines applicable to the construction of federal statutes—the federalism canon and the major-questions doctrine—confirm that Kalshi must point to *clear* statutory text to support its express field-preemption argument. Under the federalism canon, a party claiming that Congress has “significantly alter[ed] the balance between federal and state power” must show that “Congress [has] enact[ed] exceedingly clear language” to that effect. *Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 764 (2021). And under the major-questions doctrine, a party asserting that Congress has delegated powers of “vast economic and political

significance” to a federal agency must point to “clear congressional authorization.” *West Virginia v. EPA*, 597 U.S. 697, 723-724 (2022). Both of these doctrines apply here, and for that reason, too, any analysis of §2(a)(1)(A) starts from “the presumption that Congress did not intend to displace state law.” App. 216; *see* App. 187-188.

B. Nothing in the text of §2(a)(1)(A) preempts states’ traditional power to regulate sports wagering.

As mentioned, Kalshi bases its preemption defense on §2(a)(1)(A), which, since 2010, has granted the CFTC “exclusive jurisdiction” over certain “transactions involving swaps.” That clause does not preempt—let alone clearly—Chapter 23N’s regulation of sports wagering.

First, the sports wagers offered on Kalshi’s platform are not “swaps” as that term is used in §2(a)(1)(A). The Dodd-Frank amendments defined a “swap” as a contract “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). As one court recently explained, that language refers to an “event or contingency [that] *itself* has some potential financial, economic, or commercial consequence”—not a sporting event with mere “downstream financial consequences such as parties extrinsic to the event betting on it.” *Hendrick*, 2025 WL 3286282, at *6 (emphasis added); *see also id.* at *7 n. 3 (recounting Kalshi’s admission

in federal court in 2024 that events like horse racing or boxing matches “have no independent significance; their outcomes carry no economic risks.”). And even if sports matchups were qualifying “events,” wagers on Kalshi’s platform do not turn on the “occurrence” or “nonoccurrence” of those events (that is, whether the match takes place), but instead depend on their *outcome*. *Id.*¹²

Second, even if Kalshi could show that sports bets are “swaps,” it still cannot establish that §2(a)(1)(A) “clear[ly] and manifest[ly]” preempts state gambling or sports-wagering laws. *Altria*, 555 U.S. at 77. The primary purpose of the CEA’s “exclusive jurisdiction” language is to delineate CFTC’s regulatory turf vis-à-vis other federal agencies (*see* App. 217-218)—not to preempt state law. Indeed, the only time §2(a)(1)(A) references state law is to *preserve* “the jurisdiction” that other regulators possess “under the laws of . . . any State.” That is not the kind of language Congress uses when it “intend[s] to displace traditional state police powers.” App. 218. And even if §2(a)(1)(A) can be read “to preempt *some* state law,” nothing in the text suggests that the provision “extends as far as state gaming laws.” App. 218. That should come as no surprise:

¹² The Superior Court “assume[d] without deciding that Kalshi’s event contracts are swaps,” App. 218, but this Court may affirm on any ground apparent in the record, *Gabbidon v. King*, 414 Mass. 685, 686 (1993). The fact that Kalshi’s offerings are not actually “swaps” supplies an additional reason why the Superior Court’s decision is correct.

Congress passed Dodd-Frank to curb the risky financial practices that led to the 2008 crisis, not to address sports wagering. *See supra*, at 16. Indeed, when Congress added “swaps” to the CEA in 2010, sports wagering was illegal in all but four states. *See Murphy*, 584 U.S. at 462.

Other parts of the CEA confirm that §2(a)(1)(A) does not interfere with state sports-wagering laws. Elsewhere in the statute—in provisions not relevant to this litigation—Congress expressly “supersede[d] and preempt[ed] the application of any State or local law” on certain subjects. 7 U.S.C. §§16(e)(2), 27f(b); *accord id.* §16(h). That language is telling: “Congress’ enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517 (1992); *see* App. 219-220 (citing *Martin*, 793 F. Supp. 3d. at 681). Equally tellingly, the CEA authorizes the CFTC to bar the listing of event contracts that involve “gaming” or activity that is “unlawful” under state law—and the CFTC has done just that. 7 U.S.C. §7a-2(c)(5)(C)(i)-(ii); 17 C.F.R. §40.11(a). “This language ‘reflects an affirmative intent to *preserve* state laws,” App. 219 (quoting *Martin*, 793 F. Supp. 3d at 680), not to displace them.

Other statutes provide still more evidence that §2(a)(1)(A) does not silently legalize nationwide sports betting. Throughout the U.S. Code, Congress has consistently used clear language when it wants to regulate

gambling or sports wagering. *E.g.*, 18 U.S.C. §1084(a) (regulating transmission of information related to “bets or wagers”); 28 U.S.C. §3702 (regulating “betting, gambling, or wagering” on sporting events); 31 U.S.C. §5363 (regulating “unlawful Internet gambling”). Kalshi’s view that §2(a)(1)(A) addressed gaming activity *sub silentio* is difficult to reconcile with these provisions. *See Martin*, 793 F. Supp. 3d at 683.

Indeed, the mismatch between the language of the CEA and Kalshi’s preemption theory is especially stark given Kalshi’s claim that §2(a)(1)(A) achieves *field* preemption, a potent form of preemption that exists only in “[r]are cases.” *Kansas v. Garcia*, 589 U.S. 191, 208 (2020). In evaluating a field-preemption defense, a court must carefully examine “the target at which the state law aims,” *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 385-388 (2015) (emphasis omitted), and ask whether Congress left “no room for supplementary state legislation,” *Garcia*, 589 U.S. at 208. For the reasons already explained, however, nothing in §2(a)(1)(A) evinces a congressional intent to completely occupy the field that Chapter 23N targets—namely, regulation of sports wagering. *See Am. Agric. Movement, Inc. v. Bd. of Trade*, 977 F.2d 1147, 1155 (7th Cir. 1992) (holding that Congress did not give §2(a)(1)(A) field-preemptive effect).

C. Kalshi’s arguments are inconsistent with the relevant history and context.

Text and structure are enough to reject Kalshi’s arguments, but its

reading of the CEA also conflicts with history and context.

First, Kalshi's interpretation is impossible to reconcile with the contemporaneous debate surrounding the Dodd-Frank amendments. As discussed, no one at the time of the extensive debates surrounding Dodd-Frank suggested that the statute would displace states' decisions about sports wagering. *See supra*, at 16. Kalshi's theory, in other words, requires the Court to believe that Congress legalized nationwide sports betting in 2010 *and no one noticed that fact until last year*. That is exceedingly unlikely. As the Supreme Court has explained, the "legalization of sports gambling is a controversial subject." *Murphy*, 584 U.S. at 486. Nationwide legalization of sports gambling would not have gone undetected for fifteen years.

Second, Kalshi's theory has implausible present-day implications. As described above, the CEA generally makes it "unlawful for any person" to "enter into a swap" outside of a CFTC-registered market. 7 U.S.C. §2(e). If Kalshi's reading of the CEA is correct, therefore, *all* sports wagering must take place on a CFTC-regulated exchange. The upshot: every sportsbook currently licensed by the Commonwealth and other states (including those run by FanDuel, Draft Kings, and others) actually violates federal law. And the CFTC is actually the nation's sports gambling regulator. But the CFTC itself has disclaimed that authority,

explaining that it “does not believe that it has the statutory mandate nor specialized experience appropriate to oversee [gambling], or that Congress intended for the Commission to exercise its jurisdiction . . . in this manner.” 89 Fed. Reg. 48,968, 48,983 (Jun. 10, 2024).

For all these reasons, Kalshi cannot show that §2(a)(1)(A) expressly displaces traditional state power to regulate sports wagering.

II. The CEA does not impliedly preempt Chapter 23N.

Moving beyond express preemption, Kalshi also argues that applying Chapter 23N to its sports-related events contracts would pose an “unacceptable obstacle” to Congress’s “purposes and objectives.” *Wyeth*, 555 U.S. at 563-564 (quotation marks omitted). As with express preemption, however, implied preemption must sound in “the text and structure of the statute at issue,” lest a court “displac[e] perfectly legitimate state laws on the strength of ‘purposes’ that only [it] can see.” *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 778 (2019) (plurality opinion) (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)).

For the reasons already explained, the text and structure of the CEA make clear that Chapter 23N does not impede Congress’s purposes and objectives. *See supra*, at 20-23. Indeed, the CEA’s implementing regulations expressly bar federally regulated derivatives markets from offering products that involve “gaming” or activities that are “unlawful

under any State . . . law.” 17 C.F.R. §40.11(a); *see* 7 U.S.C. §7a-2(c)(5)(C)(i)-(ii). Against that backdrop, Chapter 23N clearly does not stand in the way of the CEA’s aims—it *further*s them. “That both systems may operate in harmony demonstrates a lack of frustration to Congress’s intent.” App. 222; *see also Martin*, 793 F. Supp. 3d at 686 (“Kalshi has not shown how obtaining a license in Maryland and otherwise complying with Maryland law would prevent it from complying with federal law.”).

In short, Kalshi also cannot demonstrate that the CEA impliedly preempts state gaming law.¹³

REASONS TO GRANT DIRECT APPELLATE REVIEW

I. Kalshi’s appeal raises a novel and important question about the Commonwealth’s power to enforce state gaming law.

Direct appellate review is appropriate where an appeal involves “questions of first impression or novel questions of law which should be submitted for final determination to [this] Court.” Mass. R. App. P. 11(a)(1). That condition is satisfied here.

The question in this case is indisputably one of first impression. As

¹³ The decision below addressed (1) whether Kalshi’s preemption defense is likely to succeed, and (2) whether a preliminary injunction is in the public interest. App. 215-224. Kalshi’s docketing statement identifies only the former as an issue on appeal. App. 238. And the Superior Court’s resolution of the second issue was manifestly correct: “There is no real question that” Chapter 23N’s protections advance “public health and safety” and “the Commonwealth’s financial interest.” App. 223.

with many other states’ post-*Murphy* gaming laws, Chapter 23N is a relatively new statute, *see* St. 2022, c. 173, and the Commonwealth is aware of no prior appellate decision construing or applying it. Nor is the Commonwealth aware of any prior Massachusetts decision addressing the preemptive scope of the CEA. It follows, *a fortiori*, that no Massachusetts court has considered how the two laws interact—and, specifically, whether the CEA preempts Chapter 23N.

That question warrants prompt resolution by this Court. Although the issue is novel, it is cropping up with increasing frequency in cases around the country. As discussed above, a number of federal courts are currently grappling with Kalshi’s preemption claims. *See supra*, at 16-17 & note 9. And closer to home, the District of Massachusetts is considering the same preemption arguments in lawsuits initiated by two other companies. *See QCX LLC v. Campbell*, No. 26-cv10651; *Robinhood Derivatives LLC v. Campbell*, No. 25-cv-12578. A prompt decision from this Court will provide needed guidance on this important issue.

II. The resolution of this case will have significant public-welfare consequences and economic effects.

Direct appellate review is also appropriate when a case involves “questions of such public interest that justice requires a final determination by [this] Court.” Mass. R. App. P. 11(a)(3). This case satisfies that condition, too.

First, this case has substantial implications for public health and consumer protection. As this Court has previously recognized, there are “many perils, pitfalls, temptations and traps for the unwary”—as well as “occasions for corruption for the participants”—that are “inherent in any gambling operation of [certain] proportions.” *Colella v. State Racing Comm’n*, 360 Mass. 152, 159 (1971). In legalizing sports wagering, the Legislature chose to mitigate those dangers in a number of ways—including, among other things, by prohibiting the placement of wagers on youth sports, barring licensed operators from accepting credit-card wagers or wagers from people under 21, and requiring licensees to take steps to prevent insider trading and problem gambling. G.L. c. 23N, §§4(d)(2), 11(a), 13(d)(i). But Kalshi currently ignores *all* of those requirements—as well as the many others found in Chapter 23N.

Second, this case has substantial economic implications. Kalshi rakes in millions of dollars from Massachusetts residents *each week* from transactions that violate the Legislature’s clear commands. Along the way, Kalshi also deprives the Commonwealth of millions of dollars in tax revenue, including the 20% excise on revenues from online wagers that it would pay if it followed Chapter 23N. *Id.* §14.

It should be for this Court to decide—and promptly—whether the law countenances these outcomes and whether, as Kalshi claims,

Congress silently deprived the Commonwealth of its longstanding police power to oversee and regulate sports wagering.

CONCLUSION

The Court should grant direct appellate review, maintain the briefing schedule agreed upon by the parties and adopted by the Appeals Court, and set this case for argument in May. Upon review, the Court should affirm the Superior Court's entry of a preliminary injunction.

February 27, 2026

Respectfully submitted.

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ Gerard J. Cedrone
M. Patrick Moore (BBO #670323)
First Assistant Attorney General
Jared Rinehimer (BBO #684701)
*Chief, Privacy & Responsible
Technology Division*
Gerard J. Cedrone (BBO #699674)
Deputy State Solicitor
Louisa Castrucci (BBO #692208)
Alda Chan (BBO #705204)
Frances Cohen (BBO #542811)
Joshua R. Edlin (BBO #715110)
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 963-2282
gerard.cedrone@mass.gov

APPENDIX

Superior Court:

| | |
|---|-----|
| Docket Entries | 31 |
| Complaint (Dkt. No. 1) | 39 |
| Memorandum in Support of Commonwealth’s Emergency Motion for a Preliminary Injunction (Dkt. No. 5) | 82 |
| Affidavit of Derek Lenon (without attachments) (Dkt. No. 7) | 107 |
| Affidavit of Karalyn O’Brien (Dkt. No. 8) | 109 |
| Memorandum of Law in Support of Kalshi’s Motion to Dismiss and in Opposition to the Commonwealth’s Emergency Motion for a Preliminary Injunction (Dkt. No. 41) | 111 |
| Declaration of Xavier Sottile (Dkt. No. 43) | 156 |
| Commonwealth’s Combined Opposition to Kalshi’s Motion to Dismiss and Reply in Support of the Commonwealth’s Emergency Motion for a Preliminary Injunction (Dkt. No. 44) | 176 |
| Memorandum of Decision and Order on Plaintiff’s Motion for a Preliminary Injunction and Defendants’ Motion to Dismiss (Dkt. No. 47) | 209 |
| Order of January 27, 2026 (Dkt. No. 57) | 226 |
| Order Concerning Preliminary Injunction and Defendants’ Motion for a Stay Pending Appeal (Dkt. No. 56) | 228 |
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| Docket Entries in the Single-Justice Session (No. 2026-J-143) | 233 |
| Kalshi’s Civil Docketing Statement (Dkt. No. 2) | 235 |

2584CV02525 Commonwealth of Massachusetts vs. KalshiEX LLC

- Case Type:
Business Litigation
- Case Status:
Re-Opened
- File Date
09/12/2025
- DCM Track:
B - Special Track (BLS)
- Initiating Action:
Actions Involving Business Entities and Government
- Status Date:
11/03/2025
- Case Judge:
- Next Event:

[All Information](#) | [Party](#) | [Event](#) | [Docket](#) | [Disposition](#)

Party Information

Commonwealth of Massachusetts
- Plaintiff

Alias

Party Attorney

- Attorney
- Castrucci, Esq., Louisa E
- Bar Code
- 692208
- Address
- Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108
- Phone Number
- (617)963-2848
- Attorney
- Cedrone, Esq., Gerard J
- Bar Code
- 699674
- Address
- Office of the Attorney General
One Ashburton Place
Boston, MA 02108
- Phone Number
- (617)963-2282
- Attorney
- Chan, Esq., Alda
- Bar Code
- 705204
- Address
- Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108
- Phone Number
- (617)963-2525
- Attorney
- Cohen, Esq., Frances S
- Bar Code
- 542811
- Address
- Office of the Attorney General
CAD Law Division Government Bureau
Place
Boston, MA 20530
- Phone Number
- (617)963-2006
- Attorney
- Edlin, Esq., Joshua R
- Bar Code
- 715110
- Address

(App. 31)

- Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108
- Phone Number
(617)963-2905
- Attorney
Moore, Jr., Esq., Michael P
- Bar Code
670323
- Address
Massachusetts Attorney General's Office
One Ashburton Place
Boston, MA 02108
- Phone Number
(617)963-7491
- Attorney
Rinehimer, Esq., Jared
- Bar Code
684701
- Address
Massachusetts Attorney General's Office
One Ashburton Place
18th Floor
Boston, MA 02108
- Phone Number
(617)727-2200

[More Party Information](#)

KalshiEX LLC
- Defendant

Alias

Party Attorney

- Attorney
DeFilipp, Esq., Kristyn Marie
- Bar Code
676911
- Address
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02110
- Phone Number
(617)832-1218
- Attorney
Neitzel, Esq., Beth C
- Bar Code
714591
- Address
Foley Hoag
155 Seaport Blvd
Suite 1600
Boston, MA 02210
- Phone Number
(202)261-7325
- Attorney
Smith, Esq., Jack C
- Bar Code
712045
- Address
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02110
- Phone Number
(617)832-1119

[More Party Information](#)

Events

| Date | Session | Location | Type | Event Judge | Result |
|---------------------|-----------------------|---------------------------|-----------------------------------|---------------------------------|-------------------------|
| 09/22/2025 10:00 AM | Business Litigation 1 | BOS-10th FL, CR 1015 (SC) | Hearing on Preliminary Injunction | Barry-Smith, Hon. Christopher K | Canceled |
| 11/17/2025 10:00 AM | Business Litigation 1 | BOS-10th FL, CR 1015 (SC) | Hearing on Preliminary Injunction | Barry-Smith, Hon. Christopher K | Rescheduled |
| 11/18/2025 10:00 AM | Business Litigation 1 | BOS-10th FL, CR 1015 (SC) | Hearing on Preliminary Injunction | Barry-Smith, Hon. Christopher K | Rescheduled |
| 12/09/2025 10:00 AM | Business Litigation 1 | BOS-10th FL, CR 1015 (SC) | Rule 12 Hearing | Barry-Smith, Hon. Christopher K | Held - Under advisement |

| <u>Date</u> | <u>Session</u> | <u>Location</u> | <u>Type</u> | <u>Event Judge</u> | <u>Result</u> |
|---------------|-----------------------------|---------------------------|-----------------------------------|---------------------------------|-------------------------|
| 12/09/2025 AM | 10:00 Business Litigation 1 | BOS-10th FL, CR 1015 (SC) | Hearing on Preliminary Injunction | Barry-Smith, Hon. Christopher K | Held - Under advisement |
| 01/23/2026 PM | 12:00 Business Litigation 1 | BOS-10th FL, CR 1015 (SC) | Motion Hearing | Krupp, Hon. Peter B | Held - Under advisement |

Docket Information

| <u>Docket Date</u> | <u>Docket Text</u> | <u>File Ref Nbr.</u> | <u>Image Avail.</u> |
|--------------------|---|----------------------|--|
| 09/12/2025 | Attorney appearance On this date Louisa E Castrucci, Esq. added for Plaintiff Commonwealth of Massachusetts | | |
| 09/12/2025 | Attorney appearance On this date Joshua R Edlin, Esq. added for Plaintiff Commonwealth of Massachusetts | | |
| 09/12/2025 | Attorney appearance On this date Alda Chan, Esq. added for Plaintiff Commonwealth of Massachusetts | | |
| 09/12/2025 | Attorney appearance On this date Jared Rinehimer, Esq. added for Plaintiff Commonwealth of Massachusetts | | |
| 09/12/2025 | Attorney appearance On this date Michael P Moore, Jr., Esq. added for Plaintiff Commonwealth of Massachusetts | | |
| 09/12/2025 | Original civil complaint filed. | 1 |  |
| 09/12/2025 | Civil action cover sheet filed. | 2 |  |
| 09/12/2025 | General correspondence regarding NOTICE OF ACCEPTANCE INTO BUSINESS LITIGATION SESSION "BLS1" This matter has been accepted into the Suffolk Business Litigation Session. It has been assigned to BLS1. (dated 9/12/25) Notice sent by email | 3 |   |
| 09/12/2025 | Plaintiff Commonwealth of Massachusetts's EMERGENCY Motion for a Preliminary Injunction | 4 |  |
| 09/12/2025 | Commonwealth of Massachusetts's Memorandum in support of Emergency Motion for a Preliminary Injunction | 5 |  |
| 09/12/2025 | Affidavit of Melissa Casella | 6 |  |
| 09/12/2025 | Affidavit of Derek Lennon - Tax & Docs | 7 |  |
| 09/12/2025 | Affidavit of Karalyn O'Brien - Licensure Status | 8 |  |
| 09/12/2025 | Affidavit of Payton Doan | 9 |  |
| 09/12/2025 | Plaintiff Commonwealth of Massachusetts's Motion for Short Order of Notice | 10 |  |
| 09/15/2025 | Endorsement on Motion for Short Order of Notice (#10.0): ALLOWED Allowed, see Order. (dated 9/15/25) Notice sent 9/17/25 | |   |
| 09/15/2025 | ORDER: Short Order of Notice See p#11. (dated 9/15/25) Notice sent 9/17/25 | 11 |  |
| 09/15/2025 | Summons and order of notice issued on a Motion for a Preliminary Injunction , returnable on 09/22/2025 10:00 AM Hearing on Preliminary Injunction. | | |
| 09/17/2025 | Summons, Short Order of Notice, returned SERVED Certified Mail, Process Server, and e-mail. (See Affidavit of Service) Applies To: Chan, Esq., Alda (Attorney) on behalf of Commonwealth of Massachusetts (Plaintiff) | 12 |   |
| 09/17/2025 | Affidavit of Service Applies To: Chan, Esq., Alda (Attorney) on behalf of Commonwealth of Massachusetts (Plaintiff) | 13 |   |
| 09/17/2025 | Exhibits/Appendix FILED 9/16/2025 | |   |

| <u>Docket Date</u> | <u>Docket Text</u> | <u>File Ref Nbr.</u> | <u>Image Avail.</u> |
|--------------------|---|----------------------|--|
| 09/17/2025 | Defendant KalshiEX LLC's Notice of Removal (U.S.Dist. #25cv-12595) FILED 9/16/2025 | 14 |  Image |
| 09/19/2025 | REMOVED to the U.S. District Court Of Massachusetts | | |
| 09/19/2025 | Case transferred to another court. | | |
| 09/19/2025 | Event Result:: Hearing on Preliminary Injunction scheduled on: 09/22/2025 10:00 AM Has been: Canceled For the following reason: Request of Defendant Comments: Case transferred to federal court. Hon. Christopher K Barry-Smith, Presiding | | |
| 11/03/2025 | Remanded to the Superior Court from the U.S. District Court. ACTION RETURN TO COURT ACCORDINGLY See P# 29 Notice sent 11/04/2025 | | |
| 11/03/2025 | Defendant KalshiEX LLC's Submission of Corporated Disclosure Statement | 15 |  Image |
| 11/03/2025 | Defendant KalshiEX LLC's Submission of Certification of Related Cases | 16 |  Image |
| 11/03/2025 | Defendant KalshiEX LLC's Motion for Dissolution of State Court Order (Unopposed Motion) ELECTRONIC ORDER entered granting as unopposed Motion. (Stearns, J. USD) entered 09/17/2025 | 17 |  Image |
| 11/03/2025 | Defendant KalshiEX LLC's Motion for Admission of PRO HAC VICE of Grant R. Mainland (Unopposed motion) ELECTRONIC ORDER entered granting Motion. (Stearns, J. USD) entered 09/19/2025 | 18 |  Image |
| 11/03/2025 | Defendant KalshiEX LLC's Motion for Admission of PRO HAC VICE of Joshua B. Sterling (Unopposed motion) ELECTRONIC ORDER entered granting Motion. (Stearns, J. USD) entered 09/19/2025 | 19 |  Image |
| 11/03/2025 | Defendant KalshiEX LLC's Motion for Admission of PRO HAC VICE of Andrew Porter (Unopposed Motion) ELECTRONIC ORDER entered granting Motion. (Stearns, J. USD) entered 09/19/2025 | 20 |  Image |
| 11/03/2025 | Defendant KalshiEX LLC's Motion for Admission of PRO HAC VICE of Will E. Havemann(Unopposed Motion) ELECTRONIC ORDER entered granting Motion. (Stearns, J. USD) entered 09/19/2025 | 21 |  Image |
| 11/03/2025 | General correspondence regarding Return of Service filed by Plaintiff | 22 |  Image |
| 11/03/2025 | Plaintiff Commonwealth of Massachusetts's Motion to Remand | 23 |  Image |
| 11/03/2025 | Commonwealth of Massachusetts's Memorandum in support of Motion to Remand | 24 |  Image |
| 11/03/2025 | Plaintiff, Defendant Commonwealth of Massachusetts, KalshiEX LLC's Submission of Joint Status Report | 25 |  Image |
| 11/03/2025 | KalshiEX LLC's Memorandum in opposition to Motion to Remand | 26 |  Image |
| 11/03/2025 | Defendant KalshiEX LLC's Submission of Declaration of Nicole D. Valente in Support of Kalshi's Memorandum of Law in Opposition to Motion to Remand | 27 |  Image |
| 11/03/2025 | Reply/Sur-reply Commonwealth's Reply in Support of Motion to Remand | 28 |  Image |
| 11/03/2025 | General correspondence regarding Order of Remand In accordance with this Court's Order dated October 28, 2025, granting the plaintiff's motion to remand, it is hereby ordered that this case be REMANDED to Massachusetts Superior Court for Suffolk County for further proceedings. (Stearns, J. USD) entered 10/28/2025 | 29 |  Image |
| 11/03/2025 | General correspondence regarding Docket entries Received | 30 |  Image |

| <u>Docket Date</u> | <u>Docket Text</u> | <u>File Ref Nbr.</u> | <u>Image Avail.</u> |
|--------------------|--|----------------------|--|
| 11/06/2025 | Attorney appearance electronically filed. | |  |
| 11/07/2025 | Defendant KalshiEX LLC's Motion for Admission Pro Hac Vice Re: Andrew L. Porter | 31 |   |
| 11/07/2025 | Defendant KalshiEX LLC's Motion for Admission Pro Hac Vice Re: Grant R. Mainland | 32 |   |
| 11/07/2025 | Defendant KalshiEX LLC's Motion for Admission Pro Hac Vice Re: Joshua B. Sterling | 33 |   |
| 11/07/2025 | Defendant KalshiEX LLC's Motion for Admission Pro Hac Vice Re: Nicole D. Valente | 34 |   |
| 11/07/2025 | Defendant KalshiEX LLC's Motion for Admission Pro Hac Vice Re: William Havemann | 35 |   |
| 11/10/2025 | Attorney appearance electronically filed. | |  |
| 11/10/2025 | Plaintiff, Defendant Commonwealth of Massachusetts, KalshiEX LLC's Submission of Joint Status Report | 36 |   |
| 11/12/2025 | Event Result:: Hearing on Preliminary Injunction scheduled on: 11/17/2025 10:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Christopher K Barry-Smith, Presiding | | |
| 11/14/2025 | Endorsement on Motion for admission pro hac vice (#31.0): ALLOWED (Dated 11/10/25) Notice sent 11/17/25 | |   |
| 11/14/2025 | Endorsement on Motion for admission pro hac vice (#32.0): ALLOWED (Dated 11/10/25) Notice sent 11/17/25 | |   |
| 11/14/2025 | Endorsement on Motion for admission pro hac vice (#33.0): ALLOWED (Dated 11/10/25) Notice sent 11/17/25 | |   |
| 11/14/2025 | Endorsement on Motion for admission pro hac vic (#34.0): ALLOWED (Dated 11/10/25) Notice sent 11/17/25 | |   |
| 11/14/2025 | Endorsement on Motion for admission pro hac vice (#35.0): ALLOWED (Dated 11/10/25) Notice sent 11/17/25 | |   |
| 11/14/2025 | Event Result:: Hearing on Preliminary Injunction scheduled on: 11/18/2025 10:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Christopher K Barry-Smith, Presiding | | |
| 11/14/2025 | Attorney appearance electronically filed. | |  |
| 11/18/2025 | ORDER: Scheduling Order (Dated: 11/14/25) Notice sent 11/19/25 | 37 |   |
| 11/18/2025 | Defendant KalshiEX LLC's Motion for Impoundment (Unopposed) | 38 |   |
| 11/18/2025 | Proposed Filings/Orders | |  |
| 11/18/2025 | Declaration of Xavier Sottile in Support of Kalshiex LLC's Motion for Impoundment | 39 |   |
| 11/18/2025 | Defendant KalshiEX LLC's Motion to Dismiss | 40 |   |
| 11/18/2025 | KalshiEX LLC's Memorandum in support of Motion to Dismiss and in Opposition to the Commonwealth's Emergency Motion for Preliminary Injunction | 41 |   |
| 11/18/2025 | Declaration for Nicole D. Valente in Support of Kalshi's Motion to Dismiss and in Opposition to the Commonwealth's Emergency Motion for Preliminary Injunction | 42 |   |

| Docket Date | Docket Text | File Ref Nbr. | Image Avail. |
|-----------------------------|--|-------------------------------|---|
| 11/18/2025 | Exhibits/Appendix | |  |
| 11/18/2025 | Declaration of Xavier Sottile | 43 |  Image |
| 11/24/2025 | Endorsement on Motion for impoundment (#38.0): Other action taken The motion for impoundment will be heard together with the other motions scheduled for Dec. 9, 2025. Until that hearing, the Exhibits 1&2 to the Valente Declaration are provisionally impounded and may be filed under seal. So ordered. (Dated 11/24/25) Notice sent 11/25/25 | |   Image |
| 12/03/2025 | Attorney appearance On this date Gerard J Cedrone, Esq. added for Plaintiff Commonwealth of Massachusetts | | |
| 12/03/2025 | Opposition to Kalshi's Motion to Dismiss and Reply of the Commonwealth's Emergency Motion for a Preliminary Injunction filed by Commonwealth of Massachusetts | 44 |  Image |
| 12/03/2025 | Affidavit of Payton Doan | 45 |  Image |
| 12/03/2025 | Exhibits/Appendix | |   Image |
| 12/03/2025 | Attorney appearance electronically filed. | |   Image |
| 12/08/2025 | Reply/Sur-reply Reply Brief in Support of Kalshi's Motion to Dismiss | 46 |   Image |
| 12/09/2025 | Matter taken under advisement: Hearing on Preliminary Injunction scheduled on: 12/09/2025 10:00 AM Has been: Held - Under advisement Hon. Christopher K Barry-Smith, Presiding Staff: Gloria Brooks, Assistant Clerk Magistrate | | |
| 12/09/2025 | Matter taken under advisement: Rule 12 Hearing scheduled on: 12/09/2025 10:00 AM Has been: Held - Under advisement Hon. Christopher K Barry-Smith, Presiding Staff: Gloria Brooks, Assistant Clerk Magistrate | | |
| 01/20/2026 | MEMORANDUM & ORDER: For the forgoing reasons, the Commonwealth's motion for a preliminary injunction is ALLOWED. Kalshi's motion to dismiss is DENIED. The Commonwealth is entitled to a preliminary injunction prohibiting Kalshi from offering sport-related event contracts in the absence of the required license under the Sports Wagering Law. At the hearing both parties discussed, but did not resolve, certain details of the Commonwealth's requested injunction, including how to prohibit new contracts without impacting already existing contracts. For that reason, I will enter a preliminary injunction consistent with this decision on the following schedule: i) not later than January 21, 2026 at 4:00 p.m the Commonwealth shall submit a proposed preliminary injunction consistent with this decision; ii) not later than January 23, 2026 at 10:00 a.m, Kalshi may submit a response to the Commonwealth's proposed order; iii) if either side requests to be heard or if I determine a hearing is necessary, a hearing will take place on Friday, January 23, at 12:00 noon, after which I will enter a preliminary injunction. Any motion to stay may also be raised in this time period. If both parties wish to confer with respect to the terms of the preliminary injunction and request to extend these deadlines, they may notify the clerk and I will respond promptly to any such joint request. SO ORDERED. (Dated: 1/20/26) Judge: Barry-Smith, Hon. Christopher K Notice sent 1/22/2026 Notice sent 1/23/26 | 47 |  Image |
| 01/23/2026 | Defendant KalshiEX LLC's EMERGENCY Motion to Stay Preliminary Injunction Pending Appeal | 48 |  Image |
| 01/23/2026 | KalshiEX LLC's Memorandum in support of Defendant's Emergency Motion to Stay Injunction Pending Appeal | 49 |  Image |
| 01/23/2026 | Kalshi's Response to the Commonwealth's Proposed Preliminary Injunction Order | 50 |  Image |
| 01/23/2026 | Plaintiff Commonwealth of Massachusetts's Response to Order Granting Motion for Preliminary Injunction | 51 |   Image |

| <u>Docket Date</u> | <u>Docket Text</u> | <u>File Ref Nbr.</u> | <u>Image Avail.</u> |
|--------------------|---|----------------------|--|
| 01/23/2026 | Matter taken under advisement: Motion Hearing scheduled on: 01/23/2026 12:00 PM Has been: Held - Under advisement Hon. Christopher K Barry-Smith, Presiding Staff: Gloria Brooks, Assistant Clerk Magistrate | | |
| 01/27/2026 | ORDER: See paper #52 (Dated 1/27/26) Notice sent 01/28/26 | 52 |  |
| 01/30/2026 | Opposition to Defendant's Emergency Motion to Stay Injunction Pending Appeal filed by Commonwealth of Massachusetts | 53 |  Image |
| 02/04/2026 | Reply/Sur-reply Reply in support of Defendant's Emergency Motion to Stay Injunction Pending Appeal | 54 |  Image |
| 02/04/2026 | Joint Status Report Regarding Preliminary Injunction Applies To: Commonwealth of Massachusetts (Plaintiff); KalshiEX LLC (Defendant) | 55 |  Image |
| 02/06/2026 | ORDER: Order concerning Preliminary Injunction and Defendant's Motion for a stay pending Appeal See paper #56 ORDER: The Preliminary Injunction in the form proposed by the Commonwealth, attached, is entered as a Preliminary Injunction, effective today- Friday, February 6, 2026. Kalshi's Motion for a stay of the Preliminary Injunction while its appeal is pending is DENIED. (Dated 2/6/2026) Notice sent 2/10/26 | 56 |  Image |
| 02/06/2026 | ORDER: Preliminary Injunction See paper #57 SO ORDERED. (Dated 2/6/2026) Notice sent 2/10/26 | 57 |  Image |
| 02/06/2026 | Defendant KalshiEX LLC's Notice of Appeal | 58 |  Image |
| 02/06/2026 | Notice of appeal filed. (See p#58) Applies To: KalshiEX LLC (Defendant) | | |
| 02/10/2026 | Notice of docket entry received from Appeals Court Please take note that on February 9, 2026, the following entry was made on the docket of the above-referenced case (2026-J-0143): Motion to stay/vacate stay of judgment or sentence filed for Kalshix LLC by Attorney Kristyn DeFilipp. | 59 |  Image |
| 02/17/2026 | Notice of docket entry received from Appeals Court Please take note that, with respect to the Motion to stay/vacate stay of judgment or sentence filed for Kalshix LLC by Attorney Kristyn DeFilipp. (Paper #1), on February 17, 2026, the following order was entered on the docket of the above-referenced case: RE#1: After review, the defendant Kalshix, LLC's Rule 6 motion to stay the 01/20/2026 memorandum of decision and order on plaintiff's motion for a preliminary injunction and defendant's motion to dismiss, and the 02/06/2026 order concerning the preliminary injunction and the defendant's motion for a stay pending appeal is allowed pending further order of this court or a single justice thereof. Without suggesting any view on the merits or the disposition of this litigation, the defendant's appeal is ordered expedited. Accordingly, the defendant is to forthwith, but no later than 02/19/2026, order expedited transcript(s). The Superior Court is requested to assemble the record upon receipt of the transcript(s), and the defendant is to enter its appeal within 2 business days of receipt of notice of assembly of the record. Both parties' briefs shall be filed without enlargement except under truly exigent circumstances. Upon the filing of the appellee's principal brief, the appeal shall be promptly referred to a panel for consideration. (Singh, J.). *Notice/Attest/ Barry-Smith, J. | 60 |  Image |
| 02/17/2026 | Transcript of 12/9/25 & 1/23/26 received from transcriber Michelle Constantino (via email) | | |
| 02/19/2026 | Appeal: Statement of the Case on Appeal (Cover Sheet). | |  |
| 02/19/2026 | Notice of assembly of record sent to Counsel | |  Image |
| 02/19/2026 | Notice to Clerk of the Appeals Court of Assembly of Record | |  Image |
| 02/26/2026 | Notice of Entry of appeal received from the Appeals Court In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case (2026-P-0244) was entered in this Court on February 23, 2026. | 61 |  Image |

Case Disposition

| <u>Disposition</u> | <u>Date</u> | <u>Case Judge</u> |
|------------------------------|-------------|-------------------|
| Transferred to another Court | 09/19/2025 | |
| Pending | | |

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 2584CV 02525

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

KALSHIEX LLC,

Defendant.

COMPLAINT



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1. The Commonwealth of Massachusetts, by and through its Attorney General, Andrea Joy Campbell, brings this action against defendant KalshiEX LLC (“Kalshi”) for offering sports wagering without a license in violation of G.L. c. 23N, § 5 *et seq.*

I. INTRODUCTION

2. The Supreme Judicial Court “has long recognized that the legalization and regulation of gambling are among the Legislature’s core police powers” *Gattineri v. Wynn MA, LLC*, 493 Mass. 13, 20 (2023) (citing *Abdow v. Att’y Gen.*, 468 Mass. 478, 489-90 (2014)).

3. Until the overturning of the Professional and Amateur Sports Protection Act (“PASPA,” 28 U.S.C. § 3701 *et seq.*) in 2018, sports wagering was illegal in most of the United States. *See Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453 (2018). Since that time, at least 40 states and territories have legalized sports betting. Massachusetts established a legal process requiring a license to offer sports wagering through the internet, including through mobile devices like smartphones. *See* G.L. c. 23N, § 5.

4. As part of that process, the Massachusetts Gaming Commission (the “MGC” or “Commission”) was tasked with establishing a licensing regime. G.L. c. 23N, § 5. Any operator providing sports wagering in Massachusetts must be licensed by the MGC and is subject to stringent requirements to protect the public, such as verifying gamblers’ location and age, *see* 205 CMR § 243.01(1)(i) (location), 205 CMR § 248.04 (age); committing to responsible gambling initiatives, *see, e.g.*, 205 CMR § 248.16; financial reporting, *see, e.g.*, 205 CMR § 239.03; reporting suspicious or illegal wagering activity, *see* G.L. c. 23N, § 11(e); and reserve requirements to secure payouts to winners. *See* 205 CMR § 238.12.

5. Sports wagering is regulated for many good reasons, among them that such wagering has significant public health consequences, such as compulsive gambling—a clinically recognized behavioral addiction—and disastrous financial losses.

6. Kalshi is violating the Commonwealth’s strict sports wagering laws and regulations by offering unlicensed sports wagering to Massachusetts residents.

7. Kalshi disguises its sports wagering offerings as “event contracts” offered on a “prediction market.”

8. Kalshi’s wagers allow a bet on whether a sports-related occurrence will happen. The bettor wins money if they guess correctly and forfeits the wagered cash if they guess incorrectly.

9. The types of “events” for which Kalshi offers contracts range from elections, pop culture, weather, and—most pertinent here—professional and collegiate sporting events.

10. Kalshi’s sports-related event contracts are sports wagers under Massachusetts laws and regulated by the MGC.

11. As of May 2025, “[m]ore than three-quarters of Kalshi’s trading volume now comes from sports The figures suggest that Kalshi makes a larger percentage of its money from sports than DraftKings or FanDuel—businesses that are almost synonymous with sports betting in the U.S.”¹

¹ Daniel O’Boyle, *Kalshi More Reliant On Sports Than Draftkings Or Fanduel, Data Shows*, INGAME (Updated May 21, 2025), <https://www.ingame.com/kalshi-sports-data-trading-volume/>.

II. PARTIES

A. Plaintiff

12. Plaintiff is the Commonwealth of Massachusetts (“Commonwealth”), represented by Attorney General Andrea Joy Campbell, who brings this action in the public interest.

B. Defendant

13. Defendant KalshiEX LLC (“Kalshi”) is a Delaware limited liability company with its principal place of business in New York, New York. Kalshi is a wholly owned subsidiary of Kalshi Inc. Kalshi operates a so-called prediction market through which residents of the Commonwealth can engage in unlicensed gambling under the guise of trading event contracts. This market is an online trading platform through which users may wager on the likelihood of a sports-related occurrence. Kalshi conducts business across the United States, including within the Commonwealth of Massachusetts, where Kalshi makes its services available to residents, markets its platform to potential users, and accepts payments through widely used financial systems accessible by Massachusetts consumers.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action under G.L. c. 212, § 4.

15. This Court has specific personal jurisdiction over Kalshi under G.L. c. 223A, § 3, because, among other things, Kalshi engaged in and continued to engage in business within Massachusetts by offering wagers to Massachusetts consumers on the likelihood of a sports-related occurrence, and because Kalshi’s actions and inactions have harmed Massachusetts residents.

16. Venue is proper in Suffolk County under G.L. c. 223, § 5 as the Commonwealth is the plaintiff.

IV. LEGAL BACKGROUND

A. Gambling in the Commonwealth

17. With few exceptions, Chapter 271 of the General Laws criminalizes gambling activities as crimes against public policy. Since the early-twentieth century, Chapter 271 has comprised “a complete and comprehensive statutory system designed to eliminate the evil of gambling” *Commonwealth v. Wolbarst*, 319 Mass. 291, 295 (1946).

18. The legislature defines “illegal gaming²” as “a banking or percentage game played with cards, dice, tiles, dominoes, or an electronic or mechanical device or machine for money, property, checks, credit or any representative of value,” unless otherwise authorized as legal gambling which includes, in pertinent part, “sports wagering conducted under chapter 23N.” G.L. c. 4, § 7, cl. 10.

19. Sports wagering became legal in the Commonwealth in 2022. St. 2022, c. 173. Eligibility to accept sports wagers is conditioned on state licensure, which is governed by the MGC; and, once licensed, gaming operators are strictly regulated by the MGC. *See* G.L. c. 23N, 205 CMR §§ 202–258 (the “Sports Wagering Regulations”).

20. General Laws Chapter 23N, § 3 defines “sports wagering” as

the business of accepting wagers on sporting events or portions of sporting events, other events, the individual performance statistics of athletes in a sporting event or other events or a combination of any of the same Sports wagering shall include, but shall not be limited to, single-game bets, teaser bets, parlays, over-under, moneyline, pools, exchange wagering, in-game wagering, in-play bets, proposition bets and straight bets.

21. “Wager” is defined as “a sum of money or thing of value risked on an uncertain occurrence.” G.L. c. 23N, § 3.

² The terms “gambling” and “gaming” are used herein synonymously. *See Commonwealth v. Theatre Advert. Co.*, 286 Mass. 405, 411 (1934).

22. A “sporting event” is defined as “a professional sport or athletic event, collegiate sport or athletic event, a collegiate tournament . . . or other event authorized by the” MGC. G.L. c. 23N, § 3. Wagering is statutorily prohibited on “high school and youth sports or athletic events; or a collegiate sport or athletic event involving 1 or more collegiate teams from the commonwealth unless they are involved in a collegiate tournament.” G.L. c. 23N, § 3.

23. Chapter 23N provides that “[n]otwithstanding any general or special law to the contrary, the operation of sports wagering and ancillary activities shall be lawful when conducted” pursuant to Chapter 23N and the Sports Wagering Regulations. G.L. c. 23N, § 2. However, “[a] person shall not engage in any activity in connection with sports wagering in the commonwealth unless all required licenses have been obtained in accordance with this chapter and the rules and regulations of the commission.” G.L. c. 23N, § 5(a).

1. *Sports Wagering Licensure*

24. To qualify for a sports wagering license, the applicant must undergo an extensive investigation for “suitability” to determine that “each person who has control of the applicant meets all qualifications for licensure.” G.L. c. 23N, § 6(d); *see, e.g.* 205 CMR § 215.00 (2023). The MGC’s suitability analysis considers the applicant’s reputation, financial stability and resources, business acumen, history of compliance with gambling requirements in other jurisdictions, litigation status, and the suitability of its affiliates and associates. G.L. c. 23N, § 6(d).

25. Applicants for a license must pay \$200,000 to cover the costs of the MGC’s application processing and suitability investigation. G.L. c. 23N, § 7. Additionally, if granted a license, the licensee must pay to the MGC a licensing fee in the amount of \$5 million for a five-year license. G.L. c. 23N, § 6(f).

26. In addition to the licensing fee, the MGC annually assesses and collects a \$1 million fee apportioned among all online-only sports wagering operators, with each operators' contribution calculated based on the operator's respective gross receipts. G.L. c. 23N, § 15(e). These funds are deposited into the Public Health Trust Fund, which the secretary of Health and Human Services administers to support efforts to combat and educate on the problems associated with compulsive gambling, and to support the MGC's research dedicated to understanding the social and economic effects of, and science behind, gambling, G.L. c. 23K, §§ 58, 71, and sports wagering. G.L. c. 23N, § 23.

27. The MGC levies a 20% excise tax on sports wagering adjusted gross receipts for mobile wagers. G.L. c. 23N, § 14; *see* 205 CMR § 240.00 (2022).

28. Not only are sports wagering operators rigorously vetted for licensure, but the MGC also licenses vendors and affiliates of the operators. 205 CMR § 234.01(1)(a) (2023). The Commission conducts a similar "suitability" investigation centered on integrity and financial stability before issuing any vendor license. *See generally* 205 CMR § 234.00 (2023).

2. *The Obligations of a Licensed Sports Wagering Operator*

29. A sports wagering licensee owes numerous duties to the Commonwealth, including but not limited to paying taxes, prohibiting youth and self-excluded individuals from both its products and advertisements, implementing responsible gambling features, and reporting suspected illegal activity or activity that compromises the integrity or betting outcome of a sporting event.

30. Sports wagering operators are required to employ "commercially reasonable methods" to prohibit certain persons related to the operator from engaging on the platform, as well as certain persons within a sports governing body from wagering on their own sporting events. G.L. c. 23N, § 11(a).

31. Sports wagering is restricted to those over 21 years of age in the Commonwealth, G.L. c. 23N, § 13(d), and extensive MGC regulations require operators to protect youth under the age of 21 from sports wagering. *See, e.g.*, 205 CMR § 250.00 (2023), 205 CMR § 256.05 (2025).

32. A licensed sports wagering operator must employ electronic verification to confirm the identity and age of a user before the user can create an account, 205 CMR § 248.04 (2025), and must limit users to one account. 205 CMR § 248.05(1) (2025).

33. Licensed sports wagering operators must promote “social responsibility and responsible gaming.” G.L. c. 23N, § 4(d)(2). They must “assess, prevent and address problem gaming by an operator’s consumers,” such as via “comprehensive employee trainings on responding to circumstances in which individuals present signs of gambling addiction.” *Id.*

34. Operators must offer daily, weekly, and monthly deposit and wager limits that specify the maximum amount of funds that a patron may deposit into their sports wagering account or put at risk during a particular timeframe, respectively. *See* 205 CMR § 248.16(1) (2025). A sports wagering operator must allow users to set betting limitations at any time, and prompt users to do so when creating an account, the first time a deposit is made, and the first time a wager is placed. *Id.*

35. When an individual enrolls in the Voluntary Self-Exclusion Program,³ a sports wagering operator must not advertise to an enrollee, 205 CMR § 256.07 (2025), or allow an enrollee to hold a sports wagering account while enrolled. 205 CMR § 233.02(1) (2023).

36. All marketing, advertising, and promotional materials for sports wagering operators must include contact information for the Massachusetts Problem Gambling Helpline

³ The Voluntary Self-Exclusion Program is a statewide program that allows an individual to voluntarily exclude from casino gambling and/or sports wagering for a predetermined amount of time—including for life. *See Voluntary Self-Exclusion*, MASS. GAMING COMM’N, <https://massgaming.com/about/voluntary-self-exclusion/> (last visited Aug. 5, 2025).

and any other responsible gambling information required by the MGC for the means of advertising used. *See* 205 CMR § 256.06 (2025).

37. Licensees must immediately report to the Commission—and where applicable, the respective sport’s governing body—information that includes abnormal betting activity that may compromise the integrity of a sporting event or its betting outcome (*e.g.*, match fixing). G.L. c. 23N, § 11(e); *see also* 205 CMR § 239.00 (2023).

38. Licensees may only offer the types of wagers that are authorized by the Commission.⁴ 205 CMR § 247.01(1) (2025).

39. A licensee’s offerings may be limited by request of a sports governing body or associated players association upon a good cause showing that a type, form, or category of wager is “contrary to public policy,” “unfair to patrons,” or impacts the integrity of the sport, as well as the health and safety of the athletes and their families. 205 CMR § 247.04(1)(c)-(d).

40. Moreover, operators are obligated to immediately report to the MGC any information concerning criminal proceedings commenced against it regarding its operations, as well as any other “suspicious or illegal wagering activity,” such as funds derived from illegal activity or used to conceal or launder funds. *See* G.L. c. 23N, § 11(e).

41. To date, the Commission has issued nine licenses to sports wagering operators in the Commonwealth with seven actively operating and two ceasing operations. Kalshi is not one of them.

42. Kalshi has never sought approval or licensure from the MGC to engage in sports wagering.

⁴ *Sports Wagering Approved Events & Wagers*, MASS. GAMING. COMM’N, <https://massgaming.com/about/sports-wagering-in-massachusetts/sports-wagering-approved-events-and-wagers/> (last visited Aug. 22, 2025).

43. Kalshi has failed to make any effort to demonstrate to the MGC that it meets the requirements for a license.

V. KALSHI'S PREDICTION MARKET PLATFORM

44. Kalshi was co-founded in 2018 by Tarek Mansour and Luana Lopes Lara.

45. Kalshi is a private technology company that, in its own words, operates a web-based “prediction” market.

46. From its inception, Kalshi has promoted itself as a novel “financial exchange” through which people could “trade in the domain of every day.”⁵

47. In reality, Kalshi was designed from the outset to appeal to mass-market speculation.

48. Kalshi allows Massachusetts consumers to place bets on its platform through its website, <https://kalshi.com>, and through its mobile application (“app”) on the Android and iOS (Apple) platforms.

A. Overview and Evolution of Kalshi's Wagers

49. Kalshi allows users to take a monetary position on a real-world event by purchasing “event contracts.”

50. Event contracts are structured as binary options: bettors buy “Yes” or “No” positions on whether an event will occur (“Yes”) or will not occur (“No”). They receive a fixed payout if they are correct, and nothing if they are not.

51. Kalshi describes itself as a prediction market because each contract's price (ranging from \$0.01 to \$0.99) is determined based on the total volume of “Yes” and “No” wagers

⁵ *About Kalshi*, KALSHI, <https://kalshi.com/about> (last visited Aug. 1, 2025).

purchased, reflecting “the collective sentiment of its users regarding the likelihood of an event”⁶

52. Kalshi claims this “dynamic pricing model” “directly correlates with the market’s perceived probability of a specific event occurring,” which provides for “real-time fluctuations in contract prices, ensuring that they accurately reflect the consensus opinion of the market participants.”⁷

53. As the perceived likelihood of a “Yes” outcome increases (*i.e.* more people have purchased the “Yes” option in an event contract), the corresponding “Yes” contract price increases. Conversely, the contract price for “No” will increase as the perceived likelihood of a “No” outcome increases, and the contract price for “Yes” will fall.

54. Once the event resolves, Kalshi settles contracts at \$1 for the correct outcome and \$0 for the incorrect one.

55. For example, wagering on 100 “Yes” event contracts for a certain event to take place at a cost of 30 cents each (\$30 total)—plus any applicable transaction fee—that, in fact, occurs would result in payout of \$1 per contract, or \$100 (netting \$70). If incorrect, the original \$30 is lost.

56. For most wagers, Kalshi charges a varying transaction fee, charging more for the most uncertain events. That is, \$0.50 wagers have the greatest fees, amounting to approximately 1.75 cents per contract.⁸

⁶ *How are prices determined?*, KALSHI HELP CTR., <https://help.kalshi.com/markets/markets-101/how-are-prices-determined> (last visited Aug. 1, 2025)).

⁷ *Id.*

⁸ *Kalshi Fee Schedule*, KALSHI, <https://kalshi.com/docs/kalshi-fee-schedule.pdf> (last updated July 8, 2025).

57. Bettors deposit funds into their Kalshi account and use those funds to wager on event contracts. Any return on a successful wager will remain in the bettor's Kalshi account until they choose to withdraw. Kalshi charges a fee for certain deposit and withdrawal methods.

58. Kalshi matches bettors on opposite sides of the event contract (the "yes" and the "no") so that the combined investment from both bettors equals \$1.

59. If the price changes, bettors may "sell" their wager before the event takes place.

60. Kalshi's affiliated entity, Kalshi Trading LLC, fills a role similar to that of the house in a classic gambling operation, by acting as a market maker on its platform. It supplies liquidity by placing both buy and sell orders for event contracts, ensuring that bettors can wager at nearly all times. It takes opposing positions, absorbs imbalances in bettor demand, and profits from price movements. For example, suppose Kalshi offers a contract asking, "*Will the Boston Red Sox win their game on Friday?*" A bettor might want to wager on 100 "Yes" shares at 65 cents each, expecting the Red Sox to win. But if there are not enough other bettors willing to sell "No" shares at that price, Kalshi Trading steps in and buys the "No" shares.

61. Kalshi also has an affiliated clearinghouse under common ownership called Kalshi Klear LLC that finalizes and settles event contract wagers. Kalshi Klear is responsible for determining outcomes, issuing payouts, and processing the movement of funds between bettors once an event is resolved. It functions entirely within Kalshi's corporate structure and does not serve as an independent intermediary. This arrangement allows Kalshi to control each stage of the wager Kalshi writes the rules for the contract, determines the basis for settlement, and oversees the payment process.

62. Kalshi's use of its own clearing agent reveals that the company is not merely providing a platform for third-party trading. It is administering a closed-loop wagering system, where it creates the games, handles the bets, and pays out the winners.

63. The types of event contract wagers are numerous, and Kalshi keeps adding more. Examples include whether Tottenham or Manchester United will win the Europa League Championship, whether the New England Patriots or the New York Giants will win their next game, and who will win the Women's Tennis Association tournament. In August and September of 2025, Kalshi expanded its offerings to include bets on events such as the number of touchdowns a given player will score in a game, how many points a certain team will win by, the overall total score in a game, and bets on combinations of different sports outcomes. In each case, the bettors' return is determined entirely by an outcome outside their control.

64. Kalshi formally launched its platform in July 2021 with event contracts focused on topics like inflation, Consumer Price Index, unemployment, and macroeconomic benchmarks. These initial offerings were framed in financial terms, but structured and priced like bets. Each contract allowed users to take a position for or against a particular outcome for a fixed return.

65. In October 2024, Kalshi expanded into political event contracts. Users were invited to bet on which party would control Congress, whether a presidential candidate would win a swing state, or the margin of victory in a presidential race. These political contracts were presented as opportunities to profit from "civic knowledge," but their mechanics (binary outcomes, fixed payouts, speculative pricing) are the same as those that comprise its sporting event contracts.

66. As described further *infra*, in January 2025, Kalshi began to offer sports wagering contracts.

70. Each event contract webpage has an “Ideas” tab and “Activity” tab. The former invites users to post their “prediction” and allows them to interact with other user’s posts, including replying, liking, bookmarking, and sharing with others. The latter tab shows the number of purchased and sold “Yes” and “No” contracts updated in real time.

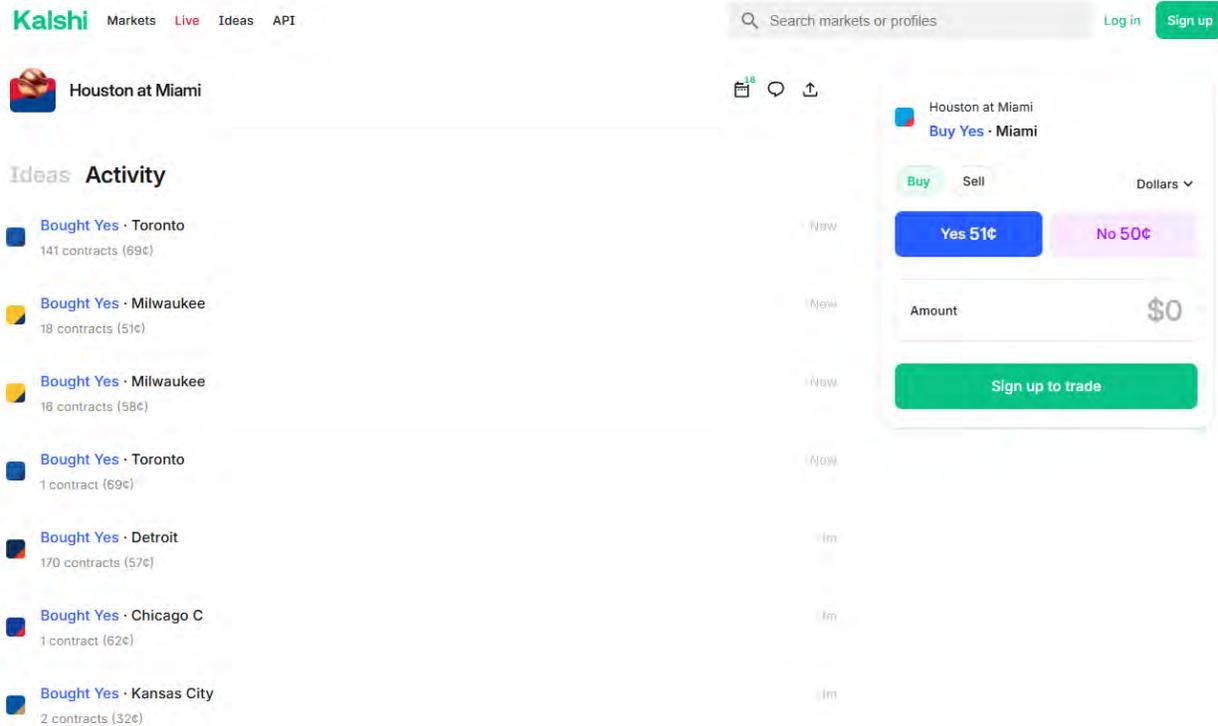


Figure B: A screen capture taken on August 5, 2025, of the Activity tab showing real-time market activity on wagers for the Houston vs. Miami major league baseball (“MLB”) game scheduled for August 5, 2025.

71. Kalshi also offers a continuously updating ticker tape of market activity and a “people are also buying” on the event contract wager page before placing a wager in addition to a “people also bought” prompt immediately after users place a wager, sustaining real-time stimulation and encouraging further speculation without pause. These features mirror known psychological triggers of gambling behavior and are engineered to increase user retention and transaction volume.

72. This uninterrupted sequence of feedback and engagement contributes to a reward loop commonly associated with addictive gambling behavior. Behavioral researchers warn that such mechanisms, modeled after operant conditioning and slot machine dynamics, can bypass rational evaluation and contribute to excessive financial risk-taking.

2. *Public Leaderboards, Profiles, and Posts Reinforce Speculation*

73. Kalshi uses public leaderboards to rank its bettors, based on profits and volume on a daily, weekly, monthly, and all-time basis. The leaderboards encourage competition and social comparison for those who opt in.

74. The leaderboard rankings, displayed with usernames, avatars, and performance stats, mimic leaderboards utilized in video games and other platforms such as fantasy contests and social casinos, and encourage users to chase short-term gains.

75. There is also a countdown clock in the top right corner appearing in blue that reflects the remaining time for the time-limited leaderboards, as well as a button to “Join” either the profit or volume leaderboards, respectively. These features only serve to instill further incentive and pressure for users to appear on the leaderboard.

76. The leaderboards serve no market purpose; instead, they promote repeated high-risk behavior by rewarding speculative successes with community recognition.

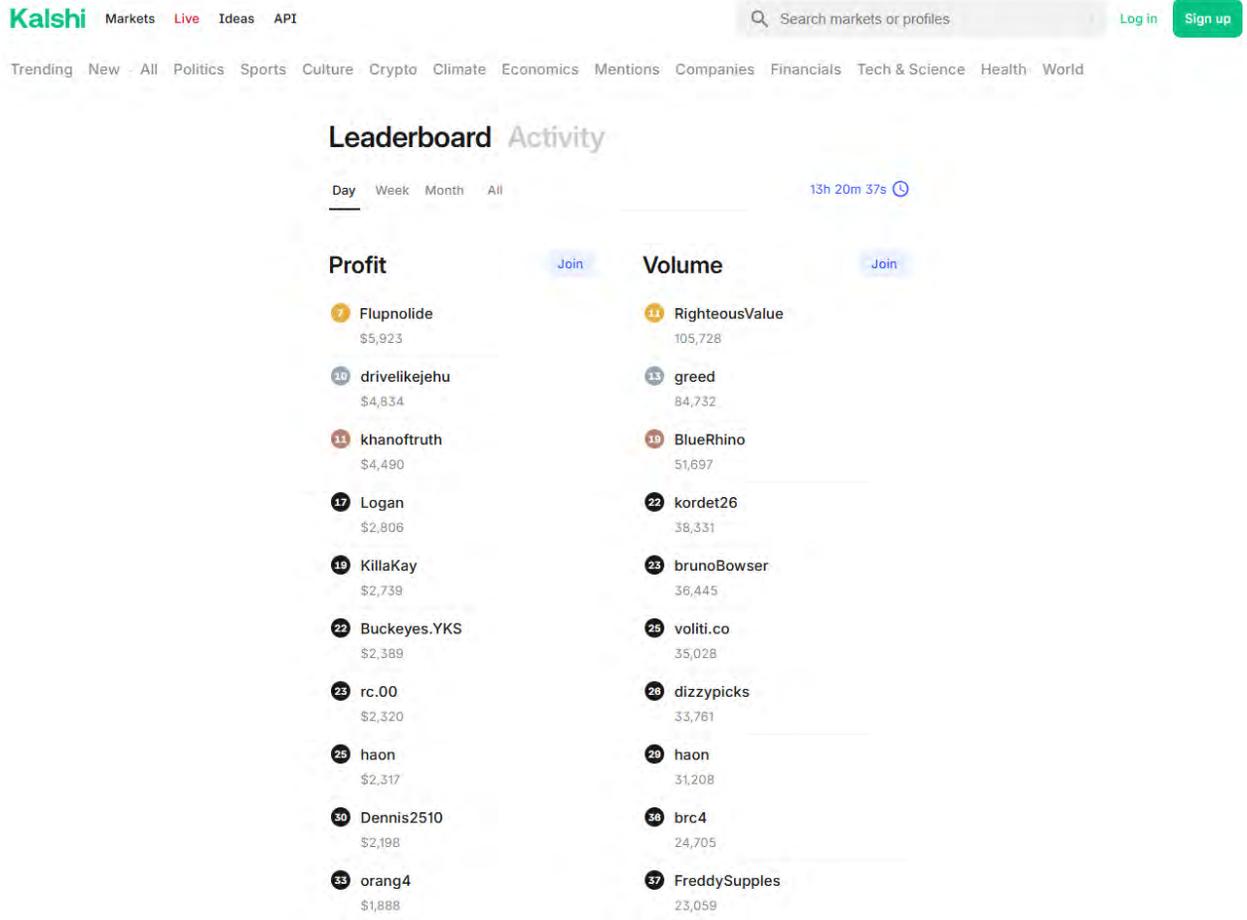


Figure C: A screen capture taken on July 18, 2025, of the Kalshi “daily” leaderboard.

77. User profiles add another layer to Kalshi’s encouragement of engagement and speculation. Bettors may create a profile with a nickname, profile picture, and description to “interact with other traders.”⁹ These profiles may publicly display detailed wagering metrics, including potential payouts, cumulative profit, total volume transacted, and the number of wagers made, depending on the user’s privacy setting. Making these features public allows the bettor to compete on the leaderboard. If made public, these figures appear prominently beneath

⁹ Kalshi Ideas Profile, KALSHI HELP CTR., <https://help.kalshi.com/account/kalshi-ideas-profile> (last visited Aug. 5, 2025).

each bettor’s profile name and avatar, alongside a timeline of their recent transactions and posts, replies, and “likes” (*i.e.* their interactions with other Kalshi users) on the Kalshi platform.

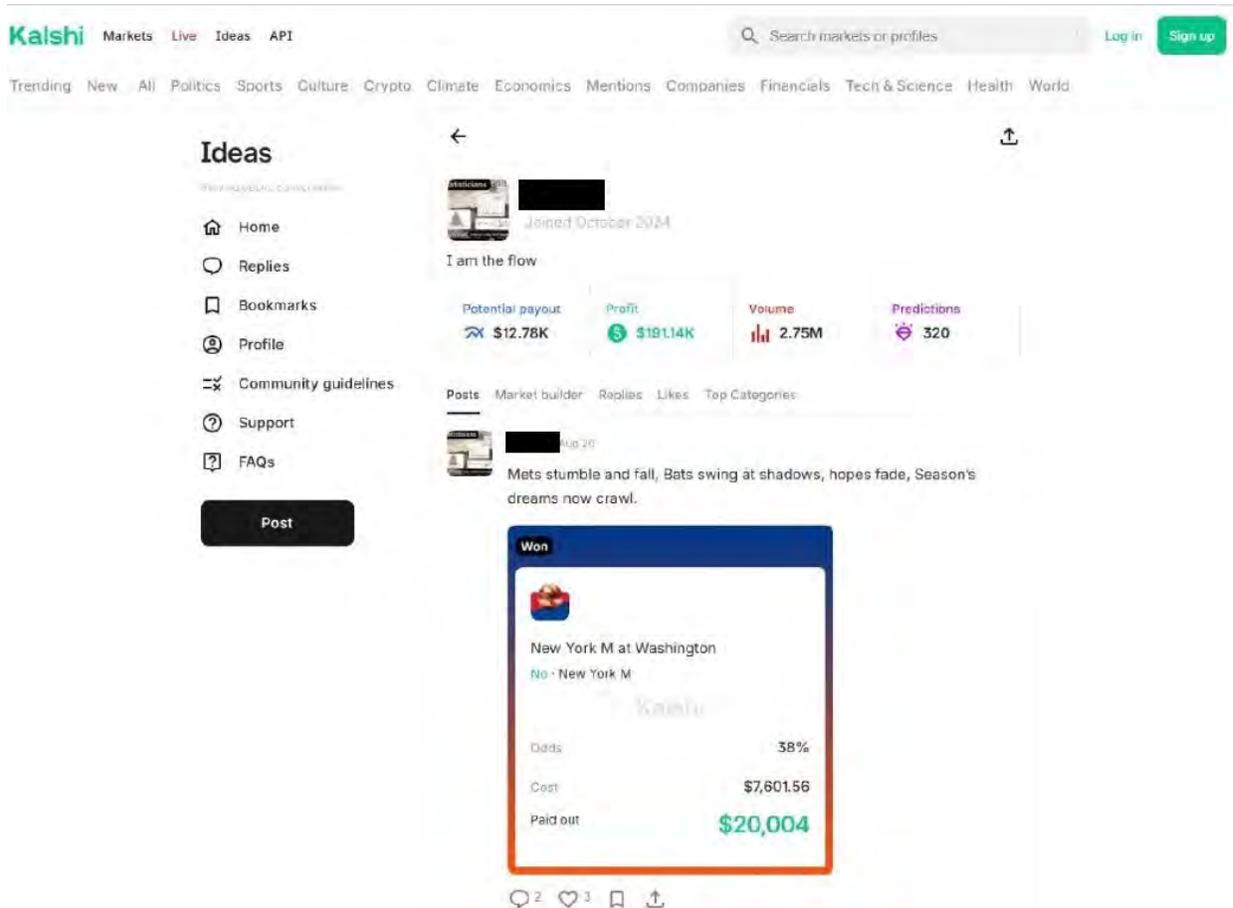


Figure D: A portion of a screen capture taken on August 7, 2025, of a redacted Kalshi profile page displaying the user’s posted wager on a baseball game. The wager resulted in a payout and received two replies (indicated by the speech bubble) and three “likes” (indicated by the heart).

78. Bettors are encouraged to post their “prediction” on the event contract page under the “Ideas” tab, which facilitates a messaging function for bettors to engage with each other. Bettors can reply, like, bookmark, and share other user’s posts.

79. User profiles serve as performance dashboards that encourage bettors to compete, compare, and signal success. The interface reinforces speculative behavior through design choices modeled on gambling platforms, including rapid trade cycling, reward anticipation, and mechanisms known to trigger compulsive engagement loops.

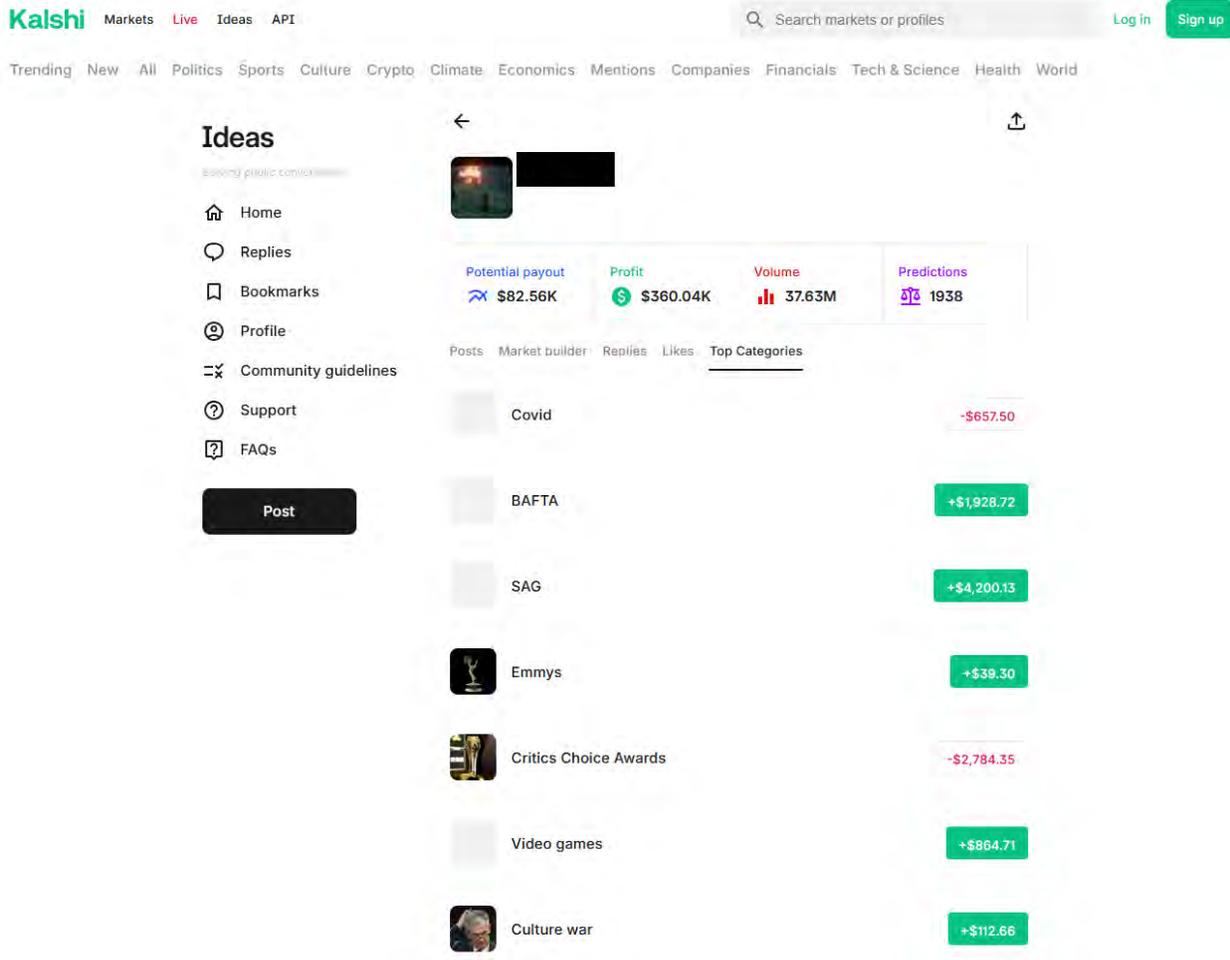


Figure E: A screen capture taken on August 5, 2025, of a redacted Kalshi profile page prominently displaying the user’s Kalshi statistics and below the user’s “Top Categories” of purchased event contracts showing profits (in green) and losses (in red).

80. Kalshi makes its contract wagers freely accessible to the public in the United States through its website and its mobile apps, including in Massachusetts.

81. Kalshi does not even attempt to comply with Massachusetts’ or any other state’s sports wagering laws.

82. Although Kalshi addresses the “numerous risks associated with trading on Kalshi” in its membership agreement,¹⁰ no such disclaimers can be found on the public-facing wager

¹⁰ Kalshi Membership Agreement, KALSHI, <https://kalshi.com/docs/kalshi-member-agreement.pdf> (last visited Aug. 22, 2025).

pages. There is a risk warning that appears at the bottom of Kalshi’s homepage; however, it is difficult to navigate to when scrolling down, as the homepage automatically and continuously updates with other available wagers.

VI. KALSHI’S SPORTS WAGERS

83. On January 23, 2025, Kalshi introduced sports-related wagers, including those on Super Bowl winners and March Madness outcomes.

84. From January to June of 2025—approximately the first five months Kalshi offered sports event contracts—bettors wagered more than \$1 billion on 3.4 million sports wagers.

85. More specifically, sports event wagers comprised approximately 70% of Kalshi’s trading volume between February 25, 2025, and May 17, 2025, which increased to 75% from March 18, 2025 onwards—Kalshi’s first day offering single-game March Madness markets. Kalshi made more from sports wagers than licensed sports wagering platforms Draftkings or FanDuel over the course of the same February through May timeframe.

86. As of June 2025, Kalshi has roughly two million users and is available nationwide.

87. On information and belief, Kalshi is valued at over \$2 billion.

A. Kalshi’s Sports Event Contracts Are Sports Wagering under Massachusetts Law

88. Despite Kalshi calling its product “event contracts,” consumers are placing wagers on the outcome of sporting events.

89. Kalshi’s sporting event contracts constitute “sports wagering” because Kalshi is engaged in “the business of accepting wagers on sporting events.” G.L. c. 23N, § 3.

90. Kalshi's offering meets the definition of a "wager" under Chapter 23N because a user risks a sum of money (*i.e.* the price of the contract) on an uncertain occurrence in a sporting event (*i.e.* the position taken on the event contract) for the chance to win money if the event takes place (*i.e.* a prize). *See* G.L. c. 23N, § 3.

91. Kalshi's sporting event contracts concern a "professional [and collegiate] sport or athletic event[]," which constitutes a "sporting event." G.L. c. 23N, § 3.

92. Accordingly, Kalshi's sport events contracts are wagers on uncertain outcomes, structured and operated in a manner that meets the legal definition of sports wagering under Massachusetts law.

93. Moreover, Kalshi's wagers bear resemblance to wagers that are explicitly identified by c. 23N as sports wagering.

94. For example, one of Kalshi's offerings display a binary option of a winner of a contest, the perceived likelihood of either option winning, and a price on either option determined by that perceived likelihood.

95. Kalshi pays out to the winner and nothing to the loser.

96. Such bets are moneyline wagers, which c. 23N, § 3 identifies as one of the particular types of bets defined as "sports wagering."

97. For sports wagering operators that are licensed in Massachusetts, moneyline wagers display binary options of the winner of a contest, noting odds and a higher payout for the option that is less likely to occur.

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NFL Odds

| NFL | SPREAD | MONEY | TOTAL |
|-----------------------|--------------|-------|-------------------|
| Dallas Cowboys | +6.5 -102 | -250 | O 46.5 -105 |
| Philadelphia Eagles | -6.5 -120 | -310 | U 46.5 -115 |
| SEP 4, 8:21PM ET | | | Stats More wagers |
| Kansas City Chiefs | -3 -115 | -162 | O 45.5 -110 |
| Los Angeles Chargers | +3 -105 | +136 | U 45.5 -110 |
| SEP 5, 8:01PM ET | | | Stats More wagers |
| New York Giants | +6.5 -115 | -225 | O 45.5 -105 |
| Washington Commanders | -6.5 -105 | -275 | U 45.5 -115 |
| SEP 7, 1:01PM ET | | | Stats More wagers |
| Caroline Panthers | +3 -115 | +124 | O 46.5 -108 |
| Jacksonville Jaguars | -3 -105 | -146 | U 46.5 -112 |
| SEP 7, 1:01PM ET | | | Stats More wagers |

Betslip: +125 Betslip empty Add selections to place bet

Figure F: A portion of a screen capture taken on August 27, 2025, of licensed sports wagering operator Fanduel’s website offering National Football League (“NFL”) wager offerings with Moneyline, binary option, wagers represented in “Money” column.

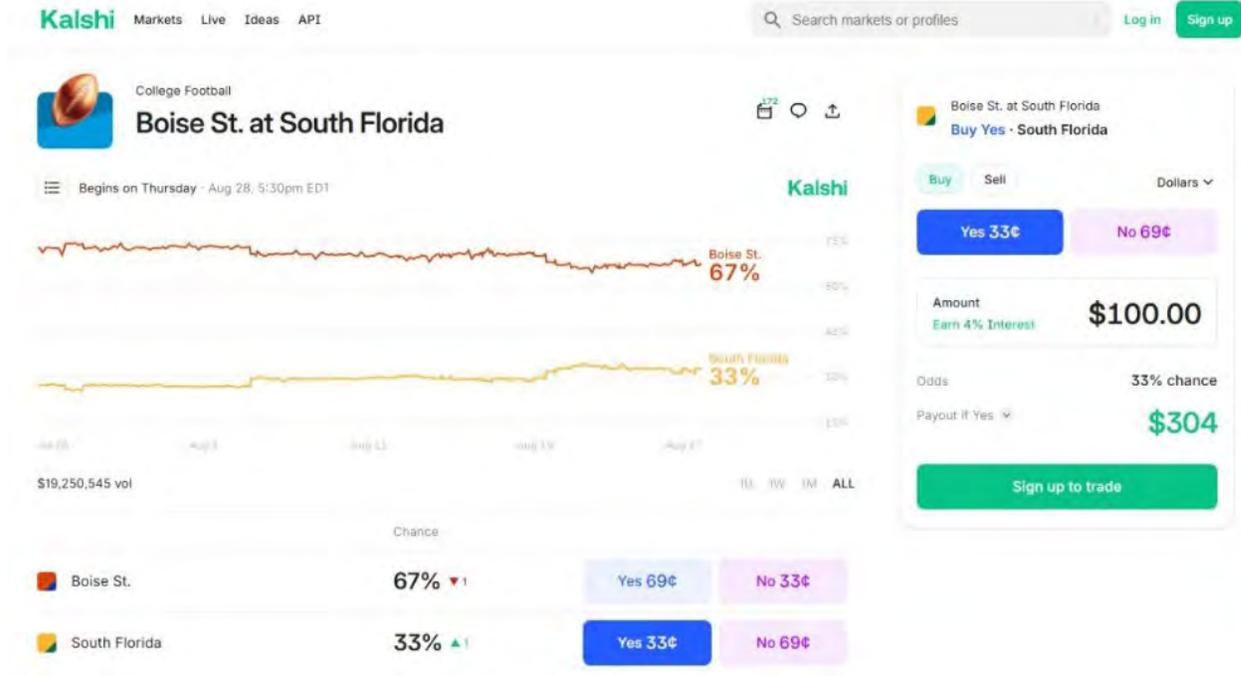


Figure G: A portion of a screen capture taken on August 27, 2025, showing that the purchase of \$100 for a “Yes” contract that South Florida will win against Boise St. in an NCAA football game, which Kalshi determines the “odds” of happening are 33%, would result in a \$304 payout if this happens.

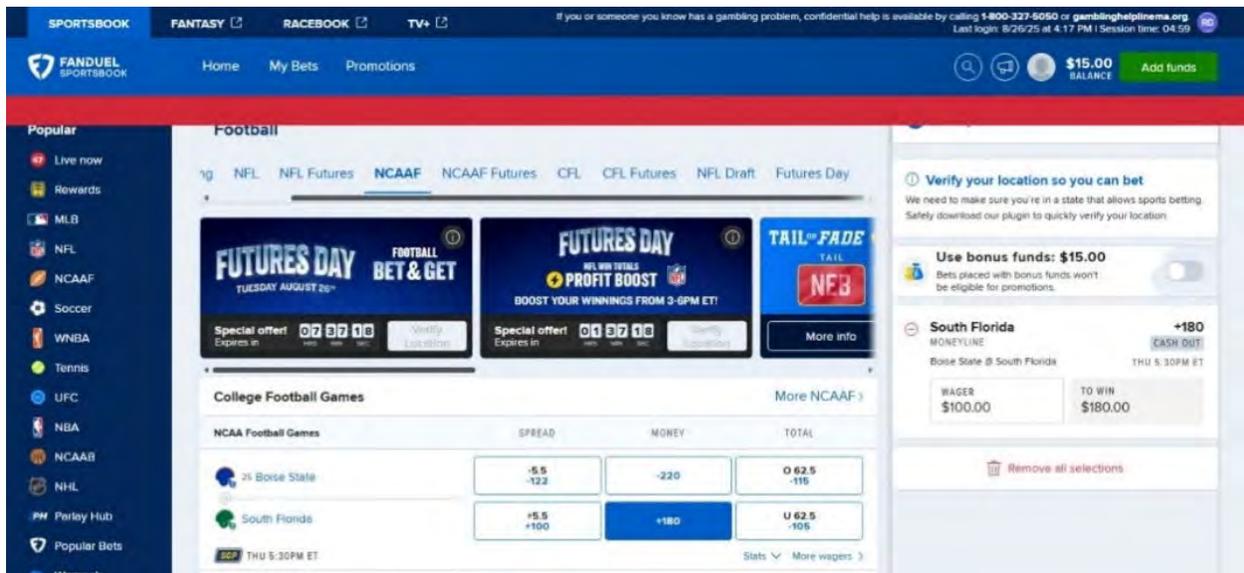


Figure H: A portion of a screen capture taken on August 26, 2025, showing that the placing of a \$100 wager that South Florida will win against Boise State, which licensed sports operator Fanduel, listed at +180 odds, would result in a \$180 payout if this happens.

98. In August 2025 and September of 2025, Kalshi’s expanded its sports-contract offerings by launching new wager types that also resemble other wagers explicitly defined as “sports wagering” under c. 23N.

99. One new wager type is framed as follows: “[w]ill <team> win <game> by <above/below/between/exactly/at least> <count> points?”¹¹ This is a point spread bet, which is a bet on the difference in score between teams in a game. Point spread bets are explicitly included in the definition of sports wagering. G.L. c. 23N, § 3. In fact, Kalshi titles the contract “FOOTBALLSPREAD.”¹²

100. Another new wager type asks “[w]ill <game> have <over/under> <count> points in <time period> of <game>?”¹³ This is an “over/under” wager, which is a bet on whether the total amount of points scored in a game is over or under a specific amount. Over/under bets are explicitly included in the definition of sports wagering. G.L. c. 23N, § 3.

101. A third new wager type asks the bettor “[w]ill <player/team> score <first/last/any/count> touchdown(s) in <time_period> of <game>?”¹⁴ This structure resembles a proposition bets, which are bets on specific events that are not the outcome of a game. Proposition bets are explicitly included in the definition of sports wagering. G.L. c. 23N, § 3.

¹¹ Letter from Xavier Sottile, Head of Markets, KalshiEX LLC, to CFTC at 1 (Aug. 18, 2025) <https://www.cftc.gov/sites/default/files/filings/ptc/25/08/ptc08182529012.pdf> (regarding “KalshiEX LLC – CFTC Regulation 40.2(a) Notification Regarding the Initial Listing of the ‘Will <team> win <game> by <above/below/between/exactly/at least> <count> points’ Contract”).

¹² *Id.* at 8.

¹³ Letter from Xavier Sottile, Head of Markets, KalshiEX LLC, to CFTC at 1 (Aug. 18, 2025) <https://www.cftc.gov/sites/default/files/filings/ptc/25/08/ptc08182529006.pdf> (regarding “KalshiEX LLC – CFTC Regulation 40.2(a) Notification Regarding the Initial Listing of the ‘Will <game> have <over/under> <count> points in <time period> of <game>?’ Contract”).

¹⁴ Letter from Xavier Sottile, Head of Markets, KalshiEX LLC, to CFTC at 1 (Aug. 18, 2025) <https://www.cftc.gov/sites/default/files/filings/ptc/25/08/ptc08182529000.pdf> (regarding “KalshiEX LLC – CFTC Regulation 40.2(a) Notification Regarding the Initial Listing of the ‘Will <player/team> score <first/last/any/count> touchdown(s) in <time_period> of <game>?’ Contract”).

102. In September of 2025, Kalshi further introduced the following wager to its portfolio: “Will <outcomes> occur in <events>?”¹⁵ designed for bets on multiple “components” which, if each prevail, “will pay out the product of the payouts for each <component>, as dictated by each corresponding <rule>, rounded down to the nearest cent.”¹⁶ This structure is a parlay, which is a bet on whether a combination of different events will occur. Parlays are explicitly included in the definition of sports wagering. G.L. c. 23N, § 3.

¹⁵ Letter from Xavier Sottile, Head of Markets, KalshiEX LLC, to CFTC at 1 (Sept. 2, 2025) <https://www.cftc.gov/sites/default/files/filings/ptc/25/09/ptc09022529868.pdf> (regarding “KalshiEX LLC – CFTC Regulation 40.2(a) Notification Regarding the Initial Listing of the ‘Will <outcome> occur in <events>?’ Contract”).

¹⁶ *Id* at 9.

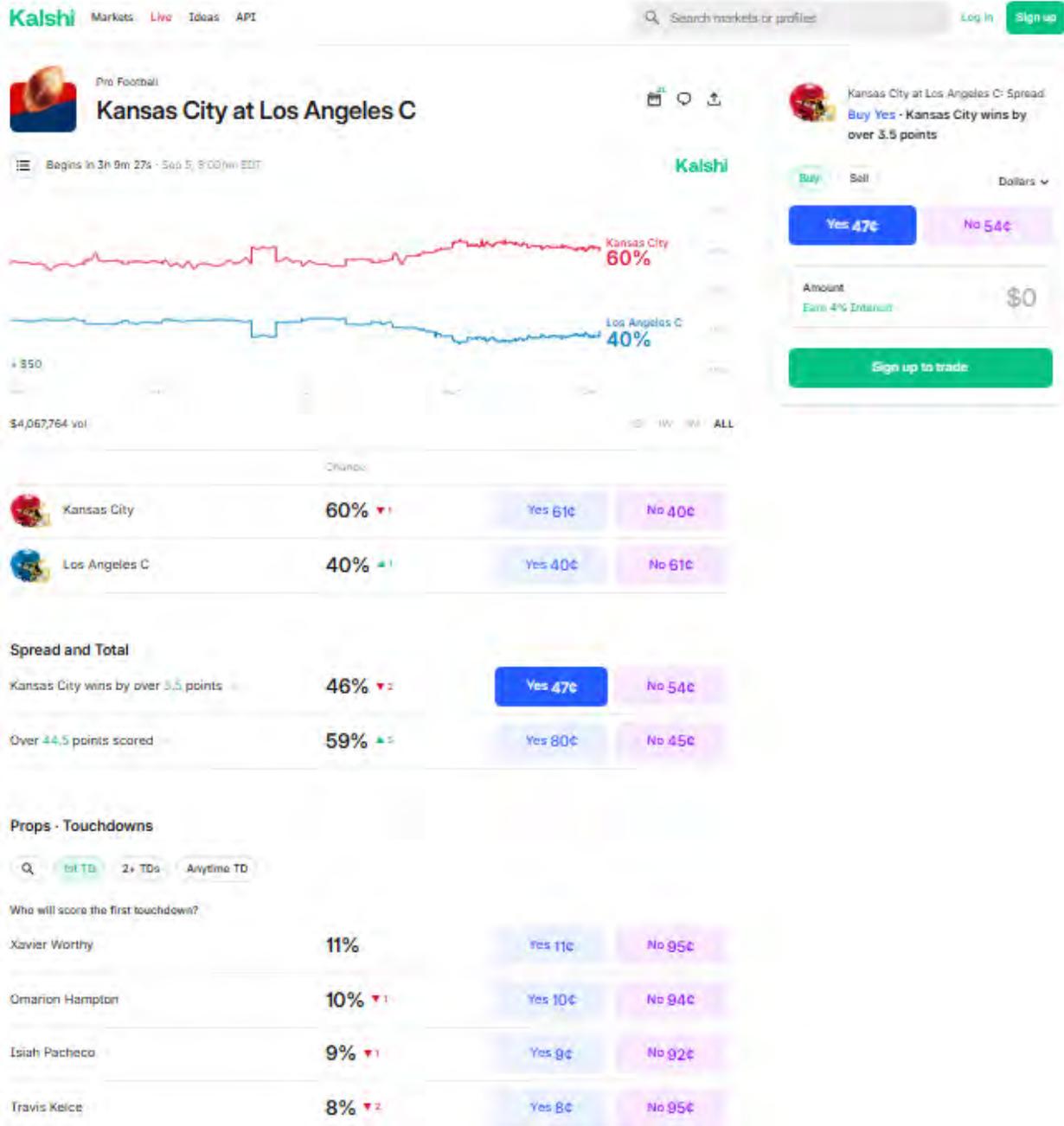


Figure I: A portion of a screen capture taken on September 5, 2025, showing the various wager types available on Kalshi's platform regarding the Kansas City at Los Angeles C scheduled for September 5, 2025, at 8 P.M.

| Game Lines SGP ^ | | | |
|---|------------|-------|----------------|
| | SPREAD | MONEY | TOTAL |
| Kansas City Chiefs | -3 -118 | -168 | O 47.5 -105 |
| Los Angeles Chargers | +3 -104 | +142 | U 47.5 -115 |

| Touchdown Scorers SGP ^ | | | |
|--|----------|-------|------|
| Tap a player name or icon for stats and more betting options.... Read more | | | |
| | ANY TIME | FIRST | LAST |
| Xavier Worthy | +124 | +650 | +750 |
| Omarion Hampton | +154 | +750 | +900 |
| Isiah Pacheco | +176 | +800 | +950 |
| Travis Kelce | +172 | +900 | +950 |

Figure J: A portion of a screen capture taken on September 5, 2025, showing the various wager types available on FanDuel’s platform regarding the Kansas City at Los Angeles C scheduled for September 5, 2025, at 8 P.M.

103. Moreover, Kalshi’s wagering structure, including the ability to sell wagers to other users and the matching of buyers on opposite sides of a contract constitutes “exchange wagering,” which is explicitly included in the definition of sports wagering. G.L. c. 23N, § 3. Exchange wagering allows bettors to bet or trade against one another rather than a “house”.

104. In addition, just like licensed sports wagering operator platforms, Kalshi offers the ability to wager on sporting events while those events are taking place.

B. Kalshi’s Event Contracts Are “Illegal Gaming” under Massachusetts Law

105. In addition to satisfying the statutory definition of “sports wagering” under Chapter 23N, Kalshi’s event contracts fall within the statutory definition of “illegal gaming” under Massachusetts Law.

106. Kalshi’s contracts constitute a “percentage game” played on an electronic device (*i.e.*, a computer or mobile device) for money. *See* G.L. c. 4, § 7, cl. 10.

107. Kalshi’s event contracts further satisfy all three elements of illegal gaming, generally referred to as an illegal lottery, under Massachusetts law: prize, consideration, and chance. *See Commonwealth v. Stewart-Johnson*, 78 Mass. App. Ct. 592, 594 (2011). First, users stake real money (consideration) to purchase binary contracts with the hope of receiving a monetary return (a prize) if they correctly predict the outcome (chance) of a future sports event. Most critically, chance predominates over skill in determining the outcome of these contracts. While users may conduct research or follow trends, they cannot influence or control the actual result of a sporting event. The event turns on external, uncertain factors, such as player performance, officiating, weather, and injuries. These factors are unknowable and beyond the bettor’s control.

108. Massachusetts is not alone in determining that Kalshi is engaged in illegal gaming. Multiple state gambling regulators have issued cease-and-desist orders to Kalshi for offering unlicensed sports wagering, including in Nevada, New Jersey, Maryland, Ohio, Illinois, Montana, and Arizona.

VII. KALSHI'S MARKETING, ADVERTISING, AND MESSAGING ADMIT IT IS ENGAGED IN SPORTS WAGERING

109. Kalshi advertises to Massachusetts consumers through its website and mobile apps, in addition to advertising on streaming videos and television (especially during or surrounding sports broadcasts), and advertising through social media.

110. Prior to March 2025, Kalshi referred to itself in advertisements as a “sports betting platform” that offered “bets” on various real-world events.

111. Kalshi’s own “Press” page on its website currently includes various news stories where Kalshi and Kalshi’s CEO refer to its offerings as “bets.”

112. As recently as 2024, on mobile application stores, such as the “App Store” for iOS (Apple) devices and “Google Play” for Android devices, Kalshi listed its app alongside the tagline “Kalshi: Bet on the headlines.”¹⁷

113. Kalshi’s “App Store” thumbnails (i.e., small images featuring the app) have made statements such as “You can bet on that” and “Legal in 50 states.”

114. Kalshi has at least two Instagram accounts accessible to Massachusetts users: @kalshi_official and @kalshisports.

115. On the @kalshi_official Instagram account, Kalshi advertises event contracts through posts on its profile. Numerous posts describe event contracts by using terms such as “odds.”

¹⁷ Kalshi now describes itself as a “regulated exchange dedicated to trading” that allows people to “trade” to offset risks and “hedge against future uncertainties” where “investments [are] directly tied to the outcome of specific events.” *Why Kalshi contracts over other asset classes?* KALSHI HELP CTR., <https://help.kalshi.com/kalshi-101/why-kalshi-contracts-over-other-asset-classes> (last visited Aug. 6, 2025).

Instagram

Home

Search

Explore

Reels

Messages

Notifications

Create

Profile

Meta AI

AI Studio

Threads

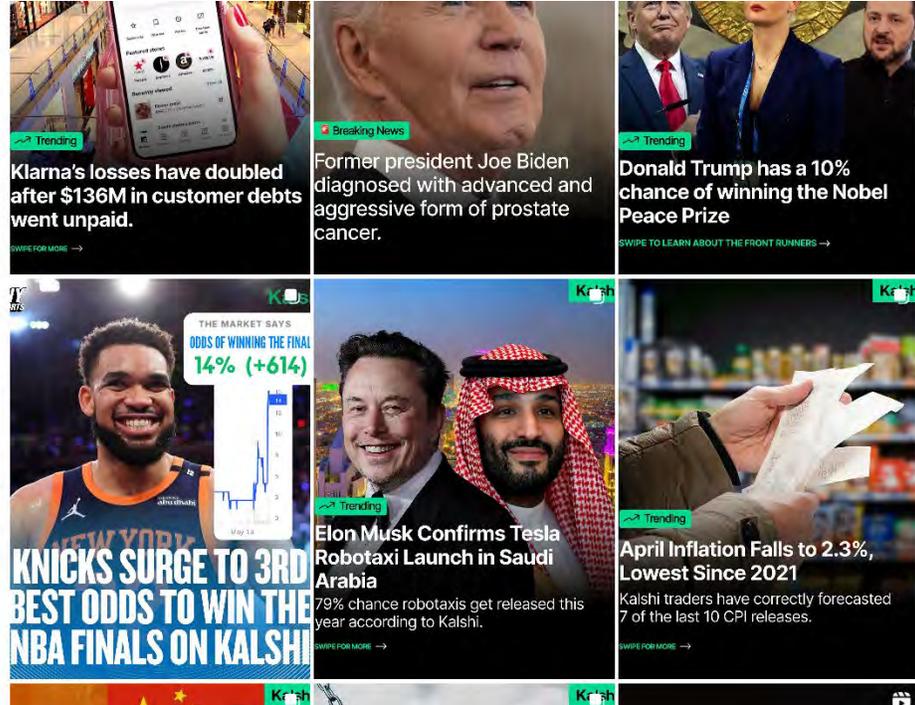


Figure K: Snippet from @kalshi_official Instagram account as of May 21, 2025.

116. On the @kalshisports Instagram account, Kalshi dedicates its posts to current sports events and sports-related pop culture, using memes and trending topics to entice consumers to enter into one of Kalshi's sports event contracts.

Instagram

- Home
- Search
- Explore
- Reels
- Messages
- Notifications
- Create
- Profile
- Meta AI
- AI Studio
- Threads

POSTS REELS TAGGED

"There's a reason NBA Twitter likes to call him the free throw merchant" 😂

This might be the last tush push we ever see in the NFL

The NFL is meeting tuesday to vote on a proposal that would ban it

Will Campbell › Date of birth
January 6, 2004

Knicks assistant coach : we're up 40 we should consider pulling starters now for Monday night

Why is KAT trying to force the New York accent 😂

Thibs :

Cam Ward asks Shedeur Sanders for his jersey and this was his response:
"I gotta sell it—I'm already down." 😂

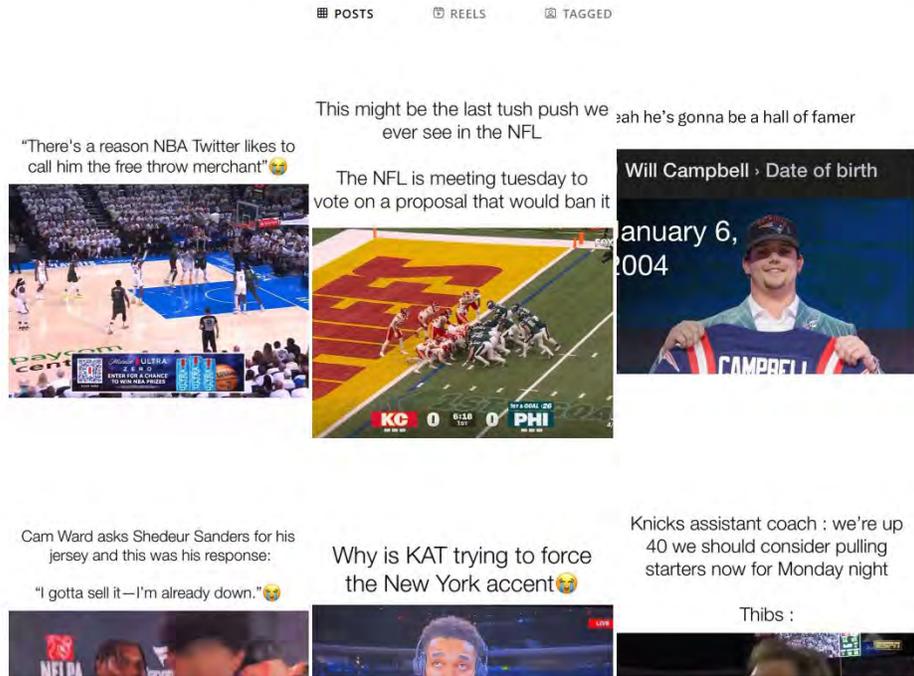


Figure L: Snippet from @kalshisports Instagram account as of May 21, 2025.

117. As recently as January 23, 2025, Kalshi has posted advertisements and published posts on Instagram referencing “betting” on Kalshi.

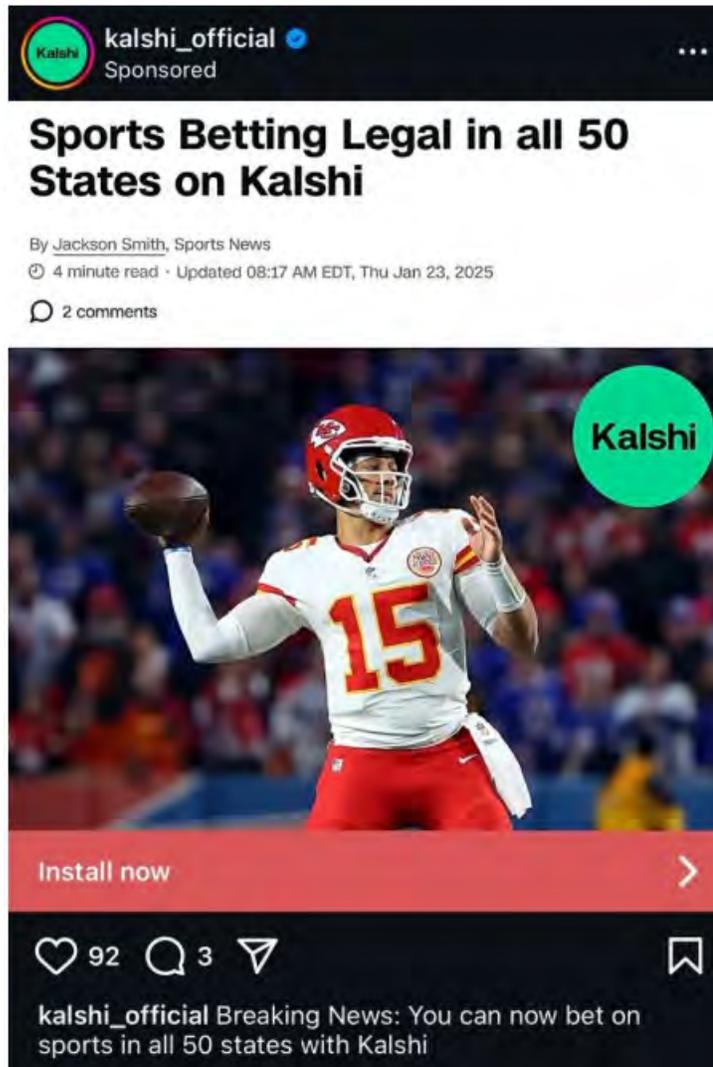


Figure M: Example of advertisement from @kalshi_official Instagram account.

118. Kalshi’s Instagram advertisements have made statements including “The First Nationwide Legal Sports Betting Platform” and “You can now bet on sports in all 50 states with Kalshi,” evidencing Kalshi’s strategy to operate and market like a gambling entity rather than a risk management platform.

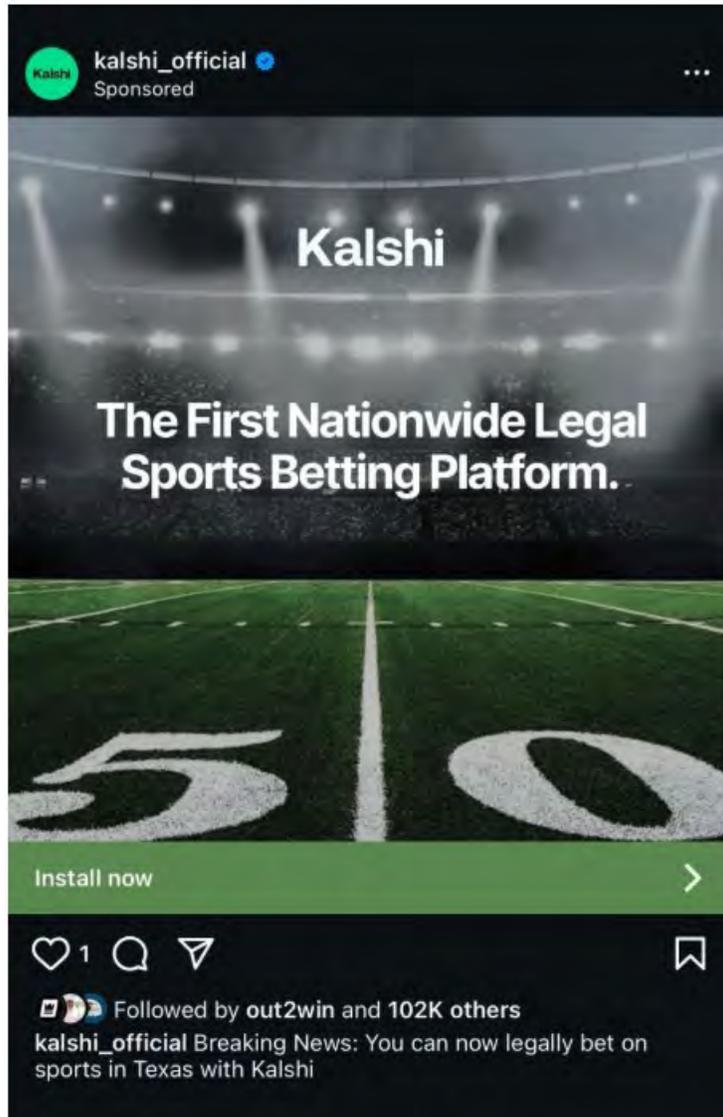


Figure N: Example of advertisement from @kalshi_official Instagram account.

119. At least one of Kalshi’s Instagram posts, in October 2024, touted how Kalshi was higher ranked than FanDuel, a Massachusetts-licensed sports wagering and fantasy sports operator, in the “Top Apps” on the Apple “App Store.”

120. Kalshi has an active TikTok account, @kalshi_markets, that is accessible to Massachusetts users.

121. Kalshi’s TikTok account includes content similar to that of its Instagram accounts, advertising its various event contracts through videos and memes that represent political, pop culture, and sports-related current events.

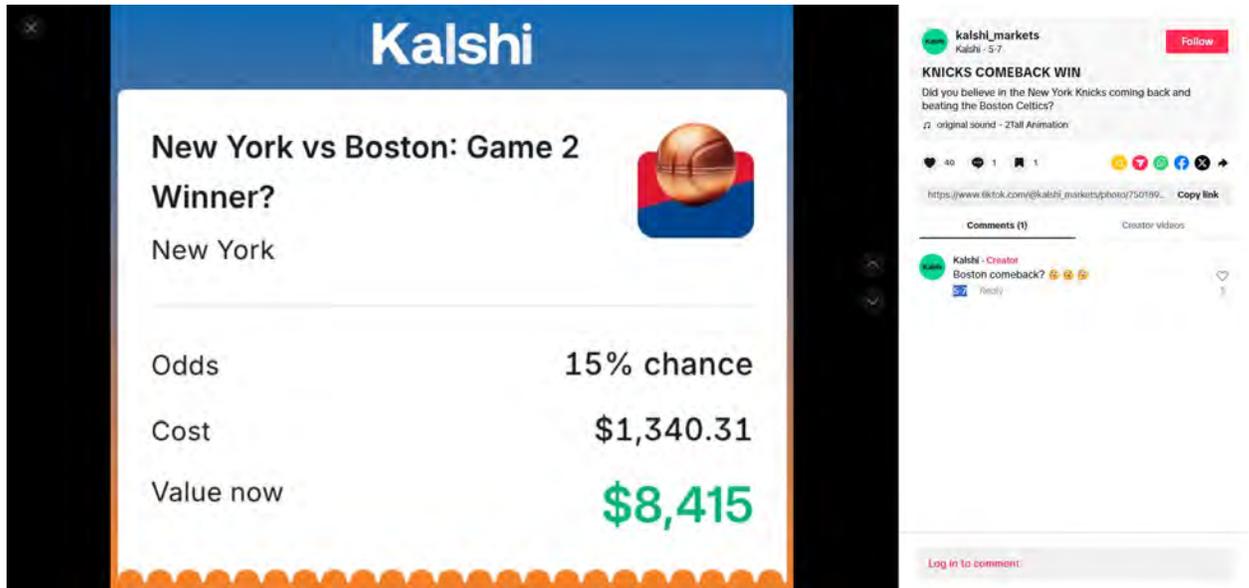


Figure O: Example of a frame in a video posted on @kalshi_markets TikTok account.

122. Kalshi has a Discord page (or “server”). Discord is a platform that allows users with common interests to communicate with one another. Kalshi describes its Discord server as a place to “talk about market ideas, answer questions, and provide a space for developers to discuss Kalshi’s powerful API” in real time and encourages users to join.¹⁸

123. The Discord server has a channel (i.e., conversation) dedicated to sports where users share the sports event contracts purchased, successful outcomes, and speculate future purchases.

¹⁸ *Connect with Us*, KALSHI HELP CTR., <https://help.kalshi.com/connect-with-us> (last visited Aug. 7, 2025).

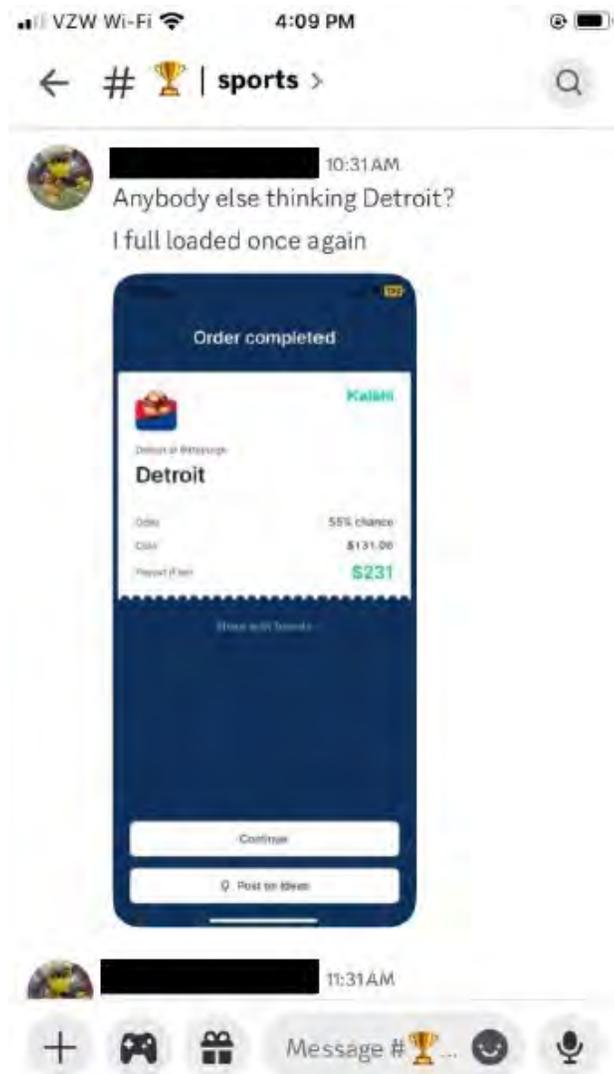


Figure P: A screen capture taken on July 22, 2025, showing a user posting their “Order completed” page within a designated “Sports” channel on Discord upon wagering in favor of Detroit winning against Pittsburgh. The username has been redacted.

124. Kalshi has had, or currently has, multiple Facebook profiles and pages that are accessible to Massachusetts users, including “Kalshi – TradeTheHeadlines,” “Kalshi – Trade Event Contracts,” “TradeWithKalshi,” and “KalshiEventFutures.”

125. While Kalshi’s advertising efforts have mostly been online, it recently reached a television viewership when it created a commercial completely from artificial intelligence that was aired during Game 3 of the NBA Finals in June 2025, where fictitious individuals were shouting their picks as to who would win the NBA championship. Other fictitious individuals

shouted gambling phrases such as “We’re in Florida asking people what they put their money on!” and “I’m all in.”

126. Kalshi now describes its platform as allowing consumers to “trade” on event contracts rather than “betting,” potentially leading consumers to believe they are not engaging in gambling. This shift in framing took place after March of 2025, after Kalshi received its first of many cease-and-desist letters from state gaming regulators.

127. Kalshi also offers “trading incentives” or “bonuses” to its users.

128. FanDuel and DraftKings also both offer programs that reward account holders based on their wager volume. Both reward programs categorize account holders into tiers based on predetermined wager volume thresholds and award account holders different amounts of credits or bonuses, or other perks, based on their tier.

129. The availability of Kalshi’s contracts are not limited to Kalshi’s platform, but are also available on Robinhood, a stock-trading platform accessible via app and webpage. The two platforms have partnered since March of 2025 to offer Kalshi wagers.

130. Approximately \$1 billion worth of Kalshi wagers were traded on Robinhood during the second quarter of the year, which likely generated an estimated \$10 million in revenue for Kalshi.

131. On August 19, 2025, Kalshi announced that it will offer event contracts on college and NFL football.

VIII. KALSHI’S UNLAWFUL SPORTS EVENT CONTRACTS LACK SAFEGUARDS FOR RESPONSIBLE GAMBLING REQUIRED BY MASSACHUSETTS LAW

132. While Kalshi offers wagers on event contracts, including sports-related event contracts, Kalshi provides little to no safeguards to educate users about financial responsibility,

risks of losing money, and have only recently implemented minimal responsible gambling tools mandated of licensed sports wagering operators to address addiction.

133. Kalshi allows anyone who is at least 18 years old to create an account and wager on event contracts. Upon signing up for an account, users enter such personal information as their date of birth and social security number and only may be asked to upload an identifying document (*i.e.* a passport or driver’s license) for further verification.

134. Kalshi also markets to, and facilitates use of its platform by, users under the age of 18. These users may access a demonstration version of the Kalshi platform, which “offers users the ability to interact with the platform using mock funds, allowing for a safe and risk-free experience” upon inputting “fake information” to sign up for this version.¹⁹

135. Kalshi does little to warn bettors about the real risk of losing money given its absolute yes-or-no payout structure.

136. Prior to March 2025, Kalshi did not provide any self-limiting options to Massachusetts bettors, such as maximum deposits, maximum wagers for a particular contract, or the maximum wager on a particular position over a particular time span.

137. As of March 2025, Kalshi introduced a “Personalized Funding Cap,” which allows bettors to set only a maximum deposit during each calendar month for all future deposits.

138. Prior to March 2025, Kalshi did not provide any option for a bettor to set a “cool-off” period, that is, a timeframe self-selected by the bettor during which they would not be able to place wagers.

¹⁹ *Demo Account*, KALSHI HELP CTR., <https://help.kalshi.com/account/demo-account> (last visited Aug. 8, 2025).

139. Kalshi does not provide any resources or information to a bettor who is seeking responsible gambling messaging or help for financial loss or gambling addiction, such as the Massachusetts Problem Gambling Helpline.

140. Kalshi does not have programs that intervene to promote responsible gambling when a bettor's pattern of wagering indicates potential problem gambling behavior.

141. Prior to March 2025, Kalshi did not offer voluntary self-exclusion options or similar protections to bettors.

142. Even if a bettor voluntarily self-excludes from Kalshi, there is no indication whether that bettor would automatically be removed from all Kalshi marketing lists.

IX. KALSHI'S UNLICENSED SPORTS EVENT CONTRACTS UNDERMINE MASSACHUSETTS' EFFORTS TO PROTECT ITS RESIDENTS FROM THE HARMS OF ONLINE SPORTS WAGERING

143. Gambling has serious public health risks that may lead to harm to a gambler's financial, economic, emotional, and physical well-being, as well as the well-being of their families and communities.

144. The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* ("DSM 5-TR") categorizes gambling disorder as an "addictive disorder," making it the only defined behavioral addiction in that manual. The disorder includes symptoms such as an increased tolerance for gambling (*i.e.*, more money wagered over time); repeated unsuccessful efforts to control, reduce, or stop gambling; and lying or concealing the extent of gambling involvement.

145. A review of sports wagering and gambling addiction studies conducted by the National Council on Problem Gambling shows that "[t]he rate of gambling problems among sports bettors is at least twice as high as among gamblers in general. . . . [and] the rate of problems is even higher" when sports wagering takes place online, "with one study of online

sports gamblers indicating that 16% met clinical criteria for gambling disorder and another 13% showed some signs of gambling problems.”²⁰

146. “[N]ot only does sports betting lead to increased betting activity, but it also leads to higher credit card balances, reduced available credit, decreased net investments in financial markets, and greater participation in lottery play. These effects are particularly pronounced among financially constrained households.”²¹

147. Research further shows that “legalized sports betting amplifies emotional cues, as evidenced by increased [intimate partner violence] when a fan’s home team unexpectedly loses.”²²

148. Several US studies report that those with gambling disorder had the highest suicide rate of any addiction disorder, with one in five having attempted suicide.

149. In addition, experts suggest that the pressures that sports betting puts on college athletes may be a contributing factor to the rise in suicidality for this group.

150. Sports betting is attracting younger participants, too. More than 40% of high schoolers and middle schoolers had gambled in the last year — from scratch tickets to sports — according to a 2021 survey of Massachusetts youth conducted by state education and health departments.

²⁰ *A Review of Sports Wagering & Gambling Addiction Studies Executive Summary*, NAT’L COUNCIL ON PROBLEM GAMBLING, https://www.ncpgambling.org/wp-content/uploads/2023/09/Sports-gambling_NCPGLitRvwExecSummary.pdf (last visited Sept. 5, 2025).

²¹ Scott R. Baker et al., *Gambling Away Stability: Sports Betting’s Impact on Vulnerable Households*, Oct. 21, 2024, https://mitsloan.mit.edu/sites/default/files/inline-files/Session3_Paper3_Gambling%20Away%20Stability.pdf.

²² Kyutaro Matsuzawa & Emily Arnesen, *Sports Betting Legalization Amplifies Emotional Cues & Intimate Partner Violence* (Oct. 30, 2024) available at <https://ssrn.com/abstract=4938642> or <http://dx.doi.org/10.2139/ssrn.4938642>.

151. In Massachusetts, residents are conducting internet searches relating to “gambling addiction” at a significantly higher rate than previously expected following the legalization of sports betting in the Commonwealth, which is “highly unlikely to be due to chance.”²³

152. Approximately two million adults in the U.S. (1% of the population) and over 139,600 individuals (2%) in Massachusetts experience gambling problems, with another 4-6 million (2-3%) demonstrating problematic gambling behaviors.

153. Kalshi is facilitating gambling in Massachusetts without all required responsible gambling features mandated for licensed sports wagering operations, and without any oversight by the MGC as to whether its measures are effective, which is exposing residents of the Commonwealth to gambling addiction without few safeguards.

X. CAUSE OF ACTION

COUNT ONE

Violation of G.L. c. 23N

Conducting Sports Wagering without a License in the Commonwealth

154. Plaintiff, the Commonwealth, repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

155. Pursuant to G.L. c. 23N, “[a] person shall not engage in any activity in connection with sports wagering in the commonwealth unless all required licenses have been obtained in accordance with this chapter and the rules and regulations of the [MGC].” G.L. c. 23N, § 5(a).

156. Section 4(g) of G.L. c. 23N provides that the MGC “may request that the attorney general bring an action to enforce [c. 23N] or any rule or regulation of the commission by civil action or petition for injunctive relief,” and the MGC has so requested in this matter.

²³ Atharva Yeola, et al., *Growing Health Concern Regarding Gambling Addiction in the Age of Sportsbooks*, JAMA INTERNAL MED. (Feb. 17, 2025) <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2830019>.

157. Kalshi qualifies as a “person” under G.L. c. 23N, as it is a corporation. *See* G.L. c. 23N, § 3.

158. Kalshi is in the business of accepting wagers, defined as “a sum of money or thing of value risked on an uncertain occurrence” on amateur and professional sporting events in the form of selling sporting event contracts. *See* G.L. c. 23N, § 3.

159. Kalshi’s sporting event contracts constitute sports wagering as defined by G.L. c. 23N, § 3 and applicable regulations.

160. Kalshi does not have a license to engage in activity in connection with sports wagering from the MGC pursuant to Chapter 23N.

161. Accordingly, Kalshi is engaged in sports betting without a license issued by the MGC in violation of G.L. c. 23N.²⁴

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commonwealth of Massachusetts respectfully requests that the Court grant the following relief:

- A. Determine that Defendant engaged in sports wagering without a license in violation of G.L. c. 23N, § 5 and the regulations promulgated thereunder;
- B. Award monetary relief in an amount to be determined at trial
- C. Permanently enjoin Defendant from engaging in sports wagering without a license in violation of G.L. c. 23N; and
- D. Award any and all other additional relief as the Court may determine to be just and proper.

²⁴ *Sports Wagering Licensees*, MASS. GAMING COMM’N, <https://massgaming.com/about/sports-wagering-in-massachusetts/sports-wagering-licensees/> (last visited July 8, 2025).

Respectfully submitted,

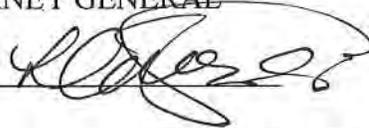
COMMONWEALTH OF MASSACHUSETTS

By its Attorney

ANDREA JOY CAMPBELL

ATTORNEY GENERAL

By: /s/



Louisa E. Castrucci, BBO # 692208

Joshua Edlin, BBO # 715110

Alda Chan, BBO # 705204

Jared Rinehimer, BBO # 684701

M. Patrick Moore, BBO # 670323

Assistant Attorneys General

One Ashburton Place

Boston, Massachusetts 02108

617-963-2848 / louisa.castrucci@mass.gov

617-963-2905 / joshua.edlin@mass.gov

617-963-2525 / alda.chan@mass.gov

617-963-2594 / jared.rinehimer@mass.gov

617-963-7491 / pat.moore@mass.gov

DATE: September 12, 2025

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

KALSHIEX LLC,

Defendant.

CIVIL ACTION NO. 2584CV02525

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
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JONATHAN F. TORRES III
CLERK

**MEMORANDUM IN SUPPORT OF COMMONWEALTH'S EMERGENCY MOTION
FOR A PRELIMINARY INJUNCTION**

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The Commonwealth of Massachusetts, by and through Attorney General Andrea Joy Campbell, brings this action in the public interest pursuant to G.L. c. 12, § 10 and to enforce the Commonwealth's sports wagering law, G.L. c. 23N. It seeks to enjoin Defendant KalshiEX LLC ("Kalshi") from continuing to offer unlicensed sports wagers in violation of Massachusetts law. Kalshi purports to offer a "prediction market," where consumers "predict"—by wager—the outcome of sporting events, various occurrences within a sporting event (*e.g.*, the timing of a touchdown in a football game), and even the performance of particular athletes. In reality, Kalshi's "prediction market" is a sports wagering platform. Unlike its competitors, Kalshi claims a blanket exemption from state licensure, laws, regulatory oversight, and taxes.

By this motion, the Commonwealth seeks to enjoin Kalshi from offering and accepting sports wagers while this action is pending, unless and until it obtains a license from the Massachusetts Gaming Commission ("MGC") and complies with scores of state laws and regulations governing licensed gaming. The motion is supported by the Complaint, multiple affidavits, and accompanying exhibits, which demonstrate that the Defendant has violated—and continues to violate—the entirety of G.L. c. 23N. To protect the public, Kalshi should be prohibited from offering illegal sports wagering to Massachusetts consumers.

BACKGROUND

Massachusetts prohibits sports wagering unless such wagers are offered by a licensed operator that complies with a host of state statutory provisions and regulations. *E.g.* G.L. c. 4, § 7, cl. 10; G.L. c. 23N, § 2; G.L. c. 271, § 17. These laws protect Massachusetts consumers, prohibit predatory practices, establish guardrails to mitigate problem gaming, and ensure that only certain types of sporting events are the subject of wagering. Because the extensive legal framework governing sports wagering in the Commonwealth is a backdrop for this action, an overview is provided below. Defendant Kalshi avowedly does not comply with Massachusetts

law. *See, e.g.*, Doan Affidavit (“Doan Aff.”), at ¶ 5; Ex. A. But Kalshi nonetheless offers sports wagering on a digital platform widely available in the Commonwealth. How that platform operates—and how it compares to licensed operators—is also detailed below.

I. Overview of Massachusetts Sports Wagering Law

A. The Limited Legalization of Sports Wagering Following the Supreme Court’s Decision in *Murphy v. NCAA*.

Until 2022, the Commonwealth did not allow sports wagering at all, as it had been prohibited in Massachusetts and nearly every other state in the country for many decades.

In 1992, Congress attempted to freeze the then-status quo in place by prohibiting any additional states from “authoriz[ing] by law” a “wagering scheme based directly or indirectly . . . on one or more competitive games in which amateur or professional athletes participate . . . or on one or more performances of such athletes in such games.” 28 U.S.C. § 3702. The prohibition was the linchpin of legislation known as the Professional and Amateur Sports Protection Act (“PASPA”). While PASPA exempted states that already legalized sports wagering, *see id.* § 3704(a)(2), any other state that attempted to do so would be barred, *id.* §§ 3702, 3704(a)(3).¹

In 2018, in a lawsuit brought by the State of New Jersey, the Supreme Court considered whether PASPA impermissibly transgressed authority reserved to the states in the Tenth Amendment by prohibiting state legislatures from legalizing and regulating sports wagering. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453 (2018). The Court unanimously concluded that it did: “Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to

¹ PASPA was also incorporated by reference into other federal laws, including the 2006 Unlawful Internet Gambling Enforcement Act, which prohibited certain practices then in use by illicit online wagering entities. *See* 31 U.S.C. §§ 5361–67; *id.* § 5361(1)(C).

act on its own.” *Id.* at 486. What Congress may not do is what it had attempted to do in PASPA: “issue direct[, binding] orders to state legislatures.” *Id.* at 474–75.

Since *Murphy*, more than three dozen states have created a legal licensing framework for sports wagering. Doan Aff. at ¶¶ 6-7, Exs. B–C. The Massachusetts version—established by An Act Regulating Sports Wagering—was signed into law in August of 2022, and is codified in Chapter 23N. St. 2022, c. 173. Operators licensed by the MGC began accepting sports wagers in early 2023. Lennon Affidavit (“Lennon Aff.”), at ¶ 8; Ex. C.

B. Strict Licensing, Compliance, and Oversight of Sports Wagering Operators in Massachusetts.

Sports wagering through licensed operators is an exclusive, specific, and demanding carve-out from the Commonwealth’s general prohibition of gambling. G.L. c. 271, § 1 *et seq.*; *see* G.L. c. 4, § 7, cl. 10; G.L. c. 23N, §§ 2, 5(a). As the SJC has stated in a related context, sports wagering “is a heavily regulated industry that only exists by virtue of legislatively created narrow exceptions to common-law and statutory bans and that, because of the nature of the business, it can be abolished at any time that the Legislature may deem proper for the safeguarding and protection of the public welfare.” *Carney v. Att’y Gen.*, 451 Mass. 803, 817 (2008) (dog racing).

To qualify for a license, an operator must undergo an extensive process with the MGC to determine its suitability—and the suitability of its executives, officers “affiliates and close associates”—to responsibly administer a sports wagering operation. G.L. c. 23N, § 6(d); 205 CMR §§ 215.01–215.02. The MGC’s suitability analysis considers the applicant’s “integrity, honesty, good character and reputation,” its past business practices, and its “history of compliance with gaming or sports wagering licensing requirements in other jurisdictions,” among many other factors. G.L. c. 23N, § 6(d)(i)–(vi); 205 CMR § 215.01(3)–(4). In deciding

whether to award a license, the MGC considers numerous factors, such as the operator's dedication to responsible gambling and its use of technology for consumer protections. 205 CMR § 218.06(5). The rigorous licensing process is financed by the applicant. G.L. c. 23N, § 7. As the Legislature has stated: "ensuring public confidence in the integrity of the gaming licensing process" is a "paramount public policy objective." G.L. c. 23K, § 1.

If an operator is suitable to hold a license, it may obtain one for a period of 5 years at the cost of \$5 million. G.L. c. 23N, § 6(f), 205 CMR § 221. Licensees must also pay annual assessments required to finance the MGC's continued oversight of sports wagering in the Commonwealth. G.L. c. 23N, § 15(b)-(c); 205 CMR § 221.01(3)(a). In addition, each licensed operator must annually pay into the Commonwealth's Public Health Trust Fund, which finances "social service and public health programs dedicated to addressing problems associated with compulsive gambling." G.L. c. 23N, § 15(e); G.L. c. 23K, § 58; 205 CMR § 221.01(3)(b). Presently, there are ten sports gaming operators actively licensed to accept online sports wagers in the Commonwealth (seven of which operate only online platforms); each has paid the licensing fees. O'Brien Affidavit ("O'Brien Aff.") ¶ 10; Doan Aff. ¶ 8, Ex. D.

Once licensed, operators may offer "sports wagering," which Chapter 23N defines as:

the business of accepting wagers on sporting events or portions of sporting events, other events, the individual performance statistics of athletes in a sporting event or other events or a combination of any of the same Sports wagering shall include, but shall not be limited to, single game bets, teaser bets, parlays, over-under, moneyline pools, exchange wagering, in-game wagering, in-play bets, proposition bets and straight bets.

G.L. c. 23N, § 3; *see id.* (defining "wager" as "a sum of money or thing of value risked on an uncertain occurrence," and "sports wager" as "a wager on a sporting event or a portion of a sporting event"). But wagers may not be offered on every competition. Only sporting events

recognized by the MGC may be wagered upon; wagers may not be accepted on a college game “involving 1 or more collegiate teams from the Commonwealth,” nor on “high school or youth sports.” *Id.* (defining “sporting event” and setting forth exclusions); 205 CMR § 247.01(1).

State law also demands that licensed operators address and mitigate the social and public health challenges presented by gaming. Children must be protected. Accordingly, licensed operators may offer sports wagering only to those 21 years of age and older, and MGC regulations impose demanding age verification requirements. G.L. c. 23N, § 13(d)(i); *see* 205 CMR § 248.04. Licensed operators must have comprehensive policies, approved by the MGC, to identify and prevent underage sports wagering. 940 CMR §§ 250.01–250.04. In addition, licensed operators may not target young people with marketing and must not advertise to audiences substantially comprised of those under 21 years old. 205 CMR § 256.05(1)–(3).

Licensed operators also must take certain steps to mitigate the potential for compulsive gambling. G.L. c. 23N, § 4 (d)(2). Licensees are instructed by the Legislature that they “shall recognize that the privilege of licensure bears a responsibility to identify, address and minimize any potential negative consequences of their business operations.” G.L. c. 23K, § 1 (8). So, Massachusetts law prohibits licensed operators from accepting wagers on credit, and customers may not use credit cards to place wagers. G.L. c. 23N, § 13(d)(ii); 205 CMR §§ 247.07(7), 248.10(3). Licensed operators must allow their customers to set—at any time—daily, weekly, and monthly limits to cap the amount a customer puts at risk, 205 CMR § 248.16; and they must facilitate a self-exclusion program to block access by (and advertising to) a person who has asked to be kept away from sports wagering. 205 CMR §§ 233.00, 256.07. In addition, operators must not use the data they have on their consumers to inundate them—and draw them

back to their online platforms—with targeted digital advertising or push alerts. 205 CMR §§ 256.07, 257.02.

In addition, licensed operators must do their part to protect the integrity of sporting events that are the subject of wagering. So, licensed operators must immediately report to the MGC—and, where applicable, the respective sport’s governing body—where abnormal betting activity suggests that something is amiss with a particular game or competition. G.L. c. 23N, § 11(e); 205 CMR § 238.18(2)(d). Wagers that impact the integrity of a sport, or the health and safety of the athletes and their families, may not be offered. 205 CMR § 247.04(1)(c)-(d).

All of this is big business. In 2024, licensed operators settled \$7.4 billion in wagers (\$7.2 billion in online-only sports wagers), yielding \$661 million in gross sports wagering revenue (\$654 million in online-only sports wagering revenue). Lennon Aff., ¶ 6; Ex. A. And it yields considerable state revenue. Licensed operators must pay an excise tax of 20% on gross revenue from sports wagers placed online; that excise is levied monthly. G.L. c. 23N, § 14(a)(ii), (b)(1).

II. Kalshi’s Operations & the Massachusetts Consumer Experience.

Kalshi has not applied for a sports wagering license, is not licensed, and does not pay state excise tax. O’Brien Aff. ¶¶ 9, 10; Lennon Aff. ¶ 4. Nonetheless, Kalshi operates an online platform offering sports wagers at all times, in every single part of Massachusetts.

As set forth in the affidavit of Melissa Casella, an Investigator in the Attorney General’s Office, Kalshi’s prediction market product may be downloaded from the app store onto an iPhone in the Commonwealth. Casella Affidavit (“Casella Aff.”) ¶¶ 4–5. The prediction market product likewise may be accessed via a traditional website, at <https://kalshi.com>. *Id.* ¶¶ 4, 6.

Once on the prediction market, a consumer in the Commonwealth may place a wager on one of many sporting events. *Id.* ¶ 8. The experience of placing a wager on Kalshi mirrors the experience of placing a wager on a licensed sports wagering operator’s sportsbook. *E.g. id.* ¶ 34.

On August 27, 2025, Ms. Casella used Kalshi to place a wager on a college football game in the amount of \$5, specifically Boise State against the University of South Florida, which took place the following day. *Id.* ¶ 25.² She was able to wager on the outcome of the game—a so-called moneyline wager—for Boise State to win the football game, and lost that wager resulting in a loss of the original \$5 amount wagered. *Id.* ¶¶ 25–28, Ex. K1–K3. On the same day, Ms. Casella accessed the sports wagering application of a licensed operator, i.e., FanDuel. *Id.* ¶¶ 30–31, Exs. L1–L2.³ Ms. Casella likewise placed a moneyline wager on Boise State to win the football game. *Id.* The next day, Boise State lost—and, accordingly, Ms. Casella lost the money she wagered on the game through Kalshi and FanDuel alike. *Id.* ¶¶ 27–28; 32–33, Exs. K3, L3.

The college football moneyline wager placed by Ms. Casella is just one example of the types of sports wagers now available on Kalshi. Other wagers are plentiful. Kalshi users may bet on the total points scored in a particular game,⁴ colloquially known as an “over/under” wager. *See* Doan Aff. ¶¶ 16–17; Ex. J. Just recently, Kalshi also began offering proposition wagers based on in-game events (e.g., on which team will score first) and specific statistical performances by a particular athlete which correlate to defined sports wagering terminology. Doan Aff. ¶¶ 10–24; Exs. F–R. Kalshi’s own marketing materials portray its products as what

² Because the creation of a Kalshi account requires the entering of personal information, Ms. Casella performed this bet using a “demo account” that Kalshi makes available for anyone to use the Kalshi platform “a safe and risk-free experience” using “mock funds.” Casella Aff. ¶¶ 22, 25; Doan Aff. ¶ 9, Ex. E1. Kalshi represents that this account allows for anyone—including minors—to “explore the features and functionalities of Kalshi.” *Id.* Even when not logged into this test account, Ms. Casella was able to see a moneyline wager offered on the same matchup while using a device located within Massachusetts. Casella Aff. ¶ 21, Ex. J2.

³ Similarly, Ms. Casella performed this bet using a “Test Account” that FanDuel provides to regulators to access the functionality of the platform. Casella Aff. ¶ 29.

⁴ For example, Kalshi allowed users to place such wagers as which player would score the first, second, or any touchdown on the NFL game between the Kansas City Chiefs and the Los Angeles Chargers that took place on September 5, 2025. Doan Aff. ¶¶ 55–59, Exs. AR–AU2.

they are: sports wagering. *E.g.* Compl. ¶¶ 117–19; Casella Aff., ¶ 9, Ex. C, *id.* ¶¶ 10–12, Ex. E. By Kalshi’s own telling, it purports to operate the “First Nationwide Legal Sports Betting Platform.” Compl. ¶ 118; Casella Aff., ¶ 9, Ex. C. On Kalshi, these wagers may be placed by people between the ages of 18 and 21. Compl. ¶ 133; Doan Aff., ¶ 25, Ex. S. Licensed operators, by contrast, are prohibited from offering sports wagering to anyone under 21. G.L. c. 23N, §§ 12(a), 13(d)(i).

III. Kalshi’s Preferred Narrative.

In Kalshi’s telling, its operation instead is a “prediction market,” listing a type of swap known as an “event contract,” where users “can buy Yes or No positions with respect to whether an event will happen or not.” Doan Aff. ¶ 26, Ex. T; Compl. ¶¶ 51–59. In January 2025, Kalshi added sporting events to its offerings. *See* Doan Aff. ¶ 27, Ex. U (Kalshi Appellate Br. at 15). Using Kalshi’s frame, its customers may, for example, take a “yes” or “no” position on: whether the New England Patriots will win on Sunday; whether the Patriots will cover the point spread; and whether the Patriots will score a first quarter touchdown. The “yes” position will be priced depending “on the probability that the event will happen; the “no” position will be priced based on the probability the event will not happen.” *Id.* ¶ 26, Ex. T; Compl. ¶¶ 52–55.

Multiple states have been unpersuaded by this framing. Sports wagering regulators in Arizona, Illinois, Maryland, Montana, New Jersey, Nevada, and Ohio have sent Kalshi cease and desist letters. Doan Aff., ¶¶ 28–34, Exs. V1–AB. In subsequent litigation, Kalshi has not claimed to be compliant with state law, but instead has claimed an absolute exemption from it.⁵ *E.g.* *Id.* ¶ 27, Ex. U (Kalshi Appellate Br. at 1, 15). Because Kalshi’s “prediction market” is

⁵ Litigation involving Kalshi and state regulators is currently pending in the Third Circuit (involving New Jersey), Fourth Circuit (involving Maryland), and Nevada. *See KalshiEx LLC v. Flaherty*, Dkt. No. 25-1922 (3d Cir.); *KalshiEx LLC v. Martin*, Dkt. No. 25-1892 (4th Cir.); *KalshiEx LLV v. Hendrick*, No. 2:25-cv-00575-APG-BNW (D. Nev.).

registered with the federal Commodity Futures Trading Commission (“CFTC”), Kalshi contends that as long as it provides the appropriate notice to the CFTC, and the CFTC takes no action, it may allow wagering on any sports-related “yes”/“no” derivative contract. *Id.* ¶ 27, Ex. U (Kalshi Appellate Br. at 15). Kalshi argues further that any attempt by a state to apply its law to such a contract is preempted by a 2010 amendment to the Commodities Exchange Act. *Id.* ¶ 27, Ex. U (Kalshi Appellate Br. at 23). At bottom, this is an assertion that in 2010, Congress surreptitiously legalized sports wagering as long as it occurred on a CFTC registered exchange, even though such wagering was then illegal in nearly every state and expressly prohibited by federal law when conducted online. *See infra* § IV-B (explaining why the argument fails as a matter of statutory interpretation and precedent regarding federal preemption).⁶

ARGUMENT

I. Legal Standard for Preliminary Injunction.

When the Attorney General seeks a preliminary injunction on behalf of the Commonwealth for the violation of state law, she must first demonstrate a “likelihood of success on the merits.” *Commonwealth v. Fremont Inv. & Loan*, 452 Mass. 733, 741 (2008). Next, she must demonstrate that the relief “promotes the public interest” or, at minimum, “will not adversely affect the public.” *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984); *LeClair v. Town of Norwell*, 430 Mass. 328, 331–32 (1999). Unlike a private plaintiff, the “Attorney General is not required to demonstrate irreparable harm.” *Mass CRINC*, 392 Mass. at 89.

⁶ Unsurprisingly, Kalshi’s competitors do not share its novel interpretation of federal law. *E.g.*, Doan Aff. ¶ 35, Ex. AC. But recent events indicate that if Kalshi successfully claims an absolute exemption from the stringent requirements of state gambling laws, other prominent operators will follow suit. *E.g.*, Doan Aff. ¶ 36; Ex. AD (“Draft Kings has submitted a new application to join the National Futures Association . . . a key early step toward entering the world of prediction markets – while Underdog and PrizePicks have submitted applications of their own”).

II. Kalshi Is Continuously Violating Extensive Massachusetts Law Governing Sports Wagering.

Massachusetts law is clear: Kalshi may not offer “sports wagering and ancillary activities” unless it is licensed by MGC, adheres to G.L. c. 23N, and follows MGC regulations. G.L. c. 23N, §§ 2, 5(a). Kalshi is not licensed and cannot establish otherwise. O’Brien Aff. ¶ 9. And it makes no claim of adherence to state law. *E.g.*, Doan Aff. ¶ 37; Ex. AE.

The central question is whether the offering of Kalshi’s “yes”/“no” event contracts — where payment is contingent on the outcome of a game, an event within the game, or the performance of an athlete—constitutes the offering sports wagering under state law. The answer is yes. State law defines “wager” as “a sum of money or thing of value risked on an uncertain occurrence,” like which team will win a sporting event and by how many points. G.L. c. 23N, § 3; 205 CMR § 202.02. “Sports wagering” is defined specifically to include “single-game bets,” “parlays, over-under, moneyline, . . . exchange wagering, . . . in-play bets, proposition bets and straight bets.” G.L. c. 23N, § 3; 205 CMR § 202.02. Kalshi accepts single game bets and moneyline wagers. Casella Aff. ¶¶ 25–27 and Exs. K1–K3. In federal filings, Kalshi has described “yes”/“no” wagers: on point-spreads where “yes” is that the selected team will cover the predicted point spread of the game; on points scored where “yes” is that the teams collectively will score above the predicted point total (known as the over-under line); and on in-game occurrences (known as proposition bets). Doan Aff. ¶¶ 10-11, 14, 16, 18, 20, 23, Exs. F, H, J, L, N, Q.

Whether Kalshi is the counterparty to these wagers or instead facilitates (in return for a fee) their placement with another customer willing to act as a counterparty is of no moment. Massachusetts law prohibits the facilitation of wagering for a fee, just as it prohibits the taking of a wager. Specifically, Chapter 23N prohibits “any activity in connection with sports wagering in

the [C]ommonwealth unless all required licenses have been obtained in accordance with this chapter and the rules and regulations of the [MGC].” G.L. c. 23N, § 5. And MGC regulations mandate that before “offering exchange wagering or other peer-to-peer wagering, a Sports Wagering operator must obtain approval from the [MGC],” and the fee (or “rake”) taken on such wagering “shall be considered Sports Wagering revenue and is subject to all taxes and tax requirements” imposed on such revenue. 205 CMR § 247.01(1).

Given Kalshi’s clear offers of sports wagering to Massachusetts residents—regardless of what Kalshi calls it—Kalshi is engaging in sports wagering without required licensure, in violation of Chapter 23N. Accordingly, the Commonwealth has demonstrated a likelihood of success on the merits of this action and thus satisfies the first factor warranting preliminary injunctive relief. *See Mass CRINC*, 392 Mass. at 88–90.

III. The Public Interest is Negatively Impacted by Kalshi’s Ongoing Violations.

The requested injunctive relief is in the public interest where mitigating the negative externalities of gambling “historically has been recognized as a matter that falls squarely within the [Commonwealth’s] core police power.” *See Abdow v. Att’y Gen.*, 468 Mass. 478, 488–89 (2014). Gambling legalization “does not remove all of the many perils, pitfalls, temptations and traps for the unwary, nor the occasions for corruption for the participants, all of which are inherent in any gambling operation of such proportions.” *Colella v. State Racing Comm’n*, 360 Mass. 152, 159 (1971). To address those “perils, pitfalls, temptations and traps,” the Legislature has determined that the public interest requires comprehensive legal protections, including the “strict oversight of all gaming establishments”; a mandate that all licensed operators are “responsib[le for] identif[ying], address[ing] and minimiz[ing] any potential negative consequences of their business operations”; the exclusion of young people under the age of 21 from sports wagering; and protections meant to ensure the integrity of the sporting events

wagered upon and the health and safety of the athletes who participate in them. *See, e.g.*, G.L. c. 23K, § 1 (1), (8); G.L. c. 23N, § 4. Kalshi's decision to sidestep these protections and to ignore state legal requirements negatively impacts the public interest in numerous ways.

For example, the Legislature determined that the public interest was best protected by preventing young people from sports wagering and making sure that the phones of high schoolers were not polluted with sports wagering applications and advertisements. *Doan Aff.* ¶¶ 38–40, Exs. AF, AV. The SJC has described this legislative judgment as a recognition that “emerging adults,” between the ages of 18 and 21, still have developing brains and “generally are not equipped to assume all the responsibilities of adulthood, especially with respect to high risk activities” like “gambling.” *Commonwealth v. Mattis*, 492 Mass. 216, 232 (2023). So, state law precludes licensed operators from accepting wagers by those under 21 years of age. G.L. c. 23N, § 13(d)(i); 205 CMR § 248.04. But not Kalshi. Its wagers are offered to 18-year-olds and are available today in high school cafeterias throughout the Commonwealth. *Doan Aff.* ¶ 25, Ex. S.

The Legislature also established protections for college athletes in Massachusetts, ensuring that wagers may not be placed on sporting events involving universities located in the Commonwealth; and further that proposition bets are not available on any college sporting event, no matter where it takes place. G.L. c. 23N, § 3; *Doan Aff.*, ¶¶ 38–40, Ex. AF and AV. These safeguards protect college athletes and the integrity of college sporting events. But Kalshi does not adhere to them. *Doan Aff.* ¶ 41, Ex. AG. As of September 9, 2025, Kalshi has accepted wagers on college football events involving Massachusetts collegiate teams. *Doan Aff.* ¶¶ 42–50, Exs. AH–AM; *see also* G.L. c. 23N, § 3. Similarly, because Kalshi is not licensed, it does not comport with the mandate that “licensees demonstrate their commitment to efforts to combat compulsive gambling and a dedication to community mitigation.” G.L. c. 23K, § 1 (8). The

semblance of protective features Kalshi coins “Responsible Risk Management” that it employed in or around March of 2025⁷ fall well short of Massachusetts’ law and, in any event, the MGC has no oversight over how Kalshi implements them.⁸ Doan Aff., ¶¶ 51-54 TK, Exs. AN–AQ.

In short, the Commonwealth has imposed scores of obligations on licensed operators because sports wagering, without meaningful limitation, is a risk to public wellbeing. Kalshi has ignored the limitations placed upon it by law, and the public interest demands that its sports wagering operation be halted until it adheres to the state’s legal framework.

IV. Kalshi’s Suggestion That State Gambling Regulation Has Been Displaced by the Federal Commodities Exchange Act Is Without Support in Law or Logic.

Faced with demands from multiple states to cease offering sports wagers, Kalshi has claimed immunity from state regulation, which, in Kalshi’s view, is preempted by the federal Commodities Exchange Act (“CEA”). We expect Kalshi will make—and fail to support—a similar argument here. In the tale it tells about itself, Kalshi operates a CFTC-registered exchange known as a designated contract market. Doan Aff. ¶ 27, Ex. U (Kalshi Appellate Br. at 1). Because it is a registered exchange, Kalshi says it may offer “swaps,” including event contracts contingent on a future occurrence of economic import. *Id.* (Kalshi Appellate Br. at 23, 35–36). So far, so good. But then Kalshi asserts that sports wagers are “swaps” that it may list on its exchange. *Id.* (Kalshi Appellate Br. at 36–37). Here, Kalshi conveniently ignores that CFTC regulations bar swaps related to gaming and those violative of state law. 17 C.F.R. § 40.11(a)(1). But the CEA allows Kalshi to self-certify its swap offerings that are consistent

⁷ Notably, the rollout of these features came almost three weeks after Kalshi received of its first gambling-related cease-and-desist letter, from Nevada. Doan Aff. ¶ 33, Ex. AA.

⁸ Kalshi only offers three user tools: (1) “Personalized Funding Cap,” which corresponds to the MGC’s “Responsible Gaming Limits,” 205 CMR § 248.16; (2) “Voluntary Opt-Out,” akin to the MGC’s Voluntary Self-Exclusion program, 205 CMR § 233.00; and (3) “Trading Break,” which correlates to the MGC’s temporary prohibition from sports wagering, 205 CMR § 254.00. Doan Aff. ¶¶ 51–54, Exs. AN–AQ. None meet the MGC’s standards.

with the CEA and CFTC regulations; and Kalshi may list a self-certified swap unless the CFTC intervenes. *See* 7 U.S.C. § 7a-2(c)(1)–(3). That is precisely what Kalshi has done with thousands of sports wagers that it self-certifies are compliant swaps, even though they are not. *See* Doan Aff. ¶ 27, Ex. U (Kalshi Appellate Br. at 15). Because the CFTC has passively allowed this practice, Kalshi says states are powerless to do anything. *Id.* (Kalshi Appellate Br. at 1, 23).

Kalshi’s argument fails twice over. First, Kalshi sets aside common sense to misconstrue the plain text of the CEA and its legislative history. Second, no matter whether sports wagers are “swaps,” Congress nowhere has preempted state authority to regulate sports wagering, which is a core state police power recognized by the Supreme Court for more than a century. Kalshi cannot meet its weighty burden to clearly and palpably demonstrate otherwise.

A. Sports Wagers Are Not Swaps, and Congress Has Not Turned the CFTC Into a Nationwide Gambling Commission.

The sophistic legal foundation of Kalshi’s sports gambling operation is its claim that, unbeknownst to everyone, in the 2010 Dodd-Frank Act, Congress authorized sports wagering on CFTC-registered exchanges. The assertion relies on a breathtakingly overbroad construction of the CEA. Either Kalshi is wrong or 38 states and the Supreme Court itself have missed entirely a sea change in the law. A substantial factor in the 2007–08 financial crisis was trading in derivatives, such as credit default swaps, that had been federally deregulated in 2000. DAVID H. CARPENTER, ET AL., CONG. RSCH. SERV., R41350, THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT: BACKGROUND AND SUMMARY 19 (2017). In the wake of that crisis, Congress sought to ensure that “‘swaps,’ which include contracts based on interest rates, currencies, physical commodities, and some credit default swaps” would be federally regulated once again and specifically subject to the jurisdiction of the CFTC. *Id.* at 19; *see* 7 U.S.C. § 1a(47)(A)(ii) (defining “swap” as a “payment . . . dependent on the occurrence, nonoccurrence,

or the extent of an occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence”).

B. Kalshi’s Misconstruing of the Dodd-Frank Act.

By taking these steps to bring oversight to swaps markets, Kalshi claims that Congress also provided a pathway for nationwide, legalized sports wagering. That is not a plausible reading of federal law.

For one, CFTC regulations prohibit the listing on a market of contracts that “involve[], relate[] to, or reference[] . . . gaming, or an activity that is unlawful under any State or Federal law.” 17 C.F.R. § 40.11(a)(1). For another, Kalshi’s reading would be quite a surprise to the *Murphy* Court, which in 2018 recognized the “coherent federal policy” of “respect[ing] the policy choices of the people of each State on the controversial issue of [sports] gambling.” 584 U.S. at 484. Indeed, sporting events—and occurrences within them—are the quintessential types of events without “financial, economic or commercial consequence” that are not to be subject of swaps. *See* 7 U.S.C. § 1(47)(A)(ii); *KalshiEX LLC v. Martin*, No. 25-cv-1283-ABA, 2025 WL 2194908, at *11 (D. Md. Aug. 1, 2025) (citing 156 Cong. Rec. S5902, S5906-7 (daily ed. July 15, 2010) (Sen. Feinstein); 156 Cong. Rec. S5902-01, S5907 (July 15, 2010) (Sen. Lincoln)). After all, swaps are intended to mitigate or hedge economic risk. *See Bloomberg L.P. v. Commodity Futures Trading Comm’n*, 949 F. Supp. 2d 91, 96 (D.D.C. 2013) (citing 7 U.S.C. § 1a(47)(A)’s definition of a “swap” as a contract that “transfers between the parties the risk of future change in that value without also transferring an ownership interest in the underlying asset or liability.”); *see also* 156 Cong. Rec. S5902, 5912 (daily ed. July 15, 2010) (colloquy of Sens. Lincoln & Dodd) (emphasizing that Congress intended to preserve swaps as risk-management tools). This purpose is consistent with the plain meaning of the statute. *See Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (“As usual, our job is to interpret the words consistent

with their ordinary meaning”) (internal quotation omitted). Before it entered the sports wagering business, Kalshi readily conceded this basic point. *See* Doan Aff. ¶ 60, Ex. AW (Kalshi CFTC Appellee Br. at 45) (“Evidently, Congress sought to prevent exchanges from facilitating casino-style or sports gambling On a policy level, that makes some sense: The basic purpose of Designated Contract Markets is to allow the ‘hedging’ of economic risk”).

What is more, Kalshi’s argument ignores a fundamental rule of statutory construction, specifically that Congress “does not alter fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001). This is particularly true where federal law would significantly alter the balance of state and national authority in subject matter. *E.g.*, *Bond v. United States*, 572 U.S. 844, 858 (2014). At the time the language Kalshi relies upon was adopted, sports wagering was prohibited in nearly every state. 28 U.S.C. § 3702. Just four years earlier, Congress had adopted the Unlawful Internet Gambling Enforcement Act to stem illicit gambling online by prohibiting the acceptance of wagers, like sports wagers, barred by state law. 31 U.S.C. § 5363. Numerous laws, dating back decades, codified the national understanding that “States should have the primary responsibility for determining what forms of gambling may legally take place within their borders.” 15 U.S.C. § 3001(a); *see* 18 U.S.C. § 1084(a) (criminalizing interstate transmission of wagers on sporting events). Congress did not sweep all of that aside, without comment or fanfare, in its quest to bring oversight to formerly opaque derivative markets. *See KalshiEX LLC v. Martin*, No. 25-cv-1283-ABA, 2025 WL 2194908, *10 (D. Md. Aug. 1, 2025).

In addition, while Kalshi’s narrative rests on an overbroad interpretation of the word “swap,” proper “[s]tatutory construction ‘is a holistic endeavor,’” and must account for a

statute's full text . . . structure, and subject matter." *U.S. Nat'l Bank of Or. v. Ind. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993). Looking broader at the text of the CEA, if Kalshi is correct that a sports wager is a "swap," the *only* place sports wagers may be placed is on a CFTC registered market, transforming CFTC into a nationwide gambling commission. 7 U.S.C. § 2(e). Such an outcome belies the "common sense" guiding the evaluation of federal law. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (1999) ("[W]e must be guided to a degree by common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency").

V. Congress Has Neither Expressly Nor Impliedly Preempted State Regulation of Sports Wagering.

Even if Kalshi is correct, which it is not, that its "yes"/"no" contracts on sporting events are swaps under the CEA, Kalshi still must comply with Massachusetts law unless the law is preempted. On this issue, Kalshi faces a strong presumption that it cannot overcome.⁹ Specifically, in "all preemption cases, and particularly those in which Congress has legislated in a field in which States have traditionally occupied, we start with the assumption that the historic police powers of the states were not to be superseded by the federal act unless that was the clear and manifest purpose of Congress." *Wyeth v. Levine*, 555 U.S. 555, 567 (2009); *Mass. Ass'n of Priv. Career Schs. v. Healey*, 159 F. Supp. 3d 173, 217 (D. Mass. 2016) (same). The presumption applies with particular force here because the regulation of gambling has long been

⁹ Kalshi has asserted preemption in litigation against Maryland, New Jersey and Nevada. Applying the presumption against preemption, a federal court in Maryland rejected the argument, in the most recent and comprehensive opinion. *See Martin*, 2025 WL 2194908 at *10. Kalshi has noticed an appeal of that decision. Two other courts concluded, preliminarily, that Kalshi was likely to succeed in establishing preemption. *See KalshiEX LLC v. Flaherty*, No. 25-cv-2152, 2025 WL 1218313 (D.N.J. Apr. 28, 2025); *KalshiEX LLC v. Hendrick*, No. 25-cv-575, 2025 WL 1073495 (D. Nev. Apr. 9, 2025). Both decisions were cursory and, inexplicably, neither applied the well-settled presumption against preemption. The New Jersey decision is currently on appeal. *See supra* n.5.

a core state police power. *Abdow*, 468 Mass. at 489; *Stone v. Mississippi*, 101 U.S. 814 (1879) (regulation of lotteries is a core state police power); *Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905) (“The suppression of gambling is concededly within the police powers of a state”).

A. Dodd-Frank Does Not Expressly Preempt State Gambling Law.

In various fora, Kalshi has suggested that state law is expressly preempted by the CEA. Language that purportedly preempts state law is to be interpreted narrowly, especially where, as here, federal legislation touches an area traditionally governed by the States. *CTS Corp. v. Waldburger*, 573 U.S. 1, 19 (2014). Ambiguity must be construed to “disfavor preemption.” *Altria Grp. v. Good*, 555 U.S. 70, 77 (2008). Here, the CEA provides that the CFTC “shall have exclusive jurisdiction . . . with respect to . . . transactions involving swaps . . . traded or executed on a contract market.” 7 U.S.C. § 2(a)(1)(A). This language does not reference, let alone displace, state law; it serves instead to define CFTC’s jurisdiction as compared to peer federal agencies. *See, e.g., FTC v. Ken Roberts Co.*, 276 F.3d 583, 591 (D.C. Cir. 2001) (discussing § 2(a)(1)(A) to determine CFTC jurisdiction as compared to FTC jurisdiction); *Chicago Mercantile Exch. v. SEC*, 883 F.2d 537, 548 (7th Cir. 1989) (same).

Quite apart from displacing state law, the CEA instead expressly envisions that state law will impact what type of swaps may be listed on registered exchanges; CFTC’s implementing regulations bar the listing of swaps that violate state law. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i), (ii); 17 C.F.R. § 40.11(a)(1). As the Maryland federal court concluded, where, as here, “a federal statute expressly incorporates state law,’ a ‘preemption analysis is inappropriate.” *Martin*, 2025 WL 2194908, at 9 (quoting *Power v. Arlington Hosp. Ass’n*, 42 F.3d 851, 864 (4th Cir. 1994)). In addition, Congress well knows how to expressly preempt state law. It did so in two other CEA provisions involving bucket shops and state insurance law. 7 U.S.C. § 16(e)(2), (h). The language it used in those provisions is markedly different from the provision on which Kalshi

has relied. Compare 7 U.S.C. § 2(a)(1)(2), with *id.* § 16(e)(2), (h). That alone disposes of Kalshi’s claim of express preemption. See *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517 (1992) (“Congress’ enactment of a provision defining the preemptive reach of a statute implies that matters beyond that reach are not preempted”); *Martin*, 2025 WL 2194908, at *9.

B. Kalshi has No Basis to Imply Preemption.

Elsewhere, Kalshi has suggested that the CEA impliedly preempts state sports wagering law, either because the CEA purportedly “covers the field” or otherwise conflicts with the purpose of federal law. Implied field preemption is exceedingly rare, and applies only in fields that “Congress intended the Federal Government to occupy exclusively,” as indicated by a “scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,” or “where an Act of Congress ‘touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.’” *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)); see *Murphy*, 584 U.S. at 479. To establish “field preemption,” Kalshi must first describe with particularity the “field” from which Congress purportedly intended to exclude the states. *E.g.*, *Kansas v. Garcia*, 589 U.S. 191, 208 (2020). But it cannot clear even that initial hurdle. That is because, “to define the field,” the Supreme Court has instructed courts to “proceed cautiously” and “consider[] the target at which the state law aims.” *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 385 (2015) (emphasis in original). Here, of course, the Commonwealth’s target is sports wagering, and in that field Congress has evinced an intent to *preserve* rather than preclude state authority. See, *e.g.*, 15 U.S.C. § 3001(a) (“States should have the primary responsibility for determining what forms of gambling may legally take place within their borders”); see *Capron v. Att’y Gen.*, 944 F.3d 9, 23 (1st Cir. 2019) (where “state law measures . . . concern[] a quintessentially local area

of regulation,” inference is against Congressional intent to occupy the field). Even if the field is “swaps,” the pervasiveness of federal law depends on how one construes the term “swap.” If the construction is broad enough to include sports wagering, there is no Congressionally imposed statutory scheme governing such wagers; so it cannot be said that federal law is so pervasive “that it leaves no room for state and local supplementation.” *LCM Enters, Inc. v. Town of Dartmouth*, 14 F.3d 675, 684 (1st Cir. 1994); *see Martin*, 2025 WL 2194908 at *9.

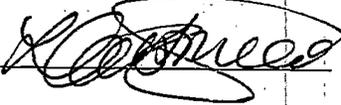
Kalshi’s assertion of implied conflict preemption is weaker still. To demonstrate an implied conflict, Kalshi must show that Massachusetts gaming law clearly and manifestly poses an obstacle “to the accomplishment and execution of the full purposes and objectives” of the CEA. *Capron*, 944 F.3d at 36. But the CEA anticipates that regulated exchanges will not be used to offer contracts that constitute gaming or violate state law; and the CFTC has prohibited such contracts. 7 U.S.C. § 7a-2(c)(5)(C)(I), (V), (VI); 14 C.F.R. § 40.11(a)(1). So, that Massachusetts law prohibits Kalshi from offering sports wagers without licensure is entirely consistent with the federal structure. In actuality, Kalshi’s argument is that because the CFTC has chosen not to enforce against the sports wagering occurring on its exchange, Massachusetts must stand aside, too, and let its illegal conduct continue. But, “[i]n the end, . . . the possibility that federal enforcement priorities might be upset is not enough to provide a basis for preemption. The Supremacy Clause gives priority to ‘the Laws of the United States,’ not the . . . law enforcement priorities or preferences of federal officers.” *Kansas*, 589 U.S. at 212.

CONCLUSION

For these reasons, the Commonwealth respectfully requests entry of a preliminary injunction as proposed in **Exhibit A** to the Commonwealth’ motion.

Respectfully submitted,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

By: 

Dated: September 12, 2025

Louisa E. Castrucci, BBO # 692208
Joshua Edlin, BBO # 715110
Alda Chan, BBO # 705204
Jared Rinehimer, BBO # 684701
M. Patrick Moore, BBO # 670323
Assistant Attorneys General
One Ashburton Place
Boston, Massachusetts 02108

617-963-2848 / louisa.castrucci@mass.gov
617-963-2905 / joshua.edlin@mass.gov
617-963-2525 / alda.chan@mass.gov
617-963-2594 / jared.rinehimer@mass.gov
617-963-7491 / pat.moore@mass.gov

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

| |
|---|
| <p>COMMONWEALTH OF MASSACHUSETTS,</p> <p>Plaintiff,</p> <p>v.</p> <p>KALSHIEX LLC</p> <p>Defendant.</p> |
|---|

Civil Action No. 02525-BLS1

SUPERIOR COURT DEPARTMENT
 OF THE TRIAL COURT
 2025 SEP 12 P 2:27

AFFIDAVIT OF DEREK LENNON – TAX & DOCS

I, Derek Lennon, hereby depose and state as follows:

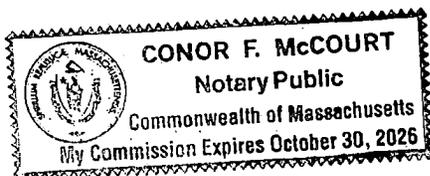
1. I am presently employed as a Chief Financial and Accounting Officer in the Finance Division of the Massachusetts Gaming Commission (“MGC”) and have been so employed since October 2013.
2. My duties as the CFAO include receiving, verifying and reporting on taxes from licensed entities.
3. I have personal knowledge of the matters set forth below, and if called upon as a witness, I could and would competently testify thereto.
4. At no point has KalshiEX LLC (“Kalshi”) paid taxes to the MGC as a licensed sports wagering operator. Nor has the MGC levied sports wagering taxes against Kalshi.
5. At no point has Kalshi paid an application fee to the MGC as part of any application for a sports wagering license.
6. Attachment A is a true and accurate copy of the MGC’s published December 2024 Revenue Report, which is available at <https://massgaming.com/wp->

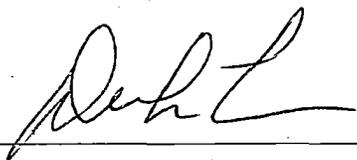
<content/uploads/MGC-Revenue-Report-December-2024.pdf>. By adding the “Total Retail” and “Total Online” columns for “Wagers Settled” and “Taxable Revenue” from January 2024 to December 2024 appearing on pages 4 and 5 of this document, licensed sports wagering operators settled \$7.4 billion in wagers (\$7.2 billion in online-only sports wagers), yielding \$661 million in gross sports wagering revenue (\$654 million in online-only sports wagering revenue).

7. Attachment B is a true and accurate copy of the MGC’s published 2024 Annual Report, which is available at <https://massgaming.com/wp-content/uploads/MGC-FY24-Annual-Report.pdf>. On page 42, it shows that from January 23, 2023, to June 30, 2024, 468 people enrolled in the MGC’s sports wagering voluntary self-exclusion program.

8. Attachment C is a true and accurate copy of the MGC’s publication “Year One at a Glance: A Quick Look at Sports Wagering in the Commonwealth,” which is available at <https://massgaming.com/wp-content/uploads/MA-Sports-Wagering-Year-One-at-a-Glance.pdf>. It reports that licensed sports wagering operators began accepting sports wagers at physical locations in January of 2023 and online in March of 2023.

Signed under the pains and penalties of perjury in Boston, Massachusetts on this 10th day of September 2025.




NAME Derek Lennan

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

| |
|---|
| <p>COMMONWEALTH OF MASSACHUSETTS,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>KALSHIEX LLC</p> <p style="text-align: center;">Defendant.</p> |
|---|

Civil Action No. 02525-BLS1

AFFIDAVIT OF KARALYN O'BRIEN – LICENSURE STATUS

I, Karalyn O'Brien, hereby depose and state as follows:

1. I am presently employed as the Chief in the Licensing Division of the Massachusetts Gaming Commission ("MGC") and have been so employed since October 2022.

2. My duties as Chief include managing the licensing process and status of sports wagering operators in the Commonwealth of Massachusetts in compliance with Massachusetts law.

3. I have personal knowledge of the matters set forth below, and if called upon as a witness, I could and would competently testify thereto.

4. In the history of legalized sports wagering in the Commonwealth of Massachusetts, the MGC has issued thirteen sports wagering licenses in total.

5. One licensed operator withdrew its license application before beginning operations.

6. Two licensed operators have ceased operating in Massachusetts.

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7. Presently there are a total of ten actively operating licensed sports wagering operators in the Commonwealth.

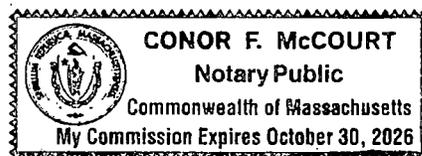
8. The MGC publishes the list of currently licensed Massachusetts sports wagering operators on its website at <https://massgaming.com/about/sports-wagering-in-massachusetts/sports-wagering-licensees/>. This website and websites linked therein are kept up to date on information known to the MGC about the various licensed sports wagering operators.

9. KalshiEX LLC (“Kalshi”) is not a licensed sports wagering operator in the Commonwealth of Massachusetts.

10. At no point from the legalization of sports wagering in the Commonwealth to date has Kalshi applied for a sports wagering license to operate sports wagering in Massachusetts.

11. The MGC awarded a temporary, one-year Category 3 Sports Wagering Operator License to Betfair Interactive US, LLC d/b/a FanDuel (“FanDuel”) on February 23, 2023. FanDuel received its operations certification on March 10, 2023, and opened its Massachusetts sportsbook to the public on the same day. It is undergoing a full suitability review by the MGC ahead of a Commission vote on awarding the entity a five-year Category 3 Sports Wagering Operator License. FanDuel continues to operate as a Category 3 Sports Wagering Operator Licensee in the Commonwealth of Massachusetts.

Signed under the pains and penalties of perjury in Boston, Massachusetts on this 10th day of September 2025.




NAME

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
BUSINESS LITIGATION SESSION**

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

KALSHIEX LLC,

Defendant.

CIVIL ACTION NO. 2584CV02525-BLS1

**MEMORANDUM OF LAW IN SUPPORT OF KALSHI'S
MOTION TO DISMISS AND IN OPPOSITION TO THE COMMONWEALTH'S
EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

In the seminal 1974 amendments to the Commodity Exchange Act, Congress created the Commodity Futures Trading Commission and gave it “exclusive jurisdiction” over nationwide derivatives exchanges. 7 U.S.C. § 2(a)(1)(A). The Commonwealth of Massachusetts now seeks to vitiate that jurisdiction, asking the Court to enjoin KalshiEX, LLC from offering sports-event contracts on its CFTC-licensed and regulated exchange. The Commonwealth does not dispute that these contracts trade on such an exchange, known as a “designated contract market” (or “DCM”). Nor does it dispute that the CFTC has exclusive jurisdiction over trading on DCMs. Rather, it asserts that sports-event contracts do not belong there. They are mere “wagering,” the argument goes, which Congress never intended to insulate from state oversight. And so the Commonwealth and 49 other states may step in not only to regulate, but to prohibit, trading in such contracts.

The Commonwealth is not the first to try to use its state gambling laws to regulate futures trading. As far back as the 19th century, states attacked all manner of futures trading as illicit “gambling.” *E.g.*, *Cothran v. Ellis*, 16 N.E. 646, 647 (Ill. 1888) (decrying grain futures as “gambling in grain”). In 1936, passage of the CEA brought a measure of federal regulation to derivatives markets, but it preserved state oversight. Then, in 1974, Congress decided that the resulting state-by-state patchwork was unworkable and brought the market under the sole oversight of the CFTC. Congress later expanded that exclusive jurisdiction, including “events” among the regulated commodities and requiring that “swaps” in such commodities be traded on a federally regulated exchange. The result is a federal statute that by every conceivable indicator of congressional intent—text, structure, and history—preempts state regulation of trading on Kalshi.

The Commonwealth would have the Court disregard this federal scheme. The complaint does not mention the CEA at all, and not until page 13 of its 20-page opening brief does the

Commonwealth address preemption. The lion’s share of its motion is devoted to Massachusetts law and the alleged superiority of its policy preferences regarding “sports wagering.” But whatever the force of those policy preferences, Congress long ago determined that they would not govern trading on derivatives exchanges. And it did so with knowledge that such trading might involve “gaming,” authorizing the CFTC—not the several states—to “determine” whether such contracts would be “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(i).

The Commonwealth tries to sidestep this exclusive delegation of authority by arguing that “CFTC regulations bar swaps related to gaming and those violative of state law.” Mem. at 13. Not so. Those regulations provide for discretionary public interest review by the CFTC of event contracts in the enumerated categories, not a blanket prohibition. Even if the argument were right, it is a fatal concession. It admits that event contracts allegedly involving “gaming” or violations of state law are under the jurisdiction of the CFTC. Where “the CFTC has jurisdiction, its power is exclusive.” *Chi. Mercantile Exch. v. SEC*, 883 F.2d 537, 548 (7th Cir. 1989).

The Commonwealth also elides the distinction between sportsbooks and prediction markets. It suggests that sports event contracts are not *really* derivatives, but rather sports wagers “disguise[d]” as swaps. Compl. ¶ 7. But Kalshi’s event contracts unquestionably qualify as “swaps” under the CEA. 7 U.S.C. § 1a(47)(A)(ii). And even if not, the remedy is not to let states pick and choose what should be allowed onto a federally regulated exchange. The remedy is to sue the CFTC for its alleged action—or inaction—under the Administrative Procedure Act. *See* 5 U.S.C. §§ 702, 706(2); *Cousins v. Sec’y of U.S. Dep’t of Transp.*, 880 F.2d 603, 605-06 (1st Cir. 1989) (“The APA was intended to provide just such a single uniform method for review of agency action,” and “[t]o allow actions for review of agency action once again to proliferate under a variety of names would threaten a return to pre-APA confusion.”).

Several states have attacked Kalshi’s sports-event contracts without regard for the preemptive effect of federal law over trading on DCMs.¹ But while other states have questioned preemption in federal court, the Commonwealth was the first to launch a state enforcement proceeding and seek a preliminary injunction without regard to the consequences for those within and beyond Massachusetts’ borders. The remedy sought could force the freezing or liquidation of open contracts that, as of the time of writing, total approximately \$650 million in value. *See* Declaration of Xavier Sottile (“Sottile Decl.”) ¶ 48.² It would thereby impose losses not only on Massachusetts residents but also on traders in jurisdictions (such as New Jersey and Nevada) where federal courts have enjoined regulators from enforcing state gambling laws against Kalshi. The public interest is not served by a rushed effort to obtain such a “drastic remedy,” *Knapik v. McGuire*, 1999 WL 1319239, at *2 (Mass. Super. Ct. May 19, 1999), especially where the core issue—preemption—is legal in nature and can be resolved promptly on the pleadings.

The complaint fails to state a claim upon which relief can be granted, Mass. R. Civ. P. 12(b)(6), and the Commonwealth cannot show a likelihood of success on the merits for the same straightforward reason—the Supremacy Clause of the U.S. Constitution stands as an insuperable

¹ *KalshiEX LLC v. Hendrick*, 2025 WL 1073495 (D. Nev. Apr. 9, 2025) (granting Kalshi’s motion for preliminary injunction against Nevada gaming authorities); *KalshiEX LLC v. Flaherty*, 2025 WL 1218313 (D.N.J. Apr. 28, 2025) (granting Kalshi’s motion for preliminary injunction against the New Jersey gaming authorities) (on appeal in Third Circuit); *KalshiEX LLC v. Martin*, 2025 WL 2194908 (D. Md. Aug. 1, 2025) (denying Kalshi’s motion for preliminary injunction against Maryland gaming authorities) (on appeal in Fourth Circuit); *KalshiEX LLC v. Schuler*, No. 2:25-cv-01165-SDM-CMV (S.D. Ohio) (motion for preliminary injunction against Ohio gaming authorities currently pending); *KalshiEX LLC v. Williams*, No. 1:25-cv-08846-AT (S.D.N.Y.) (motion for preliminary injunction against New York gaming authorities currently pending). In *Martin*, *Schuler*, and *Williams*, the state gaming authorities have agreed to stay enforcement pending resolution of the motions for preliminary injunction. *See also Blue Lake Rancheria v. Kalshi Inc.*, 2025 WL 3141202, at *1 (N.D. Cal. Nov. 10, 2025) (holding that the CEA governs event contracts over purportedly contrary laws).

² Appreciating that the facts alleged in a complaint are presumed to be true for purposes of a motion to dismiss, *Magliacane v. City of Gardner*, 483 Mass. 842, 843-44 (2020), Kalshi offers the Sottile Declaration solely in opposition to the Commonwealth’s motion for preliminary injunction. *Hearn v. Saba*, 2021 WL 2459351, at *1 n.1 (Mass. Super. Ct. Apr. 16, 2021) (“In deciding a motion for preliminary injunction, a judge may make findings of fact based on verified pleadings, sworn affidavits, and documentary evidence supplied by the parties.”).

bar to the Commonwealth’s claim. Accordingly, the Court should dismiss the complaint in its entirety with prejudice and deny the motion for preliminary injunction as moot.

BACKGROUND

I. Legal Background

This case involves derivatives: financial instruments whose value depends on one or more underlying commodities. As far back as the 19th century, states have sought to use their gambling laws to regulate such instruments—for instance, decrying grain futures as “gambling in grain.” *Cothran v. Ellis*, 16 N.E. 646, 647 (Ill. 1888); *see also* John V. Rainbolt II, *Regulating the Grain Gambler and His Successors*, 6 Hofstra L. Rev. 1, 6 (1977) (documenting states’ treatment of futures trading as unlawful gambling). The Supreme Court of that era shared the view that a futures contract was “nothing more than a wager” if the parties intended cash settlement rather than actual delivery of the underlying commodity. *Irwin v. Williar*, 110 U.S. 499, 508-509 (1884). Later, the Court’s skepticism of cash settlement softened. *See Bd. of Trade of Chi. v. Christie Grain & Stock Co.*, 198 U.S. 236, 246-49 (1905) (Holmes, J.) (blessing “[s]peculation” as a “means of avoiding or mitigating catastrophes, equalizing prices, and providing for periods of want”). As legal doctrine evolved, anti-futures sentiment intensified, causing Congress to get involved.

Congress passed the CEA in 1936 to bring a measure of federal regulation to derivatives markets. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 362 (1982). Congress initially stopped short of comprehensive regulation. It preserved “any State law applicable” to “transactions” regulated by the Act. 7 U.S.C. § 6c (1936). The drafters’ “intention” in 1936 was “not to occupy the field.” H.R. Rep. No. 74-421, at 5 (1935). As markets matured, however, that decision produced a patchwork of regulations, leading exchanges to recommend that “federal policy . . . be uniform throughout the United States” and not “subject to the vagaries” of

different obligations in “different jurisdictions.” *Hearings Before the H. Comm. on Agric.*, 93d Cong. 121 (1973) [hereinafter “*House Hearings*”].

Congress responded in 1974 with legislation designed to “[b]ring[] all futures trading under federal regulation.” *Hearings Before the S. Comm. on Agric. & Forestry*, 93d Cong. 847-48 (1974) [hereinafter “*Senate Hearings*”]. Congress created the CFTC to oversee trading on federally designated “contract market[s].” 7 U.S.C. § 2(a)(1)(A). And it vested the CFTC with “exclusive jurisdiction” over trading on those markets. *Id.* It did so recognizing that federal regulation would only be workable if it “prevent[ed] any possible conflicts over jurisdiction,” *House Hearings* at 128, and that subjecting exchanges to “different State laws would just lead to total chaos.” *Senate Hearings* at 685 (statement of Sen. Clark).

Congress deliberately reinforced the CFTC’s exclusive jurisdiction. After House drafters introduced a state-law savings clause, the Senate added language making clear that the clause applied “except as hereinabove provided” in the grant of exclusive jurisdiction to the CFTC. S. Rep. No. 93-1131, at 31 (1974). Congress thus ensured that “the Commission’s jurisdiction, where applicable, supersedes State as well as Federal agencies.” *Id.* at 6. The Senate also “struck” the existing provision preserving state laws applicable to derivatives “transaction[s].” H.R. Rep. No. 93-1383 at 35 (1974) (Conf. Rep.). As the conference report explained, the amendments were designed to “preempt the field insofar as futures regulation is concerned.” *Id.* Courts immediately understood them as such. *See, e.g., Int’l Trading, Ltd. v. Bell*, 556 S.W.2d 420, 424 (Ark. 1977) (exclusive-jurisdiction clause “is a clear indication that Congress intended no regulation in this field except under the authority of the act”); *Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980) (Friendly, J.) (explaining that CEA “preempts the application of state law” to trading on federal exchanges).

Since 1974, Congress has periodically revisited which instruments are regulated by the CEA. Three changes are relevant here. *First*, in 2000, Congress expanded the definition of “commodity” to include events. A qualifying event is an “occurrence” or “contingency” that is “beyond the control of the parties” to a “transaction” and “associated with a financial, commercial, or economic consequence.” 7 U.S.C. § 1a(19)(iv). Under the CEA, such events are one type of “excluded commodity.” *See id.* § 1a(19). Transactions on DCMs in excluded commodities, as with other commodities, fall within the CFTC’s exclusive jurisdiction. *Id.* § 2(a)(1)(A).

Second, in the Dodd-Frank Act of 2010, Congress added exchange-traded swaps to the CFTC’s exclusive jurisdiction. *See* 124 Stat. 1376, 1672. Section 2(a) now provides that the CFTC “shall have exclusive jurisdiction . . . with respect to . . . transactions involving swaps . . . traded or executed on a contract market designated” by the CFTC. 7 U.S.C. § 2(a)(1)(A). Congress defined “swap” to encompass, among other things, contracts providing for payment “dependent on the occurrence . . . of an event or contingency associated with a potential financial, economic, or commercial consequence.” *Id.* § 1a(47)(A)(ii). That language echoed the language Congress added to the “excluded commodity” definition in 2000. *Id.* § 1a(19)(iv).

Third, the Dodd-Frank Act created a “Special Rule” governing “review and approval of event contracts.” 7 U.S.C. § 7a-2(c)(5)(C)(i). The Special Rule authorizes the CFTC to review and prohibit certain event contracts that it determines to be “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(i). It provides that the CFTC “may”—but need not—deem event contracts contrary to the public interest if they “involve” certain categories, including “gaming.” *Id.*; *see* 17 C.F.R. § 40.11. Thus, the decision to prohibit an event contract that falls within one of the enumerated categories is subject to the CFTC’s evaluation of the “public interest.” When Congress enacted the Special Rule, a federal statute prohibited sports betting in most states, but in 2018, the

Supreme Court invalidated that statute. *Murphy v. NCAA*, 584 U.S. 453, 486 (2018). Sports betting is now lawful in most states, including Massachusetts.

The CFTC’s regulatory framework is extensive, comprehensive, and exclusive. To obtain approval from the CFTC, an exchange must first apply for and receive the CFTC’s designation as a contract market. 7 U.S.C. §§ 2(e), 7(a); 17 C.F.R. § 38.3(a). Once the CFTC designates an entity as a contract market, or “DCM,” the CFTC has “exclusive jurisdiction” over transactions on that DCM, including “transactions involving swaps.” 7 U.S.C. § 2(a)(1)(A). DCMs must comply with an extensive regulatory framework, including 23 “core principles” identified in the CEA. *See id.* § 7(d); 17 C.F.R. §§ 38 *et seq.* If a DCM violates any of the provisions of the CEA or the CFTC’s regulations, the CFTC is authorized to “suspend” or “revoke” the market’s “designation or registration.” 7 U.S.C. § 8(b). Suspension or revocation of an exchange’s license is “final and conclusive” and appealable only to a federal court of appeals. *Id.*

The CEA also provides that a DCM may list contracts on its exchange by self-certifying that the contracts comply with CFTC requirements. 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. § 40.2(a). The contracts are immediately effective unless and until the CFTC initiates review of any contract. *See* 7 U.S.C. § 7a-2(c)(2); 17 C.F.R. § 40.2(c).

II. Factual Background

In 2020, the CFTC certified Kalshi as a DCM, affirming that its exchange complied with the CEA. *See* Declaration of Nicole D. Valente (“Valente Decl.”), Ex. 3. Kalshi offers many kinds of event contracts related to economics, weather, popular culture, political elections, and sports. Compl. ¶¶ 9, 64-65. The Complaint alleges that Kalshi’s event contracts initially focused on economic matters such as inflation, the Consumer Price Index, and unemployment. *Id.* ¶ 64. Then, in July 2023, Kalshi filed a self-certification relating to a so-called “congressional control contract,” which “allow[ed] buyers to predict which political party will control the U.S. House of

Representatives or Senate on a specific, future date.” *See KalshiEX LLC v. CFTC*, 2024 WL 4164694, at *4 (D.D.C. Sep. 12, 2024). The CFTC informed Kalshi that it was conducting a 90-day review pursuant to the Special Rule and 17 C.F.R. § 40.11(c) to determine whether these contracts constituted “gaming,” and if so, whether they were “contrary to the public interest.” *Id.* at *3-4. Following that review, the CFTC issued an order prohibiting Kalshi from listing the contracts, but the U.S. District Court for the District of Columbia struck down the order as arbitrary and capricious under the Administrative Procedure Act (“APA”). *Id.* at *13. Kalshi began listing political-event contracts shortly thereafter. Compl. ¶ 65. The Complaint alleges that these economics- and politics-related event contracts are functionally the same as Kalshi’s sports-event contracts. *Id.* ¶ 64 (“These initial [economics-related] offerings were framed in financial terms, but structured and priced like bets. Each contract allowed users to take a position for or against a particular outcome for a fixed return.”); ¶ 65 (“These political contracts were presented as opportunities to profit from ‘civic knowledge,’ but their mechanics (binary outcomes, fixed payouts, speculative pricing) are the same as those that comprise its sporting event contracts.”).

In January 2025, Kalshi began offering sports-event contracts. *Id.* ¶ 66. Kalshi’s contracts allow users to take positions on, for example, which team will win the Europa League Championship in soccer; whether the Los Angeles Rams will win their next game; and which player will win the Women’s Tennis Association tournament. *Id.* ¶ 63. The Complaint does not allege that the CFTC has initiated a review of these sports-event contracts pursuant to the Special Rule and 17 C.F.R. § 40.11(c), because it cannot. Rather, the Commonwealth alleges that “the CFTC has passively allowed” these contracts, which were approved under federal law at the time of self-certification, to be listed and traded. Mem. at 13; *see also* 7 U.S.C. § 7a-2(c)(1).

III. This Lawsuit

In May 2025, the Commonwealth requested information from Kalshi. Valente Decl. ¶ 3. Kalshi complied with the request, subject to its position that Massachusetts law is preempted as applied to Kalshi. *Id.* ¶ 3-4. The Commonwealth did not communicate its position that Kalshi’s sports-event contracts violated Massachusetts law until September 12, 2025, when, with less than two hours’ notice, the Commonwealth commenced this action and sought an emergency preliminary injunction on short order against Kalshi’s sports-event contracts. *Id.* ¶ 5, Ex.4.

The Complaint asserts a single cause of action under General Laws Chapter 23N, alleging that Kalshi is engaged in sports wagering without a license from the Massachusetts Gaming Commission (“MGC”). The Commonwealth alleges that Kalshi’s sports-event contracts satisfy Massachusetts’ statutory definition of sports wagering, which extends to the business of accepting wagers on “sporting events” or “other events.” G.L. c. 23N, § 3. Although the Complaint alleges that *all* of Kalshi’s event contracts—sports-related or otherwise—qualify as unlicensed wagering, Compl. ¶¶ 64-65, the Commonwealth took no action until Kalshi had offered event contracts on its DCM for more than four years. In addition to challenging the validity of all of Kalshi’s event contracts—including political event contracts that the CFTC sought to prohibit until a federal court rejected that effort—the Commonwealth has gone even further. Just last week, the MGC issued a letter purporting to inform its licensees that *even licensed gaming operators* were prohibited from offering sports-event contracts in Massachusetts. Valente Decl., Ex. 5.

ARGUMENT

I. The Complaint Should Be Dismissed for Failure to State a Claim.

“Accepting the facts asserted in the complaint as true and drawing all reasonable inferences in the plaintiff’s favor, we must determine ‘whether the factual allegations in the complaint are sufficient, as a matter of law, to state a recognized cause of action or claim, and whether such

allegations plausibly suggest an entitlement to relief.’” *Dunn v. Genzyme Corp.*, 486 Mass. 713, 717 (2021). “Where Congress has chosen to foreclose non-Federal regulation in a given area, the supremacy clause in Art. 6 of the Constitution of the United States prohibits a State from applying its own law to that exclusively Federal area.” *Chestnut-Adams Ltd. P’ship v. Bricklayers & Masons Tr. Funds of Bos.*, 415 Mass. 87, 90 (1993), *abrogated on other grounds*, *Cent. Transp., Inc. v. Package Printing Co.*, 429 Mass. 189 (1999). Where state law is preempted, “a State court retains jurisdiction to rule on Federal questions within those areas, [but] it may not apply State law.” *Id.*; *see also Dunn*, 486 Mass. at 718 (“The relative specificity of the pleadings under State law is irrelevant if constitutional principles preclude the assertion of State law claims in light of existing Federal regulation.”). Here, it is clear on the pleadings that the Commonwealth’s claim against Kalshi is preempted. *W. Cap. Design, LLC v. N.Y. Mercantile Exch.*, 180 F. Supp. 2d 438, 443 (S.D.N.Y. 2001) (dismissing state claim “implicat[ing an exchange]’s duties to self-police and regulate” as preempted by the CEA); *Witzel v. Chartered Sys. Corp. of N.Y., Ltd.*, 490 F. Supp. 343, 347 (D. Minn. 1980) (dismissing state claims that would “interfere with the CFTC’s jurisdiction over commodity options”); *Mallen v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 605 F. Supp. 1105, 1114 (N.D. Ga. 1985) (dismissing state claims as preempted by the CEA).

A. The Commodity Exchange Act Preempts State Regulation of Kalshi.

A “fundamental principle of the Constitution is that Congress has the power to preempt state law.” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000). Federal law may occupy a field of regulation, thereby “completely displac[ing] state regulation.” *Fidelity Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 153 (1982). In addition, state law must yield where it conflicts with federal law, such that compliance with both is “impossible” or state law stands as an “obstacle” to Congress’s objectives. *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015). Both are true here.

The Commonwealth asserts that a “strong presumption” against preemption applies, Mem. at 17, but that is wrong. No such presumption applies where, as here, a statute expressly preempts state law, *Commonwealth of Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016), or “when the State regulates in an area where there has been a history of significant federal presence,” *United States v. Locke*, 529 U.S. 89, 108 (2000); see *Medicaid & Medicare Advantage Prods. Ass’n of Puerto Rico, Inc. v. Hernandez*, 58 F.4th 5, 11-12 (1st Cir. 2023) (Supreme Court precedent “forecloses us from applying the presumption against preemption in interpreting the [statute’s] express preemption clause”). Regardless, it is well-settled that the CEA and its implementing regulations have preempted “[s]tate laws specifically directed towards the futures markets.” *Am. Agric. Movement, Inc. v. Bd. of Trade of Chi.*, 977 F.2d 1147, 1157 (7th Cir. 1992); see also *United States v. Brien*, 617 F.2d 299, 310 (1st Cir. 1980) (“Congress intended the CFTC to occupy the entire field of commodities futures regulation.”). Indeed, the “federal government has been vitally concerned with [derivatives] trading” for over a century. *Leist*, 638 F.2d at 322. While the Commonwealth argues that states have traditionally regulated gambling, states have *not* traditionally used their gambling laws to regulate trading on DCMs—at least not since the 1974 amendments to the CEA made the CFTC the sole regulator of such markets.³ *Hofmayer v. Dean Witter & Co.*, 459 F. Supp. 733, 737 (N.D. Cal. 1978) (dismissing state claims due to “Congress’ plainly stated intent to have the Commodity Exchange Act, as amended, preempt the field of regulation of commodity futures trading”).

³ The Supreme Court has declined to apply a presumption where, as here, state law has not traditionally applied to the specific field at issue. In *Buckman Co. v. Plaintiffs’ Legal Committee*, 531 U.S. 341, 347-348 (2001), for example, the Supreme Court declined to apply a presumption in concluding that a federal statute preempted a state common-law fraud claim. Although providing redress to victims of fraud is a traditional state function, the theory of fraud in *Buckman* was “fraud-on-the-FDA,” and “[p]olicing fraud against federal agencies is hardly ‘a field which the States have traditionally occupied.’” *Id.* (citation omitted); see *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467, 477 (4th Cir. 2012) (presumption “almost certainly not applicable” in similar case of pervasive federal regulation). Similarly, here, regulating organized derivatives markets is not a field that states have traditionally occupied, making resort to a presumption improper.

1. Massachusetts Sports Wagering Laws Are Field-Preempted as Applied to Trading on DCMs.

Congress may choose to “occup[y] an entire field” and “foreclose any state regulation in the area, even if it is parallel to federal standards”; this is called “field preemption.” *Arizona v. United States*, 567 U.S. 387, 401 (2012). Congress may expressly occupy a field. *See Crosby*, 530 U.S. at 372 n.6 (“‘field’ preemption may fall into any of the categories of express, implied, or conflict preemption”). Courts can also infer field preemption from a scheme of “federal statutory directives” that “provide a full set of standards . . . designed [to function] as a ‘harmonious whole.’” *Arizona*, 567 U.S. at 401 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 72 (1941)). The “ultimate touchstone” of the preemption analysis is the “purpose of Congress.” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992). Here, the statutory text, legislative history, and comprehensive regulatory framework of the CEA clearly evince Congress’s intent to occupy the field of derivatives trading on CFTC-regulated exchanges.

a. The Statutory Text Makes Clear That Congress Intended to Preempt State Law as Applied to Trading on DCMs

Section 2(a) of the CEA grants the CFTC “*exclusive jurisdiction*” over all “transactions involving swaps” or “future delivery” contracts that are “traded or executed on a contract market designated” by the CFTC. 7 U.S.C. § 2(a)(1)(A) (emphasis added). The “plain meaning of ‘exclusive’” “necessarily denies jurisdiction” to other entities not named in that provision. *Mississippi v. Louisiana*, 506 U.S. 73, 77-78 (1992); *Mallen*, 605 F. Supp. at 1114 (“The grant of exclusive jurisdiction to the CFTC . . . was meant to ensure that federal preemption of regulatory authority was complete. This exclusive jurisdiction language would both displace incipient state regulation and warn other federal agencies.” (citation omitted)); *see also Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 163 (2016) (grant of “exclusive jurisdiction” to federal agency preempts

state efforts to intrude on the same “regulatory turf”). Kalshi’s sports-event contracts are “swaps” traded on a DCM, which necessarily denies jurisdiction to other regulators. *See infra* § I.B.2.

Immediately following the CEA’s grant of exclusive jurisdiction is a savings clause that provides: “[e]xcept as hereinabove provided, nothing contained in this section shall . . . supersede or limit the jurisdiction . . . conferred on . . . other regulatory authorities under the laws of the United States or of any State.” 7 U.S.C. § 2(a)(1)(A) (emphasis added). That language underscores that the grant of exclusive jurisdiction “hereinabove” preempted state law. *See Hendrick*, 2025 WL 1073495, at *5 (“The second sentence in section 2 . . . does not give states regulatory authority over CFTC-designated exchanges because that language is limited by the phrase ‘[e]xcept as hereinabove provided.’”); *see also N. Am. Derivatives Exch., Inc. v. Nevada*, 2025 WL 2916151, at *5 (D. Nev. Oct. 14, 2025) (reiterating that the “plain and unambiguous language” of the CEA preempts state regulation of swaps on DCMs). Even the Commonwealth’s securities regulator has enshrined Section 2(a)’s preemptive effect in its regulations, exempting from registration transactions for which “Section 2(a)(1) of the Commodity Exchange Act grants to the [CFTC] exclusive jurisdiction.” 950 CMR § 14.402(B)(13)(g).

b. The Statutory Context and Structure Supports Congress’s Intent to Preempt.

Congress later enacted other provisions relevant to the states, but each one *excludes* from states’ carefully delineated authority the right to regulate DCM trading. The CEA makes clear that state laws are not preempted as to any transaction “that is not conducted on or subject to the rules of a registered entity or exempt board of trade,” 7 U.S.C. § 16(e)(1)(B)(i), meaning that *on-exchange* transactions *are* preempted. And while Section 13a-2(1) authorizes state officials to sue over “any act or practice constituting a violation of any provision of this chapter or any [CFTC] rule,” it permits such state enforcement only against parties “*other than a [designated] contract*

market.” *Id.* (emphasis added). These clauses would “hardly have seemed necessary” if states could nonetheless enforce their own, widely disparate gambling laws against DCMs. *See Frank v. Delta Airlines Inc.*, 314 F.3d 195, 199 (5th Cir. 2002).

c. Judicial Precedent Confirms Congress’s Intent to Preempt.

When Congress revisited the CEA in Dodd-Frank, federal courts of appeals had repeatedly and uniformly held that “the CEA preempts the application of state law” to trading on DCMs. *Leist*, 638 F.2d at 322; *FTC v. Ken Roberts Co.*, 276 F.3d 583, 590-91 (D.C. Cir. 2001) (CFTC’s jurisdiction is “exclusive with regard to the trading of futures *on organized contract markets*”) (citation omitted); *Am. Agric.*, 977 F.2d at 1157 (state claims “are preempted by the CEA” as applied to “the operation of a contract market”); *Chi. Mercantile Exch. v. SEC*, 883 F.2d 537, 548 (7th Cir. 1989) (where “the CFTC has jurisdiction, its power is exclusive”). District courts and state courts of last resort agreed. *See, e.g., Jones v. B.C. Christopher & Co.*, 466 F. Supp. 213, 220 (D. Kan. 1979) (“It is now established . . . that state regulatory agencies are likewise preempted by the ‘exclusive jurisdiction’ of the CFTC.”); *Bell*, 556 S.W.2d at 423 (Section 2 “express[es] a clear intention . . . to supersede the jurisdiction of all state and federal agencies”). “Congress is presumed to know the federal courts’ interpretation of a statute that it intends to amend,” *Emerson Elec. Supply Co. v. Estes Express Lines Corp.*, 451 F.3d 179, 187 (3d Cir. 2006), and would have understood that confirming the CFTC’s jurisdiction over event contracts preempted state law as applied to those instruments. The CFTC shares this view, recently stating that, “*due to federal preemption, event contracts never violate state law* when they are traded on a DCM.” Appellant’s Br. at 27, *KalshiEX v. CFTC*, No. 24-5205 (D.C. Cir. Oct. 16, 2024) (emphases added).

d. The Legislative History Clarifies Congress’s Intent to Preempt.

Before Congress considered the 1974 amendments, the CEA preserved state law as to “transactions” regulated by the Act. 7 U.S.C. § 6c (1936). The Supreme Court had explained that

without this language, the CEA would “almost certainly conflict with state laws,” but that this proviso “serve[d] the function of preventing supersedure and preserving state control.” *Rice v. Bd. of Trade of Chi.*, 331 U.S. 247, 255 (1947). The 1974 amendments, however, eliminated this proviso; Senate drafters “deleted” it “to assure that Federal preemption is complete.” 120 Cong. Rec. 30464 (Sep. 9, 1974) (statement of Sen. Curtis).

Moreover, “preemption was a central issue in the proceedings which culminated in the 1974 amendments.” Kevin T. Van Wart, *Preemption and the Commodity Exchange Act*, 58 Chi.-Kent L. Rev. 657, 692 (1982). Congress emphasized during the legislative process that one of its goals was to “avoid unnecessary, overlapping and duplicative regulation” in the derivatives markets. *Ken Roberts*, 276 F.3d at 588. The Senate Agriculture Committee understood that the proposed amendments would bring “the futures markets” “under federal regulation.” *Senate Hearings, supra*, at 249. One sponsor added that “different State laws would just lead to total chaos.” *Senate Hearings, supra*, at 685 (statement of Sen. Clark). Drafters later reiterated that regulation should be uniform with “all exchanges . . . under the same set of rules.” H.R. Rep. No. 93-975, at 76 (1974). The conference report to the 1974 amendments thus stated Congress’s desire to “preempt the field insofar as futures regulation is concerned.” H.R. Rep. 93-1383 at 35 (Conf. Rep.); see *Garcia v. United States*, 469 U.S. 70, 76 (1984) (when resort to legislative history is warranted, committee reports are the “authoritative source”). The legislative history of Dodd-Frank similarly reveals that the Special Rule’s drafters understood that the CFTC would possess exclusive jurisdiction over event contracts and would have “the power to determine” whether contracts in certain categories were contrary to the public interest. 156 Cong. Rec. S5906 (daily ed. July 15, 2010) (statements of Sens. Feinstein and Lincoln).

e. The CEA’s Comprehensive Regulatory Scheme Leaves No Room for State Regulation of Trading on DCMs.

The CEA sets out a “comprehensive regulatory structure” to oversee futures trading. *Curran*, 456 U.S. at 356 (citation omitted). To list derivatives contracts, an exchange must receive a CFTC designation, 7 U.S.C. § 7(a), requiring an application demonstrating myriad capabilities. *See* 17 C.F.R. § 38.150(b) (capacity to detect and investigate actors who violate CFTC rules); *id.* § 38.155(a) (adequate compliance staff); *id.* § 38.156 (surveillance of trades executed on its platform). Upon becoming a DCM, it is subject to substantial oversight, including recordkeeping requirements, *id.* § 38.950, reporting obligations, *id.* §§ 38.450, 16.00 *et seq.*, liquidity standards, *id.* § 38.1101(a)(2), and penalties for noncompliance, 7 U.S.C. §§ 9a, 12c. The CEA sets out comprehensive rules governing DCM transactions, including restrictions on transactions in foreign currency, prohibitions on insider trading, and rules regarding fraudulent transactions. 7 U.S.C. §§ 6 *et seq.* DCMs may self-certify contracts they believe comply with these rules, but the CFTC retains back-end authority to review contracts for compliance. *See* 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. § 40.2(c). In the case of event contracts in certain categories, the CFTC may determine whether they are “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(i). And the CEA authorizes an array of sanctions for those who violate its strictures, including civil penalties, revocation of licensing, and referral for criminal enforcement. *Id.* §§ 9a, 12c, 13. This “comprehensive” regime leaves “no room for the States to supplement it.” *Arizona*, 567 U.S. at 399, 401 (cleaned up).

2. Massachusetts Sports Wagering Laws Are Conflict-Preempted as Applied to Kalshi.

The Commonwealth’s sports wagering laws are also conflict-preempted as applied to Kalshi because they “stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” as evidenced in the CEA. *Hines*, 312 U.S. at 67. Conflicts may exist based on “the practical result of the state law” as well as “the means that a state utilizes

to accomplish the goal.” *United States v. Alabama*, 691 F.3d 1269, 1296 (11th Cir. 2012). Where state law would interfere with federal law’s “operation within its chosen field,” it “must yield to the regulation of Congress within the sphere of its delegated power.” *Crosby*, 530 U.S. at 373 (citing *Savage v. Jones*, 225 U.S. 501, 533 (1912)); *Witzel*, 490 F. Supp. at 347 (dismissing state claims that would “interfere with the CFTC’s jurisdiction over commodity options”). Subjecting transactions on Kalshi to state law would “undermine[] the intended purpose and ‘natural effect’ ” of the federal scheme for regulating CFTC-designated exchanges.⁴ *Crosby*, 530 U.S. at 373.

First, Congress passed the 1974 Amendments to the CEA to bring futures markets regulation “under a uniform set of regulations.” *Am. Agric.*, 977 F.2d at 1156. Yet the Commonwealth asks the Court to prohibit Kalshi from allowing Massachusetts users to trade sports-event contracts on its platform. Such a state-specific prohibition is inconsistent with bringing DCMs “under a uniform set of regulations,” *id.*, and would open the door to 49 other states and the District of Columbia attempting the same. That prospect would plainly pose “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *Hines*, 312 U.S. at 67—namely, Congress’s desire to prevent the “chaos” that would result from subjecting DCMs to more than fifty regulators, as had been the case between the CEA’s adoption in 1936 and its amendment in 1974. *Senate Hearings* at 685 (statement of Sen. Clark).

Second, where Congress chooses a specific enforcement method to achieve federal goals, a state’s adoption of its own enforcement method disrupts “the careful balance struck by Congress.” *Arizona*, 567 U.S. at 406. Here, federal law authorizes Kalshi to list its sports-event contracts for trading by self-certifying that they comport with federal law, 7 U.S.C. § 7a-2(c)(1)-

⁴ At its outset, G. L. c. 23N includes an expansive definition of “sports wagering” that includes, among other activities, “accepting wagers on sporting events” and “other events,” and defines wager as “a sum of money or thing of value risked on an uncertain occurrence.” § 3. By its terms, then, this definition encompasses all prediction wagering, not just sports-event contracts.

(3); and it empowers the CFTC to review and prevent trading of those contracts to the extent they are determined to be “contrary to the public interest, 7 U.S.C. § 7a-2(c)(5)(C)(i), and to bring enforcement actions for violations of federal law, 7 U.S.C. § 13a. The CFTC has taken none of these actions with respect to Kalshi. But the Commonwealth tries to do so in its stead.⁵ A state attempting to step in for the CFTC’s through its own law creates a conflict by “undermin[ing]” Congress’s “delegation of effective discretion” to the CFTC to regulate DCMs. *Crosby*, 530 U.S. at 373. The Commonwealth seeks an injunction prohibiting what the CFTC has permitted. That creates a direct conflict between state and federal law.⁶

Third, the relief sought by the Commonwealth conflicts with the CFTC Core Principles on which Kalshi’s designation as a CFTC-approved market depends. For example, the CFTC’s Core Principle 2 requires Kalshi to “provide its members, persons with trading privileges, and independent software vendors with *impartial access* to its markets and services.” 17 C.F.R. §§ 38.150, 38.151(b) (emphasis added). But obtaining a Massachusetts license and adhering to Massachusetts-specific restrictions (such as different age restrictions or limits relating to collegiate sports) would either risk violating that principle, or require Kalshi to follow those restrictions both in the Commonwealth and *across the country*. Massachusetts thus effectively claims the authority to regulate Kalshi’s contracts nationwide. *See Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989)

⁵ The Commonwealth argues that there is no conflict because Kalshi’s sports-event contracts are impermissible under 17 C.F.R. § 40.11. That is incorrect and will be addressed below. But Chapter 23N applies more broadly than Kalshi’s sports-event contracts (*see* G.L. c.23N §§ 2, 3), and the Commonwealth does not even try to explain how its attempt to convert event contracts related to “*other events*” into “sports wagering” does not conflict with the CEA’s explicit recognition and approval of event contracts under the federal regime.

⁶ Even worse, though the Commonwealth has not yet sought criminal penalties against Kalshi, it might well do so if this Court holds that preemption does not apply. Violation of Section 17A of Chapter 271 of Massachusetts General Laws, which criminalizes accepting wagers or bets over the internet, “shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 1 year.” G.L. c. 271 § 17A. Absent a finding of preemption, the CEA’s carefully calibrated federal enforcement scheme would be displaced by a blunt application of mandatory state criminal penalties. *See Arizona*, 567 U.S. at 406 (state criminal penalties for violating federal law concerning employment of unauthorized immigrants “would interfere with the careful balance struck by Congress”).

(“a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State’s authority”). In addition, Core Principle 4 requires Kalshi to “establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions.” 17 C.F.R. § 38.255. Again, abruptly closing Kalshi’s event contracts to anyone located in Massachusetts could constitute exactly the sort of market disruption the CFTC has directed Kalshi to prevent. It could be “impossible for [Kalshi] to comply with both state and federal law”—the paradigmatic case for conflict preemption. *Crosby*, 530 U.S. at 372; *Hendrick*, 2025 WL 1073495, at *7 (“Kalshi thus faces a ‘Hobson’s choice’: if it does not comply with the defendants’ demand to cease it faces civil and criminal liability, but if it does it will incur . . . the potential existential threat of the CFTC taking action against it”).

Finally, the conflict between federal and Massachusetts law has only increased in light of the MGC’s recent letter informing even *licensed* sports wagering operators that “you are prohibited from offering sports-related event contracts in Massachusetts, directly or via an affiliate, related business entity, or other association.” Valente Decl. Ex. 5. This now means that Kalshi’s alleged violation is not that it is offering sports-event contracts “without a license,” Compl. ¶ 1, because even if it had such a license, offering those contracts would still be forbidden. Thus, the very same contracts that were self-certified pursuant the process provided by the CEA, 7 U.S.C. § 7a-2(c)(1), and that the CFTC has permitted to be listed and traded on Kalshi’s national exchange, are now verboten across the board in Massachusetts, regardless of whether the entity offering them is or is not licensed to engage in sports wagering in the state. This is yet another reason why it would be “impossible for [Kalshi] to comply with both state and federal law.” *Crosby*, 530 U.S. at 372.

B. The Commonwealth's Arguments Against Preemption Are Unavailing.

In the back half of its brief for a preliminary injunction, the Commonwealth advances a hodgepodge of arguments why its claim is not preempted by the CEA. These arguments largely reduce to the assertion that Kalshi's sports-event contracts are not really swaps under the CEA and thus do not fall within the CFTC's exclusive jurisdiction. Even if that assertion had any merit (it does not), it fails at the outset because a state enforcement action under a state regulatory regime is the wrong vehicle for such a claim. If the Commonwealth contends that Kalshi's sports-event contracts are not properly subject to the CFTC's exclusive jurisdiction, it must first raise that challenge with Kalshi's exclusive federal regulator, the CFTC.

1. The Commonwealth's Complaint Is an Improper Collateral Attack on the CFTC's Oversight of a DCM.

This entire action is a collateral attack on the CFTC's decision to permit trading of Kalshi's sports-event contracts. There is no dispute that Kalshi is a CFTC-regulated exchange; that the CEA permits Kalshi to self-certify event contracts prior to public listing; that Kalshi did in fact submit its sports-event contracts to the CFTC in advance of offering them to the public; that the CFTC has never suggested that Kalshi's sports-event contracts are contrary to the public interest; or that its sports-event contracts are currently offered on its nationwide exchange. The only dispute is whether the Commonwealth has the right to step in because the CFTC, to the Commonwealth's evident disappointment, has "passively allowed" the contracts to trade. Mem. at 13. But if the Commonwealth wants to take issue with the CFTC's oversight, the mechanism for doing so is an action against the CFTC under the APA, not a state enforcement action against a registered entity to which the CFTC is not even a party. *See Big Lagoon Rancheria v. California*, 789 F.3d 947,

953 (9th Cir. 2015) (en banc) (state may not “use a collateral proceeding to end-run the procedural requirements governing [review of administrative action]” (citation omitted)).⁷

Congress has given the CFTC the authority to oversee listing of contracts for trading on DCMs. A DCM may “elect to list for trading or accept for clearing any new contract” by providing the CFTC with a “written certification that the new contract” complies with the CEA. 7 U.S.C. § 7a-2(c)(1). The CFTC reviews proposed contracts and may initiate review of any contract. *Id.* § 7a-2(c)(2); 17 C.F.R. § 40.11(c). Congress in the Special Rule expressly granted the CFTC the discretion to determine that certain types of event contracts are contrary to the public interest, and, if so, to prohibit them. *See* 7 U.S.C. § 7a-2(c)(5)(C). The CFTC in turn has set out a process for CFTC review “on a case-by-case basis” whether an event contract listed by a DCM is barred by the Special Rule. 76 Fed. Reg. 44,776, 44,785-86 (July 27, 2011) (adopting 17 C.F.R. § 40.11). When the review period in the self-certification process for a contract closes, the CFTC decides either to object to the listing of the new contract, 7 U.S.C. § 7a-2(c)(3)(B)(ii), or to permit the new contract to be listed, *id.* §§ 7a-2(c)(2), (3)(B).

The CFTC has exercised jurisdiction over, and has allowed, the contracts to which the Commonwealth objects. As to Kalshi’s political-event contracts, which the Complaint compares to Kalshi’s sports-event contracts (Compl. ¶ 65), the CFTC initially issued an order prohibiting Kalshi from offering them on the asserted ground that they involved “gaming” and “unlawful” activity under certain states’ laws and were contrary to the public interest. *KalshiEX*, 2024 WL 4164694, at *1. The D.C. District Court disagreed, holding that they did not involve gaming or

⁷ *See also Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1291 (11th Cir. 2015) (“collateral challenge” to agency decision was inappropriate; the “proper vehicle . . . is an APA claim”); *City of Duluth v. Fond du Lac Band of Lake Superior Chippewa*, 702 F.3d 1147, 1153 (8th Cir. 2013) (“challenge[]” to agency “determination” was “properly made under the Administrative Procedure Act,” and “the review process established by Congress in the APA” could not “be circumvented”).

unlawful activity under the Special Rule, so federal law *required* the CFTC to permit them to be traded. *See id.* at *13. After the D.C. Circuit denied a stay, the CFTC dismissed its appeal, accepting the district court’s decision as final. *See* 2025 WL 1349979 (D.C. Cir. May 7, 2025). Kalshi has offered its political event contracts ever since.

With respect to sports-event contracts, the only difference is that the CFTC has elected not to undertake a public interest review of Kalshi’s contracts. Under the statutory regime, when the CFTC does not initiate a public interest review or block a contract for listing on a DCM, that is itself an agency action. *See* 5 U.S.C. § 551(13) (APA defines “agency action” to include “failure to act”). The Commonwealth may disagree with the CFTC’s decision to permit listing of these contracts, but its only recourse is with CFTC. *See* 5 U.S.C. §§ 702, 706(2) (permitting suit against agency where its action was contrary to law). What the Commonwealth cannot do is flout Congressional intent as to the CFTC’s jurisdiction by moving to enforce its own law against Kalshi for products the CFTC permitted Kalshi to offer. *See Cousins*, 880 F.2d at 605-06 (noting that “[t]he APA was intended to provide just such a single uniform method for review of agency action,” and that method of review supplants all pre-existing methods).

The practical implications of allowing states to second-guess the CFTC’s regulatory judgment through this kind of collateral attack help explain why Congress prohibited it. State regulators have understandable incentives to expand their own authority by construing the CFTC’s jurisdiction narrowly. If states may, through state law enforcement actions, second-guess the CFTC’s determination that a contract is a swap properly traded on a DCM, it would mean that states could exercise jurisdiction over the same contracts as the CFTC—in clear conflict with Congress’s decision to entrust the CFTC with “exclusive jurisdiction” in this field. That difficulty would be compounded 51-fold if each state and the District of Columbia could press its own

understanding of the term “swap.” And the difficulty would be compounded *exponentially* if states could scrutinize every contract offered on a DCM, one-by-one, to determine whether any of tens of thousands of contracts may or may not be swaps—all with the looming threat of criminal prosecution if the state concludes that any such contract is not a swap after all. This is not the regime Congress intended, and it would plainly “frustrate Congress’ intent to bring the markets under a uniform set of regulations.” *Am. Agric.*, 977 F.2d at 1156; *In re Chicago Bd. Options Exch. Volatility Index Manipulation Antitrust Litig.*, 390 F. Supp. 3d 916, 938 (N.D. Ill. 2019) (dismissing state claims that would “would run counter to congressional intent that markets be subject to uniform standards” and “hamper the efficient operation of the futures market”).

Of course, courts are empowered to determine the meaning of the terms of the CEA and compliance therein. The point is not that the CFTC alone is authorized to determine what qualifies as a swap, but rather that a challenge to the CFTC’s determination must be brought against the CFTC itself to ensure the CFTC regulates uniformly nationwide—not through state-specific enforcement actions against regulated DCMs for offering event contracts that the CFTC, exercising its exclusive jurisdiction, has permitted.

2. The Commonwealth’s Arguments Against Preemption Fail.

Even if this enforcement action were a permissible mechanism for challenging the CFTC’s determination to permit Kalshi’s sports-event contracts, the Commonwealth has not identified any basis to permit state regulation of such contracts as attempted here.

Swaps. The Commonwealth’s lead argument against preemption is that Kalshi’s sports-event contracts are “not swaps.” Mem. at 14. In taking that position, the Commonwealth does not even try to explain why Kalshi’s sports-event contracts do not meet the statutory definition of “swap.” Rather, it reads an extratextual “sports wagering” exception into the CEA’s text. But “[w]hen the text is unambiguous and the statutory scheme is coherent and consistent, we do not

look to legislative history or Congressional intent.” *Penobscot Nation v. Frey*, 3 F.4th 484, 491 (1st Cir. 2021); *see also Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022) (“The Court may not replace the actual text with speculation as to Congress’ intent.” (cleaned up)). And here, sports-event contracts fit comfortably within the statutory definition.

The plain language of the CEA’s definition of “swap” sweeps broadly and covers Kalshi’s sports-event and political-event contracts, which “provide[]” for payment based 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). The outcomes of major sports events like those for which Kalshi offers contracts have significant financial consequences for a host of stakeholders—team sponsors, advertisers, TV networks, franchises, local communities, and more. The Special Rule is similarly specific in identifying agreements, contracts, transactions or swaps that involve “gaming” as within the CFTC’s ambit, in that case for potential public interest review in accordance with CFTC regulations.

The Commonwealth nonetheless argues that sports-event contracts cannot be swaps, because otherwise sports bets could *only* be made on DCMs, and the CFTC would be a “nationwide gambling commission.” Mem. at 16. This is a strawman. In 2012, the CFTC stated that “customary consumer and commercial agreements” that are not traded “on an organized market” do not qualify. 77 Fed. Reg. 48,208, 48,246-47 (Aug. 13, 2012). Nor would the CFTC become the exclusive nationwide regulator of gambling, because the CFTC only has exclusive jurisdiction of contracts traded *on CFTC-approved exchanges*. The states remain free to regulate even derivatives that are traded *outside* of CFTC-approved exchanges. 7 U.S.C. § 16(e)(1) (“[n]othing” in the CEA “shall supersede or preempt” state law applied to off-exchange transactions); *see also*

Hendrick, 2025 WL 1073495, at *6 (“[I]f Kalshi were offering its contracts without CFTC designation, then the defendants could regulate it.”).

Even outside the CEA, Congress has recognized the risk that interested parties might attempt to characterize derivatives traded on DCMs as “gaming,” potentially undermining the CFTC’s exclusive role. In the Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA”), Congress adopted state-law definitions of “bet or wager” but excluded “any transaction conducted on or subject to the rules of a” DCM, confirming that on-DCM transactions fall under CFTC jurisdiction, while off-DCM transactions remain subject to state regulation. 31 U.S.C. § 5362(1)(E)(ii); see *Blue Lake Rancheria*, 2025 WL 3141202, at *6 (UIGEA demonstrates congressional intent to reserve on-DCM regulation to CFTC). Amazingly, the Commonwealth cites UIGEA as reflecting an intent to preserve state law, Mem. at 16, *but neglects to note the carveout for trading on DCMs*.

The Special Rule and 17 C.F.R. § 40.11. The Commonwealth alternatively argues that, even if sports-event contracts are swaps, the CFTC itself has already banned them. Mem. at 13, 14, 18, 20. As an initial matter, this argument concedes that sports-event contracts are within the CFTC’s jurisdiction—a fatal concession because that jurisdiction is exclusive. *Chi. Mercantile Exch.*, 883 F.2d at 548. But setting that aside, the argument is wrong on multiple levels.

First, the Commonwealth attempts to isolate certain language in 17 C.F.R. § 40.11(a), while ignoring section 40.11(c) of the same regulation, which provides for the CFTC’s public interest review process. This public interest review process applies to all enumerated contracts, including ones that involve “gaming” or activity that is unlawful under state law. See *KalshiEX*, 2024 WL 4512583, at *1. Unless the CFTC has undertaken a public interest review on a particular contract pursuant to Rule 40.11(c), a self-certified event contract is valid.

Second, the CFTC agrees that Rule 40.11(a) does not *per se* ban contracts. When Kalshi listed political event contracts, the CFTC conducted a review under Rule 40.11(c). It was a two-step review: (1) the CFTC found that the political contracts involved “unlawful activity” and “gaming;” and (2) separately, the CFTC found that the contracts were “contrary to the public interest.”⁸ *KalshiEX*, 2024 WL 4512583, at *12-13. Only then, did the CFTC issue an order prohibiting Kalshi from listing the contracts. This process would have been entirely unnecessary if Rule 40.11(a) had already created an across-the-board prohibition.

Third, the adopting release for Rule 40.11 makes clear that there is no such ban. Instead, it explains that DCMs can list whatever they want through self-certification, 7 U.S.C. § 7a-2(c)(2), subject to the requirements of 17 C.F.R. § 40.2 and potential review under Rule 40.11(c):

[R]egistered entities *may always* certify products pursuant to the procedures in § 40.2. If the Commission determines during its review of a product that the submission may violate the prohibitions in § 40.11(a)(1)–(2), the Commission may request that the registered entity suspend the trading or clearing of the contract pending the completion of a 90-day extended review.

76 Fed. Reg. at 44,786 (emphasis added). It would be odd for the CFTC’s own rule to allow event contracts to trade during any such review period, if no review period were required because the contracts were *per se* prohibited.

Fourth, the CFTC proposed rulemaking (which was not adopted) in 2024, 13 years after Rule 40.11 was adopted, that explained its understanding of how the Special Rule works:

The Commission interprets [the Special Rule] to contemplate that the Commission engage in a *two-step inquiry*. First, the Commission must assess whether a contract in a specified excluded commodity ‘involve[s]’ an activity enumerated in [the Special Rule] . . . If the Commission determines that the contract involves such activity, the Commission must assess whether the contract is contrary to the public interest.

⁸ The two-step nature of the review is reflected in the CFTC order itself. After determining that the contracts “involved” unlawful conduct and gaming, it spent 10 pages analyzing why they were “contrary to the public interest.” *See Valente Decl.*, Ex 7.

89 Fed. Reg. 48,968, 48,970-71 (proposed June 10, 2024) (emphasis added). That is just what the CFTC did in its dispute with Kalshi over political event contracts. But the Commonwealth would have the CFTC stop at step one.

Exclusive Jurisdiction. The Commonwealth argues that Section 2(a)(1)(A)'s grant of exclusive jurisdiction does not displace state law, but instead delegates authority among—and only among—federal agencies. Mem. at 18. This is a clear misreading of the provision, which states: “[e]xcept as hereinabove provided, nothing contained in this section shall (I) 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 *of any State.*” 7 U.S.C. § 2(a)(1)(A) (emphasis added). The provision makes no distinction between states and the SEC. And the provision would serve no purpose unless the grant of exclusive jurisdiction “hereinabove” preempted state law. *See Hendrick*, 2025 WL 1073495 at *5 (“The second sentence in section 2 . . . does not give states regulatory authority over CFTC-designated exchanges because that language is limited by the phrase ‘[e]xcept as hereinabove provided.’”). The CEA elsewhere confirms this reading, demonstrating that the CFTC’s exclusive jurisdiction over *on-exchange* transactions preempts state law. 7 U.S.C. § 16(e)(1)(B)(i).

Other Preemption Provisions. The Commonwealth points to additional preemption provisions in the CEA—Sections 16(e)(2) and (h)—and notes that those provisions use “markedly different” language from the grant of exclusive jurisdiction in Section 2. Mem. at 18. But such differences are beside the point. Sections 16(e)(2) and (h) expressly preempt “bucket shop” and “insurance” laws, respectively, but they do so as applied to transactions that do not occur on DCMs and thus are not subject to the CFTC’s exclusive jurisdiction.⁹ It is no surprise that Congress

⁹ The same is true for the other exceptions identified in the CEA. *See* 7 U.S.C. § 2(c)(1) (transactions in “foreign

would use targeted language when it wanted to preempt specific state laws as to off-exchange transactions while using the broader language of “exclusive jurisdiction” to preempt the field as to on-exchange transactions.

II. There Is No Basis for a Preliminary Injunction.

Even if the Complaint could survive dismissal, the Commonwealth has failed to establish a basis for a preliminary injunction. A preliminary injunction is an “extraordinary remedy” which “should not be granted unless the plaintiffs [make] a clear showing of entitlement thereto.” *Governo Law Firm, LLC v. CMBG3 Law, LLC*, 34 Mass. L. Rptr. 109, 109 (Mass. Super. Ct. 2017) (citations omitted). When the movant is the government, it must “show a likelihood of success on the merits and that the requested relief would be in the public interest.” *Town of Framingham v. Framingham Police Officers Union*, 93 Mass. App. Ct. 537, 542 (2018) (citing *LeClair v. Norwell*, 430 Mass. 328, 331-332 (1999)). The Commonwealth cannot satisfy its burden in seeking the “drastic” relief of a preliminary injunction here. *Knapik*, 1999 WL 1319239, at *2.

A. The Commonwealth Is Unlikely to Succeed on the Merits.

For all the reasons discussed above, the Commonwealth is unlikely to succeed on the merits because the CEA preempts Massachusetts law as applied to transactions on DCMs such as Kalshi. But even if the Court considered it a close call, there is a split of authority on this issue: three courts have sided with Kalshi (*Hendrick*, *Flaherty*, and *Blue Lake Rancheria*); one court has rejected Kalshi’s position (*Martin*), and at least three federal courts of appeals will be addressing the issue in the coming months (the Third, Fourth, and Ninth Circuits). *See supra* at 3 n.1. In

currency,” “government securities,” and “mortgages” exempted from the CEA); § 2(f)(1) (any “hybrid instrument that is predominantly a security” exempted from the CEA); §§ 27-27f (certain “banking product[s]” exempted from the CEA). Each of these cross-referenced transactions *need not occur on DCMs*—exactly why Congress needed to specify that state laws are preempted. It would have been redundant and confusing to specify preemption as to transactions on DCMs; Section 2(a) already accomplished that.

Massachusetts, a split of authority among other jurisdictions weighs against a likelihood of success. *Chiswick, Inc. v. Constas*, 18 Mass. L. Rptr. 104 (Mass. Super. Ct. 2004). At a minimum, the Commonwealth has not made a “clear showing” of its entitlement to a preliminary injunction.

B. Even If the Complaint Could Survive Dismissal, a Preliminary Injunction Would Not Serve the Public Interest.

A preliminary injunction is also unwarranted because it would not be in the public interest. *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984). In evaluating the public interest, courts “balanc[e] the equities” to determine whether injunctive relief is warranted. *LeClair*, 430 Mass. at 339. For a variety of reasons, the equities tip decisively in Kalshi’s favor.

Enforcement of a Preempted Law Is Not in the Public Interest. As an initial matter, “[t]here is generally no public interest in the perpetuation of unlawful agency action.” *Ass’n of Am. Univs. v. Dep’t of Def.*, 792 F. Supp. 3d 143, 181 (D. Mass. 2025) (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)). Quite the opposite: the public has a first-order interest in ensuring that preempted Massachusetts laws are *not* enforced against federally regulated entities. And the Commonwealth itself lacks any legitimate interest in enforcing a state law that is preempted. *See Arizona*, 567 U.S. at 401.

Nor is there merit to the Commonwealth’s suggestion that the CFTC has somehow been asleep at the switch. *See* Mem. at 13 (alleging that CFTC has “passively allowed” trading of sports-event contracts on Kalshi’s platform). There is no dispute that the CFTC has permitted Kalshi’s sports-event contracts to be traded on Kalshi’s exchange, and it is simply wrong that it did so “passively.” Kalshi self-certified its first sports-event contracts and then listed them on January 22, 2025. Sottile Decl. ¶ 9. On January 31, 2025, the CFTC requested, pursuant to 17 C.F.R. § 38.5(b), that Kalshi submit a demonstration of compliance for two sports-event contracts with the CEA, and Kalshi responded with a memorandum that detailed the listings’ compliance

with all applicable rules and regulations. Sottile Decl. ¶ 12; Valente Decl. Ex. 1. Kalshi also provided the CFTC with a memorandum from its outside counsel addressing, among other things, the CFTC’s authority to regulate trading of sports-event contracts on DCMs. Sottile Decl. ¶ 13; Valente Decl. Ex. 2. Had the CFTC deemed Kalshi’s contracts impermissible, it would have had the responsibility to “object[]” to the contracts and initiate a public interest review. *Id.* § 7a-2(c)(3)(B)(ii). It did not. Thus, the CFTC sought information from its registrant concerning the contracts in question and was clearly satisfied with the response.

The Commonwealth also cites its requirements for problem gambling as supporting an injunction in this case, but the Commonwealth admits that Kalshi also provides its users with responsible trading tools that would aid in avoiding compulsive behavior. Mem. at 12, 12 n.7; Doan Aff. (Dkt. No. 7) Exs. AO, AP, AQ. Kalshi’s tools allow users to set a personalized maximum amount that can be deposited to Kalshi in each calendar month, Doan Aff. Ex. AO, request to be excluded from trading activities in Kalshi’s market for a specific term of time, Doan Aff. Ex. AP, and to take a trading break, Doan Aff. Ex. AQ. And once a consumer chooses a risk management practice, the practice cannot be lifted or changed until the expiration date is reached. Valente Decl., Ex. 6. The Commonwealth claims that these tools do not “meet the MGC’s standards,” Mem. at 12 n.8, but Congress determined that those “standards” would not govern derivatives markets. It is not in the public interest to subject those markets to the state-by-state regulatory patchwork that Congress consciously stamped out.

The Commonwealth’s Purported Age-Related Concerns Are Misplaced. The Commonwealth argues that an injunction would be in the public interest in part because of the alleged harm caused to 18-, 19-, and 20-year-olds. Mem. at 5, 11-12. Yet the Commonwealth ignores that Massachusetts already *permits* these people—and those even younger—to participate

in the most widespread form of gambling in the Commonwealth—the state lottery. Any 18-, 19-, or 20-year-old in Massachusetts may buy a lottery ticket (or 50, as there is no limit) for their own use, and “may purchase a ticket or share for the purpose of making a gift to a person under age eighteen.”¹⁰ G.L. c. 10, § 29. And this is no small-dollar enterprise. The Commonwealth leads the nation in per-capita lottery spending by a long shot, at roughly \$1,037 per person each year.¹¹ With the next-highest state at \$573 in per-capita lottery spending, no other jurisdiction comes close—to the benefit of the Commonwealth’s coffers.¹² Indeed, the lottery accounts for nearly 70 percent of the roughly \$1.5 billion in annual revenue Massachusetts collects in taxes on gaming.¹³

And although the Commonwealth argues that Chapter 23N establishes widespread “protections for college athletes,” Mem. at 12, the statute itself contains only two narrow limits through its definitions section. G.L. c 23N, § 3.¹⁴ The broader rule that the Commonwealth invokes, Mem. at 4, 12—that wagers may only be accepted on sporting events *recognized* by the MGC—exists only in the Gaming Commission’s regulations, which may be altered at any time. 205 CMR § 247.01(1). Thus, the Commonwealth’s argument that Chapter 23N reflects the legislature’s determination of the public interest falls short—these so-called “scores of obligations,” Mem. at 13, are in fact left entirely to the Gaming Commission’s discretion.

¹⁰ See Valente Decl., Ex. 8 (“We’re trying to attract a new and emerging generation”).

¹¹ See Valente Decl., Ex. 9 (“The Mass. state lottery is the most successful in the world . . . Mass. residents spent more per capita on the lottery than in any other state — an average of \$1,037 per year per adult”); see also Ex. 10 (estimating Massachusetts at \$915 per person each year).

¹² *Id.* (showing Rhode Island in second place at \$573 in per-capita state lotto spending).

¹³ See Valente Decl., Ex. 9 (noting that “taxes on gambling — including levies on the lottery, casinos, and sports betting — are the fourth largest source of state revenue, bringing in \$1.5 billion in fiscal 2025” and that “[t]he state lottery accounts for 68 percent of that”); Valente Decl., Ex. 11 (“[T]he Massachusetts State Lottery produced \$1.067 billion in net profit for the Commonwealth during the 2025 fiscal year . . . exceeding the projected return of \$1.050 billion. This is the fifth consecutive year the Lottery’s net profit total has topped \$1 billion.”).

¹⁴ In defining a “sporting event,” Section 3 simply excludes collegiate events involving a Massachusetts team and all collegiate proposition bets. *Id.*

State Law Permits Exchange Trading. The Commonwealth’s invocation of the public interest is also at odds with the Massachusetts legislature’s own determination that trading on bona fide exchanges does not constitute unlawful gaming,¹⁵ and the Massachusetts securities regulator’s acknowledgment that the CFTC has exclusive jurisdiction over commodities contracts.¹⁶ At a minimum, there is a serious question as to the differing positions taken by the Commonwealth across its legislature and agencies. Because “the purpose of a preliminary injunction is ‘only to preserve the status quo while the case is under consideration,’ ”¹⁷ a preliminary injunction in these circumstances does not serve the public interest.¹⁸

An Injunction Requiring Kalshi to Cease Operations in Massachusetts Would Irreparably Harm Thousands of Kalshi Users In and Beyond Massachusetts. The Commonwealth seeks a mandatory injunction—*i.e.*, one that would order Kalshi to fundamentally alter its business practices and affect the accounts of thousands, rather than merely freezing the status quo. Respectfully, the Court should exercise caution before taking that disruptive step, which would cause chaos on federally regulated prediction markets. *Holick v. Boston Med. Ctr.*, 2021 WL 5630802, at *6 (Suffolk Super. Ct. Aug. 31, 2021) (relying on *Mass. Coal. of Citizens with Disabilities v. Civil Def. Agency & Office of Emergency Preparedness*, 649 F.2d 71, 76 n.7

¹⁵ See M.G.L. c. 137, § 4. Although Kalshi was founded in 2018 and therefore is not an exchange “established for a period of at least ten years,” as described in Section 4, Kalshi will meet the definition of a G.L. c. 137 exchange in short order.

¹⁶ 950 CMR § 14.402(B)(13)(g) (excluding commodities contracts subject to the exclusive jurisdiction of the CFTC from reporting requirements).

¹⁷ *Petricca Constr. Co. v. Commonwealth*, 37 Mass. App. Ct. 392, 399 (Suffolk App. 1994), (quoting *Jet-Line Servs., Inc. v. Selectmen of Stoughton*, 25 Mass. App. Ct. 645, 649-650 (1988)); *Thayer Co. v. Binnall*, 326 Mass. 467, 479 (1950) (“The purpose of a preliminary injunction is to maintain the situation in statu[s] quo until the merits can be determined.”); *In re McKnight*, 406 Mass. 787, 792 n.4 (1990) (“A preliminary injunction is, by definition, an interlocutory order entered to preserve temporarily the status quo pending a full trial on the merits.”).

¹⁸ “Injunctions should be ‘no broader than is required’ to protect the rights of the moving party.” *Vera v. Brady*, 11 LCR 215, 216 (Mass. Land Ct. 2003) (quoting *Brookline v. Goldstein*, 388 Mass. 443, 451 (1983)); *Commonwealth v. Fremont Inv. & Loan*, 452 Mass. 733, 751 (2008); *Commonwealth v. Can-Port Amusement Corp.*, 19 Mass. L. Rptr. 211 (2005).

(1st Cir. 1981) (“Mandatory preliminary injunctions do not preserve the status quo and normally should be granted only in those circumstances when the exigencies of the situation demand such relief.”)). The requested injunction would cause massive and irreparable harm not only to Kalshi, but to thousands of its users both in and beyond Massachusetts. As set forth in detail in the accompanying Sottile Declaration, the harms can be categorized as follows: (a) harms to Kalshi’s users from abruptly ceasing operations in the Commonwealth; (b) harms imposed by technical barriers to compliance; (c) risk that “geofencing” Massachusetts would jeopardize Kalshi’s CFTC designation; and (d) economic and reputational harm to Kalshi from suspending its offering of event contracts in the Commonwealth. These harms clearly tip the equities against an injunction.

First, compliance with the proposed injunction would require not only preventing new trades from being placed by users located in Massachusetts, but also freezing or liquidating the thousands of open trades worth millions of dollars. *Id.* ¶ 24. If Kalshi were to freeze all open positions involving Massachusetts users, that would deny traders access to their capital—cash collateral held by a CFTC-approved derivatives clearinghouse that underlies users’ trading activity. *Id.* ¶¶ 30-35. And liquidating accounts would unavoidably lock certain traders into losses that they otherwise might have ridden out, and prevent users from capturing any gains that had been realized.¹⁹ *Id.* ¶¶ 27, 36. Importantly, because Massachusetts residents are inevitably transacting with persons located in other states, the harms occasioned by any such forced freezing or liquidation would be suffered not only in Massachusetts, but in states around the country (including, for example, New Jersey, where a federal court has already enjoined enforcement of state gaming laws against Kalshi on preemption grounds). *Id.* ¶ 35. A mass liquidation of this sort

¹⁹ Liquidating Massachusetts users open contracts would be financially prohibitive to Kalshi because Kalshi, unlike traditional sportsbooks, does not take the other side of trades with its users. Sottile Decl. ¶¶ 27, 36.

would also create a false signal in the market, resulting in distortion in prices that would impose substantial financial losses on the traders (irrespective of where they are located). *Id.* ¶ 37.

Second, to comply with such an injunction, Kalshi would need to undertake efforts to geolocate which of its users are in Massachusetts and cease making its sports-event contracts available to them. But currently, Kalshi lacks a mechanism to identify which of its users are located in a particular state at any particular time. Sottile Decl. ¶ 24. While the Commonwealth suggests that certain unnamed “competitors” of Kalshi already geolocate, Mem. at 1, 9 n.6, the Commonwealth evidently has in mind certain web-based sports pools that are not regulated by the CFTC and thus have long-established geolocation technology to comply with applicable state law. Sottile Decl. ¶¶ 25-28. But Kalshi is not a sports pool and, like the Chicago Mercantile Exchange and Intercontinental Exchange, does not distinguish between users based on geographic location. *Id.* ¶ 28. The only geographic data it collects is limited to the *residence and IP address* of its users, not their *location*. *Id.* ¶ 29. Attempting to geofence based on residency would be both over- and underinclusive: it would capture persons who are reported to be Massachusetts residents even if they are located in another state; and it would exclude persons who are residents of other states but happen to be located in Massachusetts at the time of trading. *Id.* ¶ 30. Kalshi estimates that implementing a functional geofencing system would cost up to tens of millions of dollars annually and take months to implement. *Id.* ¶ 31.

Third, compliance with the injunction would risk Kalshi’s status as a DCM. The CEA requires DCMs to comply with nearly two dozen “Core Principles” that govern event contracts traded on CFTC-regulated exchanges. Abruptly terminating its sports-event contracts in Massachusetts would risk violation of Kalshi’s obligation under CFTC regulations to provide “impartial access” to its markets, 17 C.F.R. § 38.151(b), as well as to reduce the risk of “market

disruptions,” 17 C.F.R. § 38.255. Sottile Decl. ¶¶ 53-54. The regulations appear to prohibit a CFTC-designated exchange from simply closing its business to residents of a particular state. *Id.* ¶¶ 56-57. And immediately freezing or liquidating traders’ positions could be understood to lead to the very sort of price distortion and market manipulation the CFTC regulations guard against. Kalshi would thus face a “Hobson’s choice” because it could be “impossible for [Kalshi] to comply with both state and federal law,” *Crosby*, 530 U.S. at 372. “Kalshi thus faces a ‘Hobson’s choice’: if it does not comply with the defendants’ demand to cease it faces civil and criminal liability, but if it does comply it will incur . . . the potential existential threat of the CFTC taking action against it.” *Hendrick*, 2025 WL 1073495, at *7.

Finally, compliance with the injunction would cause serious commercial and reputational harm to Kalshi. The market uncertainty created by abruptly closing its contracts in Massachusetts could lead many users—inside and outside the Commonwealth—to leave the platform altogether. Sottile Decl. ¶ 59. An injunction would also seriously damage Kalshi’s relationships with its “futures commission merchant” (or “FCM”) partners. *Id.* ¶ 60. Those FCMs would lose the ability to offer Kalshi contracts to their Massachusetts customers, and the proposed injunction may require them to inform their customers of mandatory freezes or liquidations of open positions, undermining users’ trust in their and Kalshi’s platforms. *Id.*

CONCLUSION

For the foregoing reasons, the Court should dismiss the Commonwealth’s complaint pursuant to Mass. R. Civ. P. 12(b)(6) and deny as moot the Commonwealth’s motion for a preliminary injunction. In the alternative, should the Court deny the motion to dismiss, it should nonetheless deny the motion for a preliminary injunction because the Commonwealth cannot show that it is likely to succeed on the merits or that an injunction would be in the public interest.

Dated: November 18, 2025

/s/ Kristyn DeFilipp

Kristyn DeFilipp (BBO #676911)
Beth Neitzel (BBO # 714591)
Jack C. Smith (BBO # 712045)
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000
kbuncedefilipp@foleyhoag.com
bneitzel@foleyhoag.com
jcsmith@foleyhoag.com

Grant R. Mainland (*pro hac vice*)
Andrew L. Porter (*pro hac vice*)
Nicole D. Valente (*pro hac vice*)
MILBANK LLP
55 Hudson Yards
New York, NY 10001

Joshua B. Sterling (*pro hac vice*)
William Havemann (*pro hac vice*)
MILBANK LLP
1101 New York Ave, NW
Washington, DC 20005

Attorneys for Defendant KalshiEX LLC

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
BUSINESS LITIGATION SESSION**

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

KALSHIEX LLC,

Defendant.

CIVIL ACTION NO. 2584CV02525-BLS1

DECLARATION OF XAVIER SOTTILE

1. I am the Head of Markets at KalshiEX LLC. In that role, I am responsible for the generation of new markets. I received an undergraduate degree in economics from Yale University in 2020. Before joining Kalshi, I worked at the U.S. House of Representatives, Bridgewater Associates, and the Yale Program on Financial Stability.

2. My duties include devising proposed new contracts and shepherding those proposals from inception to completion. I also facilitate the process by which our markets undergo the regulatory review cycle under the purview of the Commodity Futures Trading Commission (“CFTC”). This involves everything from personally notifying the CFTC of contracts that Kalshi has self-certified under Section 5c(c) of the Commodity Exchange Act (the “CEA”) and Section 40.2(a) of the CFTC regulations to maintaining records pursuant to their requirements, certifying that Kalshi’s contracts comply with the Act, and communicating with Commission staff over the substance of contract filings.

3. The facts set forth herein are within my personal knowledge, and if called as a witness, I could and would competently testify to them.

4. I offer this Declaration to provide additional information about Kalshi's business and to describe the extraordinary harm that Kalshi and its users will incur if the Court grants the preliminary injunction sought by the Commonwealth of Massachusetts in this case. The Commonwealth submitted a proposed order which seeks to immediately enjoin Kalshi from offering sports-related event contracts in Massachusetts. ECF No. 4. If the injunction is granted, Kalshi itself, its representatives, and its users will be exposed to a host of harms that could not be repaired even if Kalshi ultimately succeeds in this case. This Declaration reflects my preliminary analysis of Kalshi's harms. Other unanticipated harms are possible, and even likely, given the scope of the Commonwealth's proposed order and the uncharted territory into which it would lead.

I. Kalshi's Business

5. Kalshi operates as a derivatives exchange and prediction market where users can buy and sell financial products known as event contracts.

6. In 2020, the CFTC designated Kalshi as a contract market. Since then, Kalshi has been fully regulated as a financial exchange under federal law, alongside entities like the Chicago Mercantile Exchange and the Intercontinental Exchange.

7. Kalshi specializes in event contracts, offering a secure and federally approved exchange where individual, retail, and institutional participants can hedge their risks on event-based outcomes.

8. Kalshi offers many kinds of event contracts related to an array of substantive areas like climate, technology, health, crypto, popular culture, and economics. For example, Kalshi's platform currently allows users to trade on whether India will meet its 2030 climate goals, or whether the market share for electric vehicles will be above 50% in 2030. Kalshi offers contracts

on the outcomes of Supreme Court decisions, congressional votes, weather events, technological benchmarks, markers of cultural influence, and Federal Reserve interest rate decisions.

II. Kalshi's Sports-Event Contracts

9. On January 22, 2025, Kalshi self-certified, pursuant to section 7a-2(c)(1) of the CEA, the first of a number of sports contracts that are now available on its exchange. Those certifications contain extensive information, including in confidential appendices not available to the public, for the CFTC's review.

10. Kalshi's sports-related contracts allow users to place positions on, for example, which teams will advance in certain rounds of the NCAA College Basketball Championship or who will win the U.S. Open Golf Championship.

11. While the CFTC could subject these contracts to a 90-day review under 17 C.F.R. § 40.11(c) to determine whether they fall in certain enumerated categories and are "contrary to the public interest," the CFTC has not initiated such a review of any of Kalshi's sports-event contracts.

12. On January 31, 2025, the CFTC requested, pursuant to 17 C.F.R. § 38.5(b), that Kalshi submit a demonstration of compliance for two sports-event contracts with the CEA, and Kalshi responded with a memo that detailed the listings' compliance with all applicable rules and regulations.

13. Kalshi also provided the CFTC with a memorandum from its outside counsel addressing, among other things, the CFTC's authority to regulate trading of sports-event contracts on DCMs.

14. The CFTC took no further action with respect to Kalshi's self-certifications of sports-event contracts.

III. The Commonwealth's Proposed Order

15. The Commonwealth's proposed order setting out the terms of its requested injunction contains terms which would force Kalshi to cease operations in the Commonwealth and expose Kalshi and its users to irreparable harm.

16. The proposed order prohibits Kalshi from "engaging in any activity in connection with sports wagering," which includes: (1) "offering, listing, matching, executing, clearing, settling, or otherwise facilitating any" sports wagering to anyone in Massachusetts or accessible in Massachusetts; (2) "accepting deposits, stakes, considerations, or fees" from anyone located in Massachusetts; (3) "advertising, promoting, marketing, or soliciting participation in any sports wagering contract" to anyone in Massachusetts or using a Massachusetts address; (4) "permitting account creation, verification, funding or maintenance" for anyone in Massachusetts or using a Massachusetts address "for the purpose of accessing, viewing, trading, or settling sports-wagering contracts"; and (5) "designing, launching, or operating products that are functionally similar to sportsbook wagers" for anyone in Massachusetts. I understand this to be requiring Kalshi to cease making sports-related event contracts accessible in Massachusetts. With respect to trades that are currently open (*i.e.*, where the underlying event has yet to occur), it is not clear whether this would require Kalshi to pause current trades pending the outcome of the event, or to simply liquidate user positions.

17. If the Court grants the Commonwealth's injunction and Kalshi is forced to cease operations in the Commonwealth, the company and its users, including those outside of Massachusetts, would be irreparably harmed.

18. Since Kalshi's designation as a CFTC-regulated contract market in 2020, the company has offered event contracts nationwide. As Head of Markets, I have assiduously complied with

federal regulations with regard to all our contracts, including the sports-related contracts that Massachusetts authorities have highlighted in their filings. *See* ECF Nos. 1, 5. We have done our best to run the company according to our understanding of the federal regulatory framework under which we have been governed for five years.

19. Since the Commonwealth has initiated this action and moved for injunctive relief, Kalshi's operations—which are lawful under federal law—expose the company and representatives to criminal and civil liability. It is terrifying and stressful to attempt to operate the company while this requested injunction and the risk of further criminal and civil jeopardy looms. This fear becomes all the more distressing given that Kalshi's compliance with the Commonwealth's proposed injunction would bring about a whole host of other harms to Kalshi and its users as I describe below.

IV. Harms Resulting from Attempted Compliance

20. Granting the proposed injunction would introduce barriers and challenges that would subject Kalshi and its users to irreparable harm. Technical compliance with the proposed injunction in short order would be exceedingly difficult. But even if Kalshi could implement a technical solution to comply with the proposed injunction, halting access to event contracts in Massachusetts would cause severe harm to Kalshi's existing user base. Compliance would also risk Kalshi's status as a designated contract market under the CFTC, throwing away years of efforts to earn and maintain its federal designation. All of these harms would be avoided by this Court's denial of the Commonwealth's motion.

21. Kalshi's harms from the Commonwealth's proposed injunction can be categorized as follows: (a) harms imposed by technical barriers to compliance, (b) harms to Kalshi's users from abruptly ceasing operations in Massachusetts, (c) the risk that complying with Massachusetts

law would jeopardize Kalshi's CFTC designation, and (d) economic and reputational harm to Kalshi from ceasing event-based contracts in Massachusetts. I describe each of these categories in more detail below.

a. Harms Resulting from Technical Barriers to Compliance

22. The requested relief requires Kalshi to undertake technological changes that would be either difficult or impossible for Kalshi to implement immediately. Attempting to undertake these extraordinary technological changes would impose substantial and irreparable costs that could not be recouped even if Kalshi ultimately prevails in this case.

23. The Commonwealth's proposed injunction requires Kalshi to cease all of its event contracts in Massachusetts. If Kalshi were forced to comply with the proposed injunction, it would be required to, first, undertake efforts to geolocate which of its users are in Massachusetts, and, second, cease all event contracts for those users. I have engaged in internal discussions with our leadership and technical team to determine the feasibility of compliance at both of these steps. Compliance would be difficult to implement even under a relaxed timeline and could not be done immediately.

i. Step One – Identifying Massachusetts Users

24. Because Kalshi is subject to uniform federal regulation rather than state-by-state laws, it currently lacks a mechanism to identify which of its users are located in any particular state at any particular time. Implementing such a mechanism would be incredibly costly and could not be done immediately.

25. Traditional web-based sports pools identify their users' whereabouts through a process called geolocation (or geo-positioning). Geolocation identifies and tracks an internet-connected device's location to provide real-time data as to the geographic position of the device. This

technology is more sophisticated than merely identifying the device's IP address. Instead, geolocation uses a combination of location-identifiers like GPS coordinates, cell phone towers, WiFi access points, network connections, and Bluetooth beacons to triangulate location. While IP addresses can provide city-level location accuracy, geolocation is sensitive enough to track the exact moment that a device crosses state lines.

26. It is my understanding that geolocation is a multi-step and technically complex process even for stationary devices, and that the process is even more challenging when tracking the real-time movement of devices.

27. The reason traditional sports pools deploy geolocation is to ensure that the bets and wagers that individuals place in their pools conform to state laws governing gaming and gambling. The precision of geolocation allows sports pools to make refined geographic determinations at the transaction level rather than the user level. Through geolocation, a company can allow and disallow certain transactions that take place in restricted areas rather than bluntly denying gamblers access to their platforms based on their residence irrespective of where they are located at the time of wager.

28. Kalshi is not a sports pool. As a CFTC-regulated contract market, Kalshi has never developed or implemented geolocation on its platform because it is subject to the CFTC's exclusive jurisdiction and is not subject to individual state laws governing gambling. Like the Chicago Mercantile Exchange and the Intercontinental Exchange, Kalshi does not distinguish between users or trades on the basis of geographic location. Instead, Kalshi is subject exclusively to federal law, which does not apply different standards to users of different states.

29. Kalshi keeps Know Your Customer ("KYC") data on the traders that place positions on its platform. Kalshi knows the permanent residence and IP address of its users but does not

geolocate its users and therefore does not know where a user's device is located at any point in time. Kalshi maintains a database of its traders' KYC data, which is available for CFTC inspection upon request.

30. Kalshi has no evident way to comply immediately with the Commonwealth's proposed injunction. If Kalshi sought to use its existing KYC data to identify Massachusetts-based users on its platform, this broad-brush approach would risk being deemed both under- and over-inclusive. KYC data would capture all users who claim their permanent residence as Massachusetts even if they place positions when they are located outside of Massachusetts. Conversely, the KYC data could fail to capture users whose permanent residence is outside of Massachusetts but who travel to the state and place a position while there.

31. If, alternatively, Kalshi sought to implement geolocation services across its platform, this process would be incredibly costly and time-consuming. Kalshi lacks the capacity to implement this service in-house and would therefore need to contract with a cloud- or server-based geolocation platform. I estimate that a partnership with a geolocation service provider would cost Kalshi up to tens of millions of dollars annually. Thus, if the Commonwealth's motion is granted, Kalshi would be forced to expend enormous financial resources on geolocating services, even if the court ultimately concludes that Massachusetts law does not apply to Kalshi. Based on my prior negotiations with other key partners, moreover, I estimate that negotiating a complex contract with a geolocation service provider alone could take months. Implementing and integrating the geolocation services into our existing platform would take longer still. Thus, complying with the proposed injunction could not feasibly be done quickly and, even if it could, would subject Kalshi to massive irrevocable costs.

ii. Step Two - Geographical Cessation

32. Only after identifying Kalshi users who are physically present in Massachusetts could Kalshi cease offering its event contracts to users in Massachusetts. It would be required to do so through a technical process called “geofencing.” This process would involve creating a virtual geographic boundary, or geofence, around the state of Massachusetts. Again, this process would be technically challenging, time-consuming, and expensive.

33. While geofencing might block *newcomers* from trading on the platform from Massachusetts, geographical cessation presents a host of additional difficulties for *existing* Kalshi users. As of today, there are 45,730 accounts on Kalshi that have registered with a Massachusetts address; 36,524 of those accounts have passed KYC protocols and become full-fledged Kalshi members. While the precise numbers are not public, these accounts are parties to more than 25 million contracts on the Kalshi platform, meaning Massachusetts users have tens of millions of dollars’ worth of open positions on Kalshi markets that have not yet been settled.

34. The Commonwealth’s proposed injunction could be understood to require Kalshi to cease its contracts even with respect to these existing positions. But doing so would present intractable technical difficulties.

35. Because the Commonwealth’s proposed injunction would require Kalshi to unilaterally liquidate all trades that originated in Massachusetts, compliance would either be impossible or irreparably harmful. To explain why, it is helpful to distinguish Kalshi’s exchange from a sports pool or casino. A casino or sports pool operates by taking bets from gamblers on games where the house has a statistical advantage. In other words, gamblers bet against the “house,” and when the house loses, it must pay the gambler on demand. Casinos and sports pools therefore maintain a high level of liquidity so that they can pay out those bets.

36. But Kalshi does not operate a casino or sports pool. Instead, it manages a federally regulated contract market. In contrast to a casino, an exchange facilitates trades between different users on the platform. Traders do not bet against the house, but rather enter into contracts with other traders on an exchange. To ensure compliance with the CFTC regulations, Kalshi operates a CFTC-approved derivatives clearinghouse that holds traders' funds during the pendency of an open contract. But Kalshi does not have access to immediate liquidity like a sports pool or casino that it could use to refund the cost basis of a trader's investment. Attempting to facilitate those exits using Kalshi's own funds would be exceptionally expensive and require technical capabilities that Kalshi does not now have.

37. As a designated contract market, Kalshi has the authority to cancel trades when necessary to mitigate market-disrupting events caused by malfunctions on its platform or errors in orders submitted by traders. However, due to the fully collateralized and short-term nature of trading on Kalshi, the circumstances in which this authority may be exercised are limited, and there is generally no cancellation or adjustment of an erroneous trade except in extraordinary circumstances.

38. A closing of open positions at this magnitude could cause Kalshi to suffer staggering financial harm, not to mention the financial harm to its users, because Kalshi may be unable to compensate all of its Massachusetts traders for the cancelled trades. Pursuant to the CEA, Kalshi operates through federally regulated clearinghouses that collateralize open positions. 7 U.S.C. § 7a-1. But Kalshi is fully collateralized with the understanding that every event contract between two users will pay out \$1 in total, and there are situations in which users' buying and selling of contracts causes the value of a given contract to exceed \$1.

39. The following example is illustrative. USER A buys a contract from USER B. USER A pays 90 cents, and USER B pays 10 cents. Then the contract changes in value. USER B sells his side to USER C, and USER C pays 90 cents for it. USER B cashes out his 80-cent profit. There is currently \$1 in collateral in the clearinghouse (which will satisfy the ultimate \$1 obligation to USER A or USER C at the conclusion of the contract period), but closing the open positions to their original value would mean that Kalshi owes USER A and USER C 90 cents each, or \$1.80 total.

40. If Kalshi were required to close all open positions held by Massachusetts residents on sports events, as an exchange, it would need to declare a market emergency and restore all the involved users to their original position. But there is a significant risk that Kalshi will be unable to restore all Massachusetts residents who have entered into sports-event contracts to their original position. Because Kalshi is fully collateralized up to \$1 per contract, and any given contract may exceed \$1 in value as the market's prediction on an event fluctuates before the event occurs (as illustrated in the preceding paragraph), Kalshi would be financially liable for any excess value above \$1. However, Kalshi may lack sufficient funds to cover that difference in value, which could be substantial. As such, Kalshi would be forced to take on a significant (and unrecoverable) financial liability, and the forced exit of the positions (some of which would be more valuable at present than the opening price they would be cashed out at, causing a loss to traders) would severely damage Kalshi's reputation among users as a trustworthy and secure exchange, and could also lead to significant litigation claims.

41. Kalshi, moreover, would want to give its users reasonable notice to allow them to exit their positions voluntarily if they so choose. But the immediate threat of criminal and civil

liability from Massachusetts state authorities and the Court raises serious questions about whether Kalshi could even engage in that basic diligence.

b. Irreparable Harms to Kalshi's Users

42. The Commonwealth's proposed injunction would essentially require Kalshi to cease operations in Massachusetts. But ceasing operations in Massachusetts would impose irreparable harm on Kalshi's existing user base. Ceasing operations could be understood to require either pausing current trades pending the outcome of the event that is the subject of the contract, or else liquidating user positions. Either option would impose severe harms on users.

i. Pausing Positions

43. Pausing current positions on Kalshi pending the outcome of the event at issue would deny traders access to their property and threaten their economic expectations.

44. Pausing positions pending the outcome of the event would deny Massachusetts users access to their property. Users' capital would be locked on the Kalshi platform and users with significant investments on the platform would be unable to retrieve it. If the event at issue is months or years in the future, users' assets would be locked up for the duration. Given current market conditions and uncertainty, this lack of access to funds could result in substantial losses.

45. Pausing positions would also cause a massive disruption to users' investment-backed expectations. Financial traders on Kalshi, like investors in other markets, expect to be able to alter their investments as facts on the ground change. Due to the unique market sensitivity of event contracts and the ease with which exchanges allow traders to place positions, traders capitalize on the opportunity to enter and exit their positions during the pendency of the contract. Traders also deploy well-recognized strategies like stop-loss orders and portfolio-wide loss mitigation strategies. Investors may invest in a contract expecting to sell if the contract price

falls below a certain value or expecting to reinvest more if the investment proves especially sound. And while some contracts operate on short timelines, many of the contracts that Kalshi offers are long-term. For example, one of Kalshi's event contracts allows traders to place positions on whether the electric vehicle market share will rise above 30% by 2030. Traders who have placed a position on this contract may be mitigating their risk on other investments by placing a position that effectively balances out the investment portfolio. As the market for electric vehicles changes, so does the price of the event contract. A trader may make an investment at 45 cents on the electric vehicle contract and institute a stop-loss order to sell the contract when the price dips below 30 cents because 30 cents is the breakeven point on the investment.

46. Traders are constantly engaged in the practice of ascertaining risk. As facts on the ground change, so do traders' strategies. Indeed, traders often do not place a position on a contract with the intent of seeing that contract through to its expiration date and risking the full amount of the entry price. Instead, they monitor market fluctuations during the lifetime of the event contract to determine when to cash out. In other words, traders do not necessarily value event contracts based on the ultimate value of the contract at its expiration date. They also value the flexibility that event contracts provide as a financial tool to mitigate risk in real-time.

47. Hitting pause on all Massachusetts-based trades would completely upend this investment strategy and destroy traders' expectations. If Kalshi were to pause all trades in Massachusetts, traders would no longer be able to take action on their existing contracts in accordance with their investment models. The flexible investment opportunity on which Kalshi users relied when entering into these contracts would be lost. A Kalshi user that entered into a contract on whether the federal government will shut down on January 31, 2026, for example,

would not be able to exit that contract even if facts on the ground change dramatically in the meantime.¹ Traders would be forced either to leave the state to change positions or suffer whatever losses they may endure as a result of being locked out.

48. Pausing all Massachusetts-based trades also would not solely affect Massachusetts-based users and transactions; it would wreak havoc on the entire Kalshi exchange ecosystem. Again, exchanges do not operate like casinos where gamblers bet against the house. Instead, exchanges facilitate contracts between individual traders on the market. Traders on either side of a contract are often from different states, given that Kalshi does not distinguish between the geographic location of traders. If traders in Massachusetts are locked out of their positions, then their trading counterparts in other states will likewise be limited in whether and how often they can enter and exit their positions on the Kalshi exchange. Traders in California, for example, may expect to rely on traders in Massachusetts on contracts related to water availability in the American Southwest. But if the Massachusetts-based traders and transactions are all of a sudden restricted on the platform, that will have an equal and opposite effect on the market for traders in other states. Pausing transactions in Massachusetts would thus disrupt users' positions on the exchange nationwide, which they placed in reliance on their ability to flexibly enter and exit. This could wreak havoc on the approximately \$650 million in open interest currently on the exchange from open transactions.

ii. Liquidating Positions

49. Liquidating Massachusetts-based positions on Kalshi would similarly subject users to irreparable harm. This would require Kalshi to refund either the current value of users' existing

¹ This is a politics-based event contract that is currently offered through the Kalshi exchange. KalshiEX, *Will government shut down on January 31, 2026?*, <https://kalshi.com/markets/kxgovshut/government-shutdown/kxgovshut-26jan31>.

positions or the original cost of their existing positions on their respective open contracts. Unilaterally settling traders' positions based on current market conditions or the original cost of the positions could lead to significant losses for users. A trader, for example, may have entered a long-term event contract at 80 cents, but market conditions may have caused his position to decline in value to 30 cents. Rather than allowing the trader to ride out the market dip, immediate liquidation at the market rate would force the trader to take a 50-cent loss on the contract through no fault of his own. Likewise, a trader who bought a contract during a market dip and is forced to exit at the original contract price would not be able to realize any gains that he earned over his holding period for the contract. And in either event, refunding users based either on the cost of their positions or the position's current value would be prohibitively expensive for Kalshi to execute.

50. By the same token, immediately liquidating Massachusetts-based users' positions would disrupt the market for out-of-state users by causing a false signal in the market. Event contract markets respond to market fluctuations. The immediate exit of a large portion of investors on a particular contract would have a distorting effect on the value of the contract, impairing other investors' ability to predict market changes and act accordingly. If, for example, Massachusetts traders make up a plurality of the trades on a particular contract, the immediate liquidation of all Massachusetts positions would indicate to the market that the contract's value has changed, causing a price change in response. Remaining traders would suffer from the market distortion, resulting in substantial financial losses even for Kalshi's non-Massachusetts users. Alternatively, Kalshi could liquidate the entire market for both Massachusetts and non-Massachusetts users by settling prices at either the current market price or the original contract

price, but this would, again, be prohibitively expensive and likely occasion the end of our federally-regulated company.

c. Harms to Kalshi Resulting from the Risk of CFTC Decertification

51. Compliance with Massachusetts' proposed injunction would jeopardize Kalshi's status as a CFTC-designated contract market. It is difficult to overstate how harmful this would be to Kalshi.

52. As the Head of Markets at Kalshi, I oversee the entire regulatory review process for Kalshi's contract markets. In that role, I am responsible for ensuring that each of Kalshi's contracts complies with the nearly two dozen CFTC Core Principles that govern event contracts traded on CFTC-regulated exchanges. Complying with Massachusetts state law and/or the proposed injunction could be understood to put Kalshi out of compliance with these Core Principles, imperiling Kalshi's designation as a contract market under the CFTC's purview.

53. CFTC Core Principle 4 charges designated contract markets with the "responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process." 17 C.F.R. § 38.250. Immediately liquidating or pausing traders' positions could be understood to lead to the very sort of price distortion and market manipulation that the CFTC regulations guard against. Pausing trades could cause "disruption[] of the delivery or cash-settlement process" and immediate liquidation could cause "price distortion."

54. CFTC Core Principle 2 requires that designated contract markets provide their "members, persons with trading privileges, and independent software vendors with impartial access to its markets and services." 17 C.F.R. § 38.151(b). Pursuant to this regulation, "[a]ccess criteria" must be "impartial, transparent, and applied in a non-discriminatory manner." *Id.* Discrimination based on geographic location would conflict with this requirement, but that is

exactly what Kalshi would have to do if the Court grants the Commonwealth's motion. Traders who execute positions in Massachusetts would be barred from accessing Kalshi's exchange and placing positions on Kalshi's contracts, whereas traders in any other state would have unlimited access to the platform.

55. Violation of these Core Principles could subject Kalshi to the panoply of enforcement mechanisms that the CFTC has at its disposal. Those tools range from civil monetary penalties to restitution to criminal liability.

56. Violating these principles could even jeopardize Kalshi's federal-contract-market status with the CFTC. The CFTC is authorized to suspend or revoke Kalshi's designation if Kalshi fails to comply with federal regulations. Kalshi has spent the better part of the last decade working to gain federal registration as a contract market under the CFTC and has scrupulously endeavored to comply with CFTC regulations to maintain that registration. Losing our federal license would be catastrophic for the company, even if Kalshi were to ultimately succeed in this suit against the state authorities in the long-term.

57. CFTC enforcement is not a mere theoretical risk. Several years ago, a CFTC-regulated exchange was charged with offering contracts on a discriminatory basis because it only allowed sportsbooks to trade on its platform. Discriminating on the basis of state residence could likewise subject Kalshi to federal repercussions. It is inconceivable, for example, to imagine a CFTC-designated contract market like the Chicago Mercantile Exchange abruptly closing its exchange to users in a particular state without serious federal repercussions. Yet that is what compliance with the proposed injunction would require Kalshi to do.

d. Economic and Reputational Harms to Kalshi

58. Granting the proposed injunction would also cause economic and reputational harm to Kalshi. Losses on both fronts would be irreparable even if Kalshi ultimately wins this case.

59. Kalshi has more than 36,000 verified users in Massachusetts with more than \$18 million invested on the exchange. The market uncertainty created by abruptly closing its contracts in Massachusetts could lead many users to leave the platform—even users outside of Massachusetts. Traders must have confidence in the integrity of the market to invest in it, but market confidence would be deeply shaken if the Court were to grant the proposed injunction and it could prompt other states to follow suit. Even if Kalshi were to prevail in this lawsuit, regaining that market confidence would be difficult. Kalshi has expended enormous resources to advertise its platform, onboard traders, and maintain their business. Losing those traders would mean that many of those efforts were for naught. Thus, compliance would impose significant and irrevocable economic harm on the company.

60. The proposed injunction also endangers Kalshi's established partnerships and relationships. One of Kalshi's banner partners, Robinhood, has already chosen not to list Kalshi's event contracts in Maryland because of a cease-and-desist letter, and would presumably follow the same course elsewhere if other state enforcement efforts are not enjoined or unsuccessful. This is a significant disruption for Kalshi given that Robinhood had agreed to list Kalshi's contracts to its millions of active users, but chose to deviate from that plan in direct response to a cease-and-desist letter similar to the proposed injunction the Commonwealth requests here. Other partners that help us comply with CFTC regulations by facilitating our digital investment platform and helping detect improper trading behavior may also seek to limit their exposure given the uncertainty of the application of state law to Kalshi.

61. The effects of the Commonwealth's proposed injunction would not be limited to the state but instead threaten to open a Pandora's box of regulation for the 49 other states that may wish to impose their local laws on Kalshi's exchange. In the absence of a temporary restraining order and preliminary injunction, partners and users alike will be hesitant to engage with Kalshi given this potential for state litigation.

* * *

62. The Commonwealth's proposed order, if entered, would impose irreparable harms that Kalshi cannot avoid. Compliance would cause Kalshi to incur massive unrecoverable costs, and its users would be harmed, its federal registration would be imperiled, and user confidence in the integrity of its market would be shaken. All of these harms are compounded by the real risk that other states will be emboldened to follow the Commonwealth's lead and Kalshi will have the possibility of being subjected to multiple, inconsistent regulatory schemes. And there are serious questions about whether Kalshi could implement the technical solutions on an expedited timeline as would be required by the injunction. Kalshi has spent years cultivating its reputation and developing its user base. Compliance with the injunction would lead to economic and reputational harm that will be difficult to regain.

63. I certify under penalty of perjury that the foregoing is true and correct.

At New York, New York, this 18th day of November, 2025.

/s/ Xavier Sottile

Xavier Sottile, signed with approval

A handwritten signature in black ink, appearing to read 'NDV' followed by a stylized flourish.

Nicole D. Valente
(pro hac vice)

DV

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
BUSINESS LITIGATION SESSION**

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

KALSHIEX LLC,

Defendant.

CIVIL ACTION NO. 2584CV02525-BLS1

**COMMONWEALTH'S COMBINED OPPOSITION TO KALSHI'S MOTION TO
DISMISS AND REPLY IN SUPPORT OF THE COMMONWEALTH'S EMERGENCY
MOTION FOR A PRELIMINARY INJUNCTION**

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INTRODUCTION

Kalshi does not contest that the sports wagers it offers violate Massachusetts law. Nor could it. The bets that Kalshi takes in Massachusetts clearly fall within Chapter 23N’s definition of “sports wagering.” And Kalshi does not hold any license under that law. Instead, Kalshi claims that Congress impliedly preempted Chapter 23N in 2010, legalizing sports betting nationwide on Commodity Futures Trading Commission (“CFTC”)-regulated exchanges. But Congress does not silently preempt areas of traditional state authority like gambling and sports wagering—ever. And it certainly did not do so in a statute whose purpose was to address the causes of the Great Recession, not to create a nationwide sports-betting market. Kalshi’s arguments to the contrary fail several times over.

First, the Commodity Exchange Act (“CEA” or “the Act”) does not apply to sports wagering. By its plain terms, the statute regulates “contracts of sale of a commodity for future delivery,” not gambling. 7 U.S.C. § 2(a)(1)(A). Kalshi focuses on the CEA’s use of the term “swaps,” but the statutory structure and legislative history make clear that Congress included that term to regulate the opaque derivatives that led to the 2008 financial crisis—not to legalize sports wagering. Indeed, Kalshi recently conceded as much: it told the D.C. Circuit just last year that sports-based “gaming” contracts are *not* the type of swaps that the CEA regulates.

Second, even if the CEA could somehow be stretched to cover sports wagers, Kalshi still cannot carry its weighty burden to establish preemption. Regulation of gaming is “within the core of the Commonwealth’s police power.” *Abdow v. Att’y Gen.*, 468 Mass. 478, 485–86 (2014). In such traditional state domains, the law requires a “clear and manifest” congressional intent to displace state law. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). That intent is missing.

Third, the varieties of implied preemption on which Kalshi relies—field preemption and conflict preemption—have no purchase here. Framed correctly, field preemption is off the table:

the Commonwealth is not attempting to set margin requirements or disclosure obligations for Designated Contract Markets (“DCM”); it is setting the ground rules for sports wagering here. In other words, the relevant “field” is “sports wagering,” not “trading on DCMs.” And there is no indication that Congress intended to occupy *that* field. *See Murphy v. NCAA*, 584 U.S. 453, 486 (2018) (observing that Congress has elected *not* to regulate sports gambling directly, and that “each State is” thus “free to act on its own”). Nor can Kalshi seriously claim conflict preemption: the CEA’s market-integrity and anti-manipulation objectives are *consistent* with Massachusetts’s decision to channel sports betting into a closely supervised regime.

At bottom, Kalshi’s attempts to avoid the consequences of its lawbreaking by asserting preemption rely on atextual, ahistorical, and unprecedented claims. The Court should grant the Commonwealth’s motion for a preliminary injunction and deny Kalshi’s motion to dismiss.

ADDITIONAL LEGAL BACKGROUND

The Commonwealth’s opening memorandum provided an overview of Chapter 23N and Kalshi’s operations. *See* Mem. in Support of Emergency Mot. for Prelim. Injunction (“Mem.”) at 2–9.¹ This section provides further legal background relevant to Kalshi’s preemption defense.

The CEA and CFTC. Enacted in 1936, the CEA governs the trading of derivatives like futures, options, and swaps on regulated exchanges. Pub. L. No. 74-675, § 3, 40 Stat. 1491, 1491. In 1974, Congress established the CFTC to oversee those markets and vested the agency with “exclusive jurisdiction” over specified transactions on certain CFTC-registered exchanges. Pub. L. No. 93-463, 88 Stat. 1389. The “exclusive jurisdiction” provision, codified at 7 U.S.C. § 2(a)(1)(A), does not mention gambling, sports wagering, or state criminal or licensing laws.

¹ Kalshi suggests that this action implicates contracts it offers on the outcome of elections. But this case concerns only those Kalshi products that qualify as “sports wagers” under Chapter 23N. *See* Commonwealth’s Complaint (“Compl.”) ¶¶ 154–161.

The Dodd-Frank Act. In 2010, Congress enacted the Dodd-Frank Act in response to the 2008 financial crisis. As relevant here, the Dodd-Frank Act amended the CEA to cover “swaps”—agreements between two parties to exchange (or swap) financial obligations. Pub. L. No. 111-203, pt. II, 124 Stat. 1376, 1658-754 (2010); *see* 7 U.S.C. § 1a(47); *Thrifty Oil Co. v. Bank of Am. NT&SA*, 322 F.3d 1039, 1042 (9th Cir. 2003) (explaining swaps). Congress’s aim in adding swaps to the CEA was to regulate the opaque derivatives markets that had allowed the accumulation of unsecured positions that prompted the crisis. *See* Pub. L. No. 111-203, pmbll., 124 Stat. 1376, 1376 (2010); *id.* tit. VII, § 701, 124 Stat. at 1641 (short-titling Title VII of Dodd-Frank and focusing on regulation of over-the-counter swap markets).

Though Congress debated the Dodd-Frank Act for the better part of a year—with widespread coverage in both traditional and financial press—no one in Congress suggested that the Act’s amendments would authorize exchange-traded sports betting or displace states’ decisions about sports wagering within their borders. That should come as no surprise: after all, “[t]he legalization of sports gambling is a controversial subject.” *Murphy*, 584 U.S. at 486.

Designated Contract Markets. DCMs are exchanges registered with the CFTC that may list and facilitate the trading of derivatives such as swaps. 7 U.S.C. §§ 1a(18), 2(e). Under the CEA, swaps *must* be traded on a registered exchange; it is generally “unlawful for any person . . . to enter into a swap” otherwise. *Id.* § 2(e). When a DCM wishes to list a new contract, it “self-certifies” to the CFTC that the contract complies with all pertinent laws and regulations. *See id.* § 7a-2(c)(1)–(5). Among other things, that means the DCM must certify its compliance with 7 U.S.C. § 7a-2(c)(5)(C)(i)(I) and 17 C.F.R. § 40.11(a), which prohibit a registered entity from listing transactions that involve “gaming” or “an activity that is unlawful under any State or Federal law.”

ARGUMENT

I. The Court Should Grant the Commonwealth’s Motion for a Preliminary Injunction.

A preliminary injunction is warranted if (1) the Commonwealth is likely to succeed on the merits, and (2) the requested injunction would serve the public interest. *See* Mem. at 9.

Here, both of those factors support the Commonwealth’s request for injunctive relief.

A. The Commonwealth Is Likely to Succeed on the Merits Because Kalshi’s Operations Violate Massachusetts Law and Kalshi Is Unlikely to Prevail in its Preemption Defense.

Kalshi does not and cannot dispute the keystone of the Commonwealth’s case: the sports wagering on its platform violates Massachusetts law. Kalshi offers wagers of all types on sporting events, from “moneyline” wagers on which team will win, to “prop” wagers on in-game statistics. *See* Compl. ¶¶ 94–104. These offerings fall squarely within the statutory definition of “sports wagering” under G.L. c. 23N, § 3. *See* Mem. at 4. That means Kalshi needs a license. G.L. c. 23N, § 5. Yet Kalshi does not have one. Compl. ¶¶ 41–42.

Kalshi’s rejoinder is not that its conduct complies with Massachusetts law, but that the Commonwealth’s sports-wagering law—indeed, the sports-wagering law of *every* State—was silently preempted in 2010 when Congress amended the CEA. But to prevail on that affirmative defense, Kalshi must show that Congress clearly intended to displace the State’s traditional authority over gambling, and that the CEA leaves no room for Massachusetts to apply its laws to the sports wagers made here. *E.g.*, *Wyeth*, 555 U.S. at 565. Kalshi cannot make that showing.

Instead, Kalshi devotes pages to describing federal oversight of futures and commodities markets. But Kalshi fails to explain why sports wagers belong within that scheme—because they do not, as numerous federal district courts have held over the past several months.² If

² *See KalshiEX LLC v. Hendrick*, No. 2:25-cv-575, 2025 WL 3286282, at *1, 6–9 (D. Nev. Nov.

Congress had intended to transform the CEA into a nationwide sports-betting authorization—displacing numerous state gambling laws in the process—it would have said so plainly.

Whitman v. American Trucking Ass’ns, 531 U.S. 457, 468 (2001) (“Congress . . . does not, one might say, hide elephants in mouseholes.”). But the CEA’s text, structure, history, and case law show just the opposite: Congress chose *not* to preempt state law.

1. The CEA Does Not Apply to Sports Wagering.

Kalshi’s preemption defense rests on the premise that the CEA encompasses the wagers at issue here. But whatever else the CEA covers, it does not extend to ordinary sports bets.

The plain text of the CEA’s operative provisions makes this clear. The statute addresses “contracts of sale of a commodity for future delivery” and “swaps” traded on (or subject to) the rules of registered entities. 7 U.S.C. § 2(a)(1)(A). Nothing in that language purports to license, authorize, or regulate retail sports-betting products. The absence of language directly regulating gaming is telling: Congress expressly regulated gaming and sports wagering in *other* statutes. *E.g.*, 18 U.S.C. § 1084(a) (Wire Act); 28 U.S.C. §§ 3701–3704 (Professional and Amateur Sports Protection Act or PASPA); 31 U.S.C. § 5361(a) (Unlawful Internet Gambling Enforcement Act). If Congress had intended the CEA to apply to sports wagering, it would have used the clear terms it deploys elsewhere to describe such wagering. *See Martin*, 793 F. Supp. 3d at 683.

That is especially true given the clear-statement rule that applies in this context. Where a party argues that Congress has “significantly alter[ed] the balance between federal and state

24, 2025); *N. Am. Derivatives Exch., Inc. v. Nev. Gaming Control Bd.*, No. 2:25-cv-978, 2025 WL 2916151, at *11 (D. Nev. Oct. 14, 2025) (“*Crypto*”); *KalshiEX LLC v. Martin*, 793 F. Supp. 3d. 667, 680–684 (D. Md. Aug. 1, 2025). Notably, the same judge who initially held that Kalshi’s sports-event contracts were “swaps” and granted a preliminary injunction against state enforcement—in a decision Kalshi cites extensively—has since reversed that ruling and dissolved the injunction, holding that that these contracts are *not* swaps under the CEA. *Hendrick*, 2025 WL 3286282, at *6–9; *see also Crypto*, 2025 WL 2916151 at *10.

power,” the Supreme Court requires it to show that “Congress [has] enact[ed] exceedingly clear language” to that effect. *Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 764 (2021). Kalshi cannot show that the CEA spoke to sports wagering with exceeding clarity. The major questions doctrine yields the same result. To recognize the asserted CFTC authority over issues of “vast economic and political significance,” like the nationwide legalization of sports wagering, the Supreme Court demands “clear congressional authorization,” not vague or ancillary text. *West Virginia v. EPA*, 597 U.S. 697, 723–24 (2022). But that did not happen, either.

Kalshi counters that the CEA’s definition of “swap” covers sports wagers because they turn on “the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.” Mem. in Support of Kalshi’s Mot. to Dismiss (“MTD”) at 24 (quoting 7 U.S.C. § 1a(47)(A)(ii)). But Kalshi stretches the plain meaning of the operative terms: a wager on its platform “turn[s] on the outcome of the [sporting] event, not on [its] ‘occurrence.’” *Crypto*, 2025 WL 2916151, at *7–9. Kalshi’s construction of “swaps” is also difficult to square with the statute’s structure and history. *See, e.g., Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995) (explaining under *noscitur a sociis* that “a word is known by the company it keeps”). The CEA’s definition of “swap” was expanded in 2010 to capture derivative instruments used for hedging, risk-transfer, and price discovery in financial and commercial markets. S. Rep. No. 111-176, 2, 29-30 (Apr. 30, 2010). Kalshi’s construction, by contrast, would effectively treat *any* two-party bet on uncertain outcomes as a “swap.” *Hendrick*, 2025 WL 3286282, at *6; *Crypto*, 2025 WL 2916151, at *9. That “cannot be a proper reading of the statute,” as it would mean that “all sports wagering must be done on a DCM, . . . as the CEA forbids nearly all swap dealing and trading unless done on a DCM.” *Hendrick*, 2025 WL 3286282, at *8–9 (explaining that Kalshi’s construction violates

presumption against interpretations that lead to “absurd results”); *see also* 7 U.S.C. § 2(e).

Other on-point statutes confirm that the addition of “swaps” to the CEA did not silently sweep in sports wagering. At the time Dodd-Frank was enacted in 2010, the federal Wire Act criminally prohibited interstate sports wagering by internet or telephone. *See* 18 U.S.C. § 1084(a). Dodd-Frank did not mention, let alone expressly repeal these provisions. Kalshi’s argument thus “march[es] into the teeth of a strong judicial policy disfavoring the implied repeal of statutes.” *See United States v. Brien*, 617 F.2d 299, 310 (1st Cir. 1980) (rejecting an argument that a different CEA provision impliedly repealed other federal wire-fraud statutes).

The pertinent legislative history likewise accords with the Commonwealth’s reading of the CEA. The Dodd-Frank amendments, on which Kalshi relies, were enacted after the 2008 financial crisis to address systemic risk in opaque derivative markets—not to allow interstate sports betting. *Hendrick*, 2025 WL 3286282, at *9. Accordingly, the legislative documents that Kalshi itself cites, MTD at 4–5, 15–17, address credit-default swaps and other complex financial instruments. They do not suggest that Congress legalized, much less federalized, sports betting. *See, e.g.*, 156 Cong. Rec. S5906–07 (July 15, 2010) (Sens. Lincoln & Feinstein) (explaining that Dodd-Frank did not authorize “gambling” contracts that “served no financial purpose at all”); *see also Martin*, 793 F. Supp. 3d at 683–84.

The post-2010 regulatory history also confirms that Congress regarded classic casino and sports wagering as a problem to be constrained, not as a category of federally protected activity. A CFTC regulation, for example, makes clear that a registered entity “shall not” list for trading contracts involving “gaming” or “unlawful activity.” 17 C.F.R. § 40.11(a)(1); *see* 7 U.S.C. § 7a-2(c)(5)(C)(i)–(ii). Both that rule and the statute from which it is derived, in other words, treat “gaming” as a red flag—not activity that Congress implicitly licensed.

Remarkably, Kalshi recently told the D.C. Circuit that “a contract on the outcome of a sporting event” is “the classic example” of a contract that “involves ‘gaming’”—and that “Congress did not want sports betting to be conducted on derivatives markets.” Br. of Appellee KalshiEX LLC, 2024 WL 4802698, at *17, 44, 45, *KalshiEX LLC v. CFTC*, No. 24-5205 (D.C. Cir. Nov. 15, 2024). Kalshi cannot credibly insist, just a year later, that those same sports wagers are swaps within the meaning of the CEA.

2. Even if the CEA Somehow Reached Sports Wagering, It Does Not Preempt State Sports-Wagering Law.

Even if Kalshi’s sports wagers were “swaps” under the CEA, Kalshi still must establish that the CEA preempts state sports-wagering law. It cannot do so.

i. Because Sports Wagering Sits at the Very Core of a State’s Police Power, the Presumption Against Preemption Applies.

When evaluating preemption, this Court must begin with the “basic assumption that Congress did not intend to displace state law,” particularly those laws enacted under traditional state police powers. *Wyeth*, 555 U.S. at 565; *see also Altria Grp., Inc. v. Good*, 555 U.S. 70, 77–78 (2008) (same); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (recognizing an “assumption that the historic police powers of the States” are not preempted “unless that was the clear and manifest purpose of Congress”). That presumption applies squarely here: as courts have consistently recognized, regulation of gambling and sports wagering is a core State police power. *See Abdow*, 468 Mass. at 485–86; *Commonwealth v. Wolbarst*, 319 Mass. 291, 294 (1946); *Martin*, 793 F. Supp. 3d at 676–77. Or, as the U.S. Supreme Court recently put it, the question of whether and how to legalize sports betting is “traditionally left to the States.” *Murphy*, 584 U.S. at 468–73. Accordingly, the presumption against preemption supplies an independent basis to reject Kalshi’s defense. Even if the CEA could be read to cover sports wagers, Kalshi’s theory would require the Court to conclude—impermissibly—that Congress

took the added step of removing this core aspect of traditional state authority *without saying so*.

Kalshi responds that the presumption does not apply in areas with “a history of significant federal presence.” MTD at 11.³ The Supreme Court rejected that exact line of reasoning in *Wyeth*, where it explained that the presumption turns on “the historic presence of state law,” “not . . . the absence of federal regulation.” 555 U.S. at 565 n.3. In *Wyeth*, for example, the Court applied the presumption to a case involving drug labeling, long subject to both federal and state regulation. *Id.* at 565. The present circumstances are more compelling than those in *Wyeth*: the Commonwealth seeks to regulate an area involving traditional state authority (sports wagering), that the federal government has *never* sought to legalize or directly regulate. This case falls in the presumption’s heartland.⁴

ii. Nothing in the CEA Rebutts the Presumption.

When Congress intends to displace state law, it says so. The United States Code is full of familiar formulations that unmistakably announce preemption. *E.g.*, 49 U.S.C. § 5125(b)(1)(A) (a “State . . . may not impose or continue in effect” non-conforming hazardous materials requirements); 29 U.S.C. § 1144(a) (ERISA “shall supersede any and all State laws insofar as they may . . . relate to any employee benefit plan”). The CEA language that Kalshi invokes, by

³ Relying on *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115 (2016), Kalshi argues that the presumption does not apply where a statute expressly preempts state law. But Kalshi’s case rests largely on *implied* preemption theories. MTD at 13–19. And to the extent Kalshi briefly discusses the text of the CEA, *see* MTD at 12–13, the language it cites looks nothing like the clear, express preemption clause in *Franklin*, which said that state laws “may not” prescribe certain restructuring procedures. 579 U.S. at 123.

⁴ Kalshi cites to the Fourth Circuit decision in *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014), *see* MTD at 11 n.3, but that case is inapposite for the reasons explained in *Martin*, 793 F. Supp. at 676–77. Meanwhile, Kalshi’s citation to *Buckman Co. v. Plaintiffs’ Legal Committee*, 531 U.S. 341 (2001), *see* MTD at 11 n.3, actually undercuts its position. *Buckman* withheld the presumption *only* for novel “fraud-on-the-FDA” claims that exist solely by virtue of federal law, while confirming that traditional State police-power regimes remain governed by the ordinary presumption against preemption. *See* 531 U.S. at 347–49.

contrast, is nothing like those clauses. MTD at 12–13. It does not, for example, “supersede any and all State laws” on a certain subject like ERISA does. Instead, it simply grants the CFTC “exclusive jurisdiction” over specified transactions traded on certain exchanges. 7 U.S.C. § 2(a)(1)(A). As explained in greater detail below, that language merely allocates “regulatory turf” among federal actors, rather than displacing any state laws. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 386–87 (1982).

If there were any doubt, a neighboring provision of the CEA makes abundantly clear that § 2(a)(1)(A) does not have the preemptive force that Kalshi suggests. Just a few sections away in § 16(e)(2)—a provision not operative here—Congress used express language to specify exactly which state laws are displaced and to what extent. *See* 7 U.S.C. § 16(e)(2) (“This chapter shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops [in certain contexts].”). As the Supreme Court has explained, that fact poses a particular problem for Kalshi’s interpretation: under “the familiar principle of *expressio unius est exclusio alterius*,” “Congress’ enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517 (1992); *see also Freightliner Corp. v. Myrick*, 514 U.S. 280, 288 (1995) (explaining that “an express definition of the pre-emptive reach of a statute [indicates] that Congress did not intend to pre-empt other matters”). In other words, because the CEA contains express preemption provisions in § 16(e)(2), this Court can reasonably conclude state laws outside their ambit—like in Chapter 23N—are *not* preempted. Indeed, the District of Maryland recently reached that exact conclusion in a case involving Kalshi’s operations. *See Martin*, 793 F. Supp. 3d at 681 (ruling that Congress’s decision to have § 16(e)(2) expressly preempt state “bucket shop” laws and state insurance laws for swaps,

compared to its silence as to all others, was “strong evidence that Congress did not intend to regulate so comprehensively as to exclude all state law”).

3. Kalshi Fails to Show Field or Conflict Preemption.

i. The CEA Does Not Preempt the Field of Massachusetts Sports-Wagering Law.

Kalshi must establish that the CEA “so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it.” *Marsh v. Mass. Coastal R.R. LLC*, 492 Mass. 641, 659 (2023) (quoting *Cipollone*, 505 U.S. at 516). Kalshi cannot meet that burden.

a. Kalshi Mistakes the Relevant “Field.”

The first step in a field-preemption analysis is defining the relevant field. *Kansas v. Garcia*, 589 U.S. 191, 208 (2020). That inquiry is not undertaken at a level of abstraction selected to favor preemption, but by looking to the particular conduct targeted by the state law (and the state interests effectuated by that law). *See Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 385–88 (2015). In *Oneok*, for example, pipeline companies argued that the Natural Gas Act’s grant of “exclusive jurisdiction” to the Federal Energy Regulatory Commission over wholesale natural-gas rates preempted state antitrust claims for manipulation of natural gas prices. *Id.* at 383. But the Court focused on the aim of *state* law. *Id.* at 385–88. Because the antitrust claims targeted retail prices and retail-market conduct—matters traditionally within state authority—the Court held there was no field preemption, even though the state laws had some impact in a federally regulated space. *Id.* at 385–91.

That reasoning applies here. The pertinent field is sports wagering in Massachusetts, not “regulation of trading on DCMs” or “derivatives markets” writ large. The Commonwealth’s scheme regulates who may offer sports bets in Massachusetts, what types of bets may be offered,

and under what conditions and safeguards. Compl. ¶¶ 19–40. They do not purport to address market matters within the province of the CEA and the CFTC.

Any claim that the CEA “occupied the field” of sports wagering cannot be squared with reality. Congress criminally prohibits most interstate sports wagers. *See, e.g.*, 18 U.S.C. § 1084 (a). As recently as 2018, the Supreme Court explained that sports wagering is a matter for state decision, striking down a federal statute that attempted to limit state authority. *Murphy* at 468–473. That does not reflect a field purportedly occupied entirely by the CEA.

b. Section 2(a)(1)(A) Is Not an Implied “Field Preemption” Clause.

Because a classic field preemption analysis demonstrates that the CEA does not preempt state authority over sports wagering, Kalshi tries a different approach, insisting that § 2(a)(1)(A)’s description of the CEA’s jurisdiction as “exclusive” gives rise to field preemption. Not so. Section 2(a)(1)(A) provides that the CFTC “shall have exclusive jurisdiction” with respect to specified transactions traded on designated contract markets. Textually and historically, that clause resolved turf battles between federal regulators and self-regulatory organizations—*i.e.*, it answered whether futures and swaps trading would be supervised by the Department of Agriculture, the SEC, the CFTC, or the exchanges themselves. *See Merrill Lynch*, 456 U.S. at 386-87 (1982). It did not purport to resolve how state criminal, consumer-protection, or casino and sports gaming laws would apply to participants in those markets.

The cases Kalshi relies on to suggest that “exclusive jurisdiction” clauses can have

preemptive force are inapposite.⁵ They either did not involve analogous statutes,⁶ or they involved circumstances where a state law was trying to do what the federal statute already did—run a parallel commodities-regulation scheme.⁷ They do not stand for the proposition that an “exclusive jurisdiction” clause wipes out state laws of general applicability, like fraud, unfair practices, or (as here) casino and sports gaming restrictions.

By contrast, cases that actually examine § 2(a)(1)(A) and its relationship to state laws of general applicability cut sharply against Kalshi’s sweeping theory. In *Brien*, the First Circuit upheld the application of state antifraud laws in a commodities context. 617 F.2d at 309–10. The court made clear that preemption of “regulation of the market” did not mean preemption of all state law that might involve market participants. *Id.* Other courts have reached similar conclusions. In *Patry v. Rosenthal & Co.*, 534 F. Supp. 545, 551 (D. Kan. 1982), the court rejected a claim that the CEA preempted state-law remedies, recognizing that the CEA’s structure and history allowed state common-law claims to coexist. And in *Delay v. Rosenthal & Co.*, 585 F.3d 1003, 1005–07 (6th Cir. 2009), the court allowed a state indemnification claim arising from CFTC enforcement to proceed, holding that the CEA did not preempt. In each of these decisions, courts have drawn the same line: the CEA precludes States from running their own competing commodities-regulation regimes for futures and swaps markets, but it does not impact

⁵ To the extent Kalshi contends, anomalously, that the “exclusive jurisdiction” language in 7 U.S.C. § 2(a)(1)(A) is expressly preemptive, that contention fails yet another rule of statutory construction: “when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily ‘accept the reading that disfavors preemption.’” *Altria*, 555 U.S. at 77 (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)).

⁶ For example, *Mississippi v. Louisiana*, 506 U.S. 73 (1992), involved the Supreme Court’s original jurisdiction over certain state-citizen disputes under 28 U.S.C. § 1251, not preemption.

⁷ See, e.g., *Leist v. Simplot*, 638 F.2d 283 (2d Cir. 1980); *W. Cap. Design, LLC v. N.Y. Mercantile Exch.*, 180 F. Supp. 2d 438 (S.D.N.Y. 2001); *Hofmayer v. Dean Witter & Co.*, 459 F. Supp. 733 (N.D. Cal. 1978); *Witzel v. Chartered Sys. Corp. of N.Y., Ltd.*, 490 F. Supp. 343 (D. Minn. 1980).

State police power relating to fraud, consumer protection, and casino and sports wagering.

Chapter 23N falls in the latter category: it is a neutral, generally applicable statute that regulates who may take sports bets from Massachusetts residents. Section 2(a)(1)(A) has no effect on its enforceability.

c. Legislative History Shows Congress Intended to Consolidate Market Regulation, Not to Set Nationwide Sports Wagering Policy

The legislative history of the CEA confirms that Congress was concerned with consolidating federal regulation, not with federalizing sports wagering. Before 1974, futures markets were subject to overlapping and sometimes inconsistent oversight by multiple federal agencies. *See* H.R. Conf. Rep. No. 93-1383, at 35 (1974); S. Rep. No. 93-1131 (1974); *Merrill Lynch*, 456 U.S. at 369–72. The central question in the 1974 amendments was which *federal* regulators would regulate futures trading, and how to rationalize the relationship between federal and exchange-based oversight. *See Merrill Lynch*, 456 U.S. at 268–71, 290–93; S. Rep. No. 93-1131, at 6 (1974) (Conf. Rep.), reprinted in 1974 U.S.C.C.A.N. 5843, 5848. It was not whether to legalize sports wagering nationwide. The 1974 amendments and subsequent refinements used § 2(a)(1)(A)’s “exclusive jurisdiction” language to make clear that the CFTC, not the SEC or another federal agency, would supervise futures trading. When Congress modified earlier provisos, it did so to eliminate redundant federal market-regulation schemes, not to delete state gaming laws.

Later amendments to the CEA, including Dodd-Frank, follow the same pattern. Congress was focused on market integrity, transparency, and systemic risk. S. Rep. No. 111-176, 2, 29-30 (Apr. 30, 2010). To ensure that “event contracts” traded on CFTC-regulated exchanges were not the equivalent of casino or sports gambling, Congress ensured the CFTC could reject such products. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i)(V). This structure indicates that Congress saw state

gambling law as persisting, not silently and summarily swept away.

This history highlights Kalshi’s mischaracterization of cases like *American Agriculture Movement, Inc. v. Board of Trade of Chicago*, 977 F.2d 1147 (7th Cir. 1992) (“*AAM*”) and *FTC v. Ken Roberts Co.*, 276 F.3d 583 (D.C. Cir. 2001). In Kalshi’s telling, these cases are somehow pertinent to its preemption argument. A review of each case demonstrates otherwise. *AAM* concluded that certain state-law claims “intimately tied to the operation of a contract market” could be conflict-preempted, but expressly rejected field preemption (on which Kalshi now relies) and read § 2(a)(1)(A)’s savings clause to preserve certain state law causes of action. 977 F.2d at 1161–62.

Ken Roberts similarly rejected an argument that § 2(a)(1)(A) stripped the Federal Trade Commission of authority to address false advertising related to commodities investment. 276 F.3d at 590–91. *Ken Roberts* emphasized that §2(a)(1)(A) covers a “limited, discrete set” of activities tied to the actual trading of futures and that preemption of regulation of the market did not also mean preemption of all laws that might involve participants in the market. *Id.* Those decisions are fully consistent with the Commonwealth’s position and inconsistent with Kalshi’s sweeping version of field preemption.

d. Recent, Persuasive Decisions Reject the Sweeping Field-Preemption Theory Kalshi Advances

Recent prediction-market and sports-betting decisions reject Kalshi’s position. Federal courts in Maryland and Nevada rejected similar efforts by Kalshi and other derivatives platforms to enjoin state gaming enforcement. *Martin*, 793 F. Supp. 3d 667, 683; *Hendrick*, 2025 WL 3286282, at *1, 3–14; *Crypto*, 2025 WL 2916151, at *11. Those courts were appropriately

skeptical of the theory Kalshi presses here. *E.g.*, *Martin*, 793 F. Supp. 3d at 684.⁸

ii. Massachusetts Sports-Wagering Laws Are Not Conflict-Preempted as Applied to Kalshi’s Sports Event Contracts.

Kalshi’s implied conflict-preemption theories are foreclosed by black letter law. The presumption against preemption continues to apply in this context, and is overcome only where (1) state law poses a “clear obstacle” to the accomplishment and execution of Congress’s purposes, or (2) if it is impossible to comply with both state and federal law. *Wyeth*, 555 U.S. at 571–73; *Reckis v. Johnson & Johnson*, 471 Mass. 272, 291–93 (2015). Implied conflict preemption is a “demanding” and rarely successful defense, reserved for when state law truly cannot coexist with federal requirements.

The SJC recently rejected a conflict-preemption challenge in *Robinhood Financial LLC v. Secretary of the Commonwealth*, 492 Mass. 696 (2023), confirming that the existence of a detailed federal scheme does not, by itself, displace complementary state public-protection rules. In that case, the SJC disagreed that Massachusetts’s “Fiduciary Duty Rule” was conflict-preempted by federal securities laws. *Id.* at 716–23. The Court concluded that the Massachusetts rule, which requires broker-dealers to act in the best interest of retail customers, advances rather than frustrates the federal investor-protection objectives underlying the securities laws. *Id.* at 720–23. The SJC likewise found there was no impossibility because firms could comply with both regimes: nothing in the federal law prohibited a broker from meeting the federal baseline standard while also adhering to a more protective State fiduciary obligation. *Id.*

⁸ The New Jersey federal court’s ruling granting Kalshi a preliminary injunction has been appealed to the Third Circuit; it is cursory and unpersuasive. *See KalshiEX LLC v. Flaherty*, No. 25-cv-2152, 2025 WL 1218313 (D.N.J. Apr. 28, 2025). Notably, the New Jersey court relied on the reasoning of the Nevada court’s previous ruling in *Hendrick*, a ruling which has been reversed. Furthermore, the California federal court’s recent decision in *Blue Lake Rancheria v. Kalshi Inc.*, 2025 WL 3141202 (N.D. Cal. Nov. 10, 2025) does not even address the issue of federal preemption at all, and has no application here.

a. Applying Chapter 23N Does Not Obstruct Congress's Objectives; Indeed, It Complements Them.

Chapter 23N does not pose any “clear obstacle” to the accomplishment and execution of federal purposes. Legislative history shows that Congress was concerned with the CEA preempting only “incompatible state laws.” *See* 120 Cong. Rec. 30, 464 (Sep. 9, 1974) (statement of Senator Curtis noting that the Act would only preempt state law if it “were contrary to or inconsistent with Federal law”). Even more to the point, Congress itself continues to criminally prohibit the sports gaming Kalshi claims the CEA legalized. *See* 18 U.S.C. § 1084(a) (making it a federal offense for anyone “engaged in the business of betting or wagering” to use a wire communication facility to transmit bets or wagers on “any sporting event or contest,” or related information, in interstate or foreign commerce). Massachusetts laws which prohibit Kalshi from offering sports wagering products on a CFTC-registered exchange are entirely consistent with the federal approach: they allow Kalshi to facilitate the trading of futures and derivatives on a DCM, and they prohibit Kalshi from offering illegal sports wagers there.⁹

As stated in the CEA, the federal objectives are to promote honest, efficient derivatives markets; to police fraud and manipulation; and to manage systemic risk. *See* 7 U.S.C. § 5 (findings and purpose of the CEA). The purpose of the Wire Act is, *inter alia*, “to assist the several States in the enforcement of their laws pertaining to gambling and to aid in the suppression of organized gambling activities by restricting the use of wire communication facilities.” *United States v. Yaquinta*, 204 F. Supp. 276, 277–79 (N.D.W. Va. 1962). Chapter 23N’s objectives are consistent with these federal objectives. The Legislature’s declared

⁹ Kalshi’s reliance on the Massachusetts Gaming Commission’s (“MGC”) letter, *see* MTD at 19, does not create a conflict for preemption purposes. The letter simply reiterates the MGC’s view that unlicensed sports wagering may not be offered to Massachusetts residents, and does not itself impose any new or independent obligations that could conflict with the CEA.

purposes are to protect consumers and the public from the risks of sports wagering, to safeguard the integrity of sports betting, and to channel such activity into a tightly regulated regime with suitability screening, integrity safeguards, and responsible-gaming requirements. Compl. ¶¶ 24–40; *see also Martin*, 793 F. Supp. 3d at 686 (holding that Nevada gaming law advances the objectives of the CEA). Enforcing those requirements against an unlicensed sportsbook in Massachusetts furthers the CEA’s broad concerns with integrity and abuse prevention; it does not frustrate any concrete federal objective. *See Robinhood*, 492 Mass. at 720–23.¹⁰

b. There Is No Impossibility of Complying With Both Federal and State Law.

Nor is it impossible for Kalshi to comply with both the CEA and Chapter 23N. The CEA does not require Kalshi to list sports-event contracts at all, much less to offer them to Massachusetts residents. *Wyeth* is again instructive. There, the Supreme Court held that federal approval of an FDA label did not make it impossible for a manufacturer to comply with a state law duty to strengthen its label, reasoning that the FDA requirements were a “floor,” not a “ceiling.” 555 U.S. at 571–573.

The same logic applies here: the fact that the CFTC has not objected to Kalshi’s self-certification of its sports event contracts does not compel Kalshi to sell those products in every jurisdiction regardless of state law. Kalshi can fully comply with all CFTC rules while also

¹⁰ Kalshi relies on *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363 (2000); *Arizona v. United States*, 567 U.S. 387 (2012), and similar decisions, but these involve immigration and foreign policy regimes where Congress’s desire to centralize control at the federal level was explicit, and where the challenged state laws directly interfered with nuanced federal choices about how to manage foreign relations and immigration enforcement. Those are not analogous to a state sports wagering statute. The Supreme Court expressly treats the regulation of sports wagering as akin to other forms of gambling and squarely within state prerogatives. *Murphy*, 584 U.S. at 468–73. The federal court in *Martin* likewise distinguished these same conflict-preemption authorities and found no conflict between state gaming enforcement and CFTC oversight. *Martin*, 793 F. Supp. 3d at 685–86.

honoring Massachusetts law. Alternatively, it can choose not to list sports-event contracts at all. If it insists on offering sports bets to people located in Massachusetts, it can obtain a Chapter 23N license and operate under the MGC's supervision. *See* Martin, 793 F. Supp. 3d at 686 (“It is Kalshi’s desire not to comply with [State gaming] law and presumably incur some additional compliance costs—not the existence of [State] consumer protection laws themselves—that creates the situation Kalshi professes to worry about. So long as Kalshi obtains a license and complies with [State] sports gambling laws, those laws would not pose an obstacle to Kalshi making the sports gambling portion of its platform available to users in [the State].”)

c. CFTC Self-Certification, Rule 40.11, and Proposed Rulemakings Do Not Displace State Enforcement.

Finally, nothing in the CFTC’s self-certification process, in Rule 40.11, or in any proposed CFTC rulemaking displaces state enforcement. When a DCM self-certifies a product, and the CFTC sits on its hands, its inaction is not a command that the contract be offered in every state where doing so is illegal in many states. The CFTC’s own rules make that clear. Rule 40.11 states exchanges “shall not” list gaming contracts and further instructs the agency to consider whether an event contract would be “unlawful” under state law and to withhold approval where necessary. 17 C.F.R. § 40.11. That framework presupposes that state gambling law has continuing force. And the CFTC’s passivity is no basis for preemption. “The Supremacy Clause gives priority to ‘the Laws of the United States,’” not the “enforcement priorities or preferences of” the CFTC. *See Kansas*, 589 U.S. at 212.

4. This Case Is Not a “Collateral Attack” on CFTC Oversight

Demonstrating its through-the-looking-glass read of the CEA, Kalshi portrays this action as an improper “collateral attack” on the CFTC. MTD at 20–22. The argument was flatly rejected by the only court to consider it. *See Hendrick*, 2025 WL 3286282, at *3–6 (holding that

the APA was not the only avenue to litigate whether Kalshi's sports-related event contracts fall within the CFTC's exclusive jurisdiction).

The Commonwealth does not seek to vacate, enjoin, or review any CFTC act or omission. It has not sued the CFTC; it does not invoke the Administrative Procedures Act; and it does not ask this Court to set aside or revise any CFTC determination. The Commonwealth is enforcing its laws. The relief the Commonwealth seeks would leave every CFTC rule, order, and registration intact.

The “collateral challenge” cases Kalshi invokes involve parties that attempted to evade the APA by suing regulated entities to nullify specific agency decisions. *See, e.g., Big Lagoon Rancheria v. Cal.*, 789 F.3d 947, 953 (9th Cir. 2015) (en banc) (holding state could not collaterally attack trust status of gaming land in Indian Gaming Regulatory Act suit). Those cases protect the integrity of judicial review of final agency action. They do not grant immunity for regulated entities from applicable state laws. Banks, airlines, telecom carriers, and broker-dealers are all regulated by federal agencies; they remain subject to state unfair practices statutes, criminal laws, and, where relevant, gambling restrictions. Enforcement actions by state attorneys general against those entities are not “collateral attacks” on their federal regulators. They are a standard feature of cooperative federalism.

If Kalshi genuinely believes that the CFTC’s choice to let its self-certifications stand is imbued with preemptive force, that is a bad Supremacy Clause argument, *see Kansas*, 589 U.S. at 202, and nothing more. *See Hendrick*, 2025 WL 3286282, at *5 (“Concluding that a defense to Kalshi’s preemption argument must be brought solely through the APA puts the cart before the horse. To decide if something falls within the CFTC’s jurisdiction to potentially preempt state law, courts must interpret the CEA because the CEA specifically defines that jurisdiction.”)

B. The Requested Injunction Squarely Promotes the Public Interest.

Upon enacting Chapter 23N, the Legislature made the policy choice to allow sports wagering only under a strict legal framework, overseen by the MGC, with consumer protections, responsible-gaming requirements, and requirements that facilitate research on its social and economic harms. *See* Compl. ¶¶ 17–40. That policy choice reflects the Commonwealth’s long-recognized position—and that of the Supreme Court—that unlicensed gambling in any form, such as sports wagering, is contrary to the public interest. *See, e.g., Stone v. State of Miss.*, 101 U.S. 814, 818 (1879) (“If lotteries are to be tolerated at all, it is no doubt better that they should be regulated by law, so that the people may be protected as far as possible against the inherent vices of the system”).

Kalshi’s primary argument—that enforcement of a preempted law is not in the public interest—is of course flawed because it presumes that Kalshi’s preemption argument is correct. Conversely there is no legitimate public interest in protecting unlawful operations, and the economic cost of shutting down illegality is self-inflicted. *See, e.g., MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 932 (2005) (“In sum, where an article is ‘good for nothing else’ but infringement . . . there is no legitimate public interest in its unlicensed availability.”). What is more, economic harm to a malfasant company is outweighed by public interest in enforcement of statutes designed to protect the public health, safety, and welfare. *See Commonwealth v. Fremont Inv. & Loan*, 452 Mass. 733, 745-746 (2008). Here, Kalshi’s alleged economic harms (i.e. lost revenue, compliance costs, etc.), *see* Xavier Decl. ¶¶ 20–41, are the consequence of breaking state law. *See Hendrick*, 2025 WL 3286282, at *13 (“Kalshi could have proceeded cautiously until this and other lawsuits played out, but instead it greatly expanded its offerings, so it has to some extent created or amplified its own harm.”).

Furthermore, any harm Kalshi alleges is negated by its own trading rules, which

expressly account for state enforcement. Rule 2.8(c) defines an emergency to include “action taken by . . . any state or local governmental body . . . that may have a direct impact on trading on Kalshi” and “[t]he imposition of any injunction or other restraint by any . . . court . . . that may affect the ability of a Trader or perform on Contracts.” *See* Affidavit of Payton (“Doan Aff.”) ¶ 5, Ex. B at 19. If such an emergency arises, Rule 2.8(a) authorizes Kalshi to adopt temporary emergency rules, including “suspend[ing] trading on the Platform,” and taking “any other action that the official thinks is necessary and appropriate” under Rule 2.8(d). *Id.*, Ex. B at 18–19. Rule 2.8(b) further warns that the risk of state enforcement is “one of the risks that Participants should consider when deciding whether to trade on the Platform.” *Id.* And the very steps that Kalshi now claims are “impossible” are expressly identified as “reasonable actions” under its emergency rules: Rule 2.8(d) provides that “reasonable actions resulting under this rule” include “[c]ancellation of a contract and the return of any funds paid to enter Trades on the Contract,” “[e]xtension/shortening of expiration and/or closing date,” “[s]uspension and curtailing of trading,” and “[c]hanging a Contract’s terms and conditions and/or specifications.” *Compare* Xavier Decl. ¶ 38 (“Kalshi may be unable to compensate all of its Massachusetts traders for the cancelled trades”), *with* Rule 2.8(d).

Nor should any of the complained harms come as a surprise to Kalshi. The CFTC explicitly warned Kalshi and other DCMs “to be prepared for all foreseeable conditions that may result from facilitating the trading and clearing of sports-related event contracts,” to account for “State regulatory actions and pending and potential litigation, including enforcement actions . . . with appropriate contingency planning, disclosures, and risk management policies and procedures. . . . in place to deal with any developments that may affect customer, market participant, or clearing member positions and funds” concerning sports-related event contracts.

See Doan Aff. ¶ 4, Ex. A, at 1–2. Such actions include regularly informing affected parties (i.e. customers and market participants) “based on any States in which they operate or engage in activity, to ensure that [potentially affected parties] understand the possible effects should State regulatory actions or ongoing or new litigation, including enforcement actions, result in termination of sports-related event contract positions.”¹¹ *Id.* at 2.

The public interest demands consequence for openly thwarting extensive state law. Otherwise, “if Kalshi’s view is adopted, there is a not-insignificant chance that the regulated entities in this state will abandon their current model and become DCMs, unleashing even more unregulated gambling and [impacting the Massachusetts] economy and [eliminating] related tax revenues.” *Hendrick*, 2025 WL 3286282, at *14.

C. The Preliminary Injunction Should Have the Following Contents and Scope.

The Commonwealth takes this opportunity to clarify the scope of the injunction it seeks, given Kalshi’s repeated suggestion that this case is about something more than sports wagering. MTD at 9, 17 fn.4, 21–22. It is not. The sought-after relief will prohibit Kalshi from offering sports wagers in the Commonwealth, unless and until it becomes licensed under Chapter 23N.

Moreover, the Commonwealth seeks injunctive relief that would have the least adverse impact on its residents. To that end, we recognize certain technical limitations may bear on the implementation of the Court’s order. If there is some period of time that Kalshi requires to achieve compliance with Massachusetts law, the Court should demand from Kalshi evidence as to the timeline it purports to require. In addition, the Commonwealth’s current concern is not the

¹¹ One such foreseeable consequence would be the prohibition on offering sports-related event contracts in a particular state through geofencing. Kalshi anticipates spending tens of millions of dollars to implement geofencing, including months to even negotiate a contract to engage in such services. *See* Xavier Decl. ¶¶ 24, 31. However, the CFTC Advisory makes clear that such steps should be underway already; and Kalshi customers already should have been notified about the risk of engaging in sports wagering prohibited by state law. *See* Doan Aff. ¶ 4, Ex. A at 2–3.

unwinding of existing wagers (though Kalshi should be cognizant that such wagers could give rise to private civil liability under G.L. c. 137, § 1). But Kalshi should be enjoined from drawing revenue from such wagers, whether as a “take” (percentage of the wager) or as a counterparty.

II. The Court Should Deny Kalshi’s Motion to Dismiss.

The Court should deny Kalshi’s motion to dismiss for the same reason it should enter a preliminary injunction: Kalshi has not disputed that it violates Massachusetts law, and its sole rejoinder—preemption—is unavailing. Indeed, even if the Court denies the Commonwealth’s motion, it should still decline Kalshi’s invitation to dismiss this case.

Under Mass. R. Civ. P. 12(b)(6), the Court must accept as true the well-pleaded factual allegations and draw all reasonable inferences in the Commonwealth’s favor. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). That familiar standard sets an especially high bar for dismissal where, as here, the defendant’s motion to dismiss relies on an affirmative defense. In those circumstances, “the facts establishing that defense must: (1) be ‘definitively ascertainable from the complaint and other allowable sources of information,’ and (2) ‘suffice to establish the affirmative defense with certitude.’” *Nat’l Assoc. of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49, 69 (D. Mass. 2019) (quoting *Gray v. Evercore Restructuring LLC*, 544 F.3d 320, 324 (1st Cir. 2008)). That bar is higher still when the affirmative defense is one of preemption, which implicates “the assumption that the historic police powers of the States [have not been] superseded by Federal Act.” *Dunn v. Genzyme Corp.*, 486 Mass. 713, 718 (2021) (ellipses and quotation marks omitted); *see, e.g., Ryan v. USCIS*, 974 F.3d 9, 28 (1st Cir. 2020) (noting that preemption is “typically a defense”).

These principles foreclose Kalshi’s request for dismissal. Again, Kalshi does not dispute that, if Massachusetts law applies, the complaint states a claim: its sports-event contracts are “sports wagering” within the meaning of Chapter 23N and are being offered without the license

and consumer-protection safeguards the statute requires. Compl. ¶¶ 88–108; 154–161.

Accordingly, Kalshi can prevail on its motion only if it is “definitively ascertainable from the complaint” that the CEA so clearly precludes any application of Chapter 23N to Kalshi’s conduct that the Commonwealth’s claims fail as a matter of law. *Nat’l Assoc. of the Deaf*, 377 F. Supp. 3d at 69. But if all the facts in the complaint are taken as true, Kalshi cannot make that showing.

Even if the Court believed that some preemption issues might ultimately warrant closer examination, those questions are too fact-intensive to justify dismissal on the pleadings. To take one example, even Kalshi’s wildly overbroad reading of the CEA requires it to demonstrate, as a matter of fact, that all contracts offered on its exchange involve a dependency on the “occurrence, nonoccurrence, or the extent of the occurrence of an event” that has a “potential financial, economic, or commercial consequence.” 7 U.S.C. § 1a(47)(A)(ii). Kalshi cannot meet that burden at any stage (as it has conceded in previous litigation); it certainly cannot do so without having introduced any facts. Kalshi’s motion to dismiss is replete with many more factual assertions and characterizations that fall outside the complaint. Under Rule 12(b)(6), however, the Court must accept the Commonwealth’s well-pleaded factual allegations as true and draw all reasonable inferences in its favor. *Iannacchino*, 451 Mass. at 636. It may not credit Kalshi’s competing factual narrative or resolve contested technical issues in Kalshi’s favor at this stage.

Because Kalshi’s motion to dismiss rests on an affirmative defense—and because the facts alleged in the complaint do not establish that defense “with certitude,” *Nat’l Assoc. for the Deaf*, 377 F. Supp. 3d at 69—the Court should deny the motion.

CONCLUSION

The Court should grant the Commonwealth’s motion and deny Kalshi’s motion.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
By its Attorney
ANDREA JOY CAMPBELL
ATTORNEY GENERAL

By: /s/ Joshua R. Edlin

Joshua R. Edlin, BBO # 715110
Louisa Castrucci, BBO # 692208
Alda Chan, BBO # 705204
Jared Rinehimer, BBO # 684701
Frances Cohen, BBO # 542811
M. Patrick Moore, BBO # 670323
Gerard J. Cedrone, BBO # 699674
Assistant Attorneys General
One Ashburton Place
Boston, Massachusetts 02108

617-963-2905 / joshua.edlin@mass.gov
617-963-2848 / louisa.castrucci@mass.gov
617-963-2525 / alda.chan@mass.gov
617-963-2594 / jared.rinehimer@mass.gov
617-963-2006 / frances.cohen@mass.gov
617-963-7491 / pat.moore@mass.gov
617-963-2282 / gerard.cedrone@mass.gov

DATE: December 3, 2025

NOTICE

47

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2584CV02525

COMMONWEALTH OF MASSACHUSETTS

vs.

KALSHIEX, LLC

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR
A PRELIMINARY INJUNCTION AND DEFENDANT'S MOTION TO DISMISS**

The defendant, KalshiEX, LLC ("Kalshi"), operates a nationwide "prediction" market derivatives exchange, on which traders can purchase either a "yes" or "no" position on "event contracts," including the outcome of sporting events. If the correct resulting position is chosen, the trader receives a payment. Kalshi's event contract exchange is registered as a "Designated Contract Market" ("DCM") with the Commodity Futures Trading Commission ("CFTC"), but is not licensed to offer sports wagering in Massachusetts. On September 12, 2025, the Commonwealth filed a complaint seeking a declaration that Kalshi is operating in violation of Massachusetts's sports wagering law, G.L. c. 23N ("Sports Wagering Law"), as well as monetary and injunctive relief. Presently before the court is the Commonwealth's motion for a preliminary injunction and Kalshi's motion to dismiss on federal preemption grounds. After a hearing on December 9, 2025, and consideration of the materials submitted, the Commonwealth's motion is **ALLOWED**, and Kalshi's motion is **DENIED**.

LEGAL AND FACTUAL BACKGROUND

The following undisputed facts are taken from the Complaint and submitted record, with further facts reserved for later discussion.

1. Kalshi's Business

Kalshi is a Delaware limited liability company with a principal place of business in New York City. It allows Massachusetts consumers to purchase its event contracts on its website and through its mobile application (“app”), which is available to both Android and Apple smartphone users. Kalshi event contracts are also offered on Robinhood, a stock-trading platform that is also accessible via a webpage and mobile app. Kalshi’s trades operate so that the combined investment cost from both sides of an event contract (the yes and no positions) equal a dollar, with the correct position receiving the one-dollar-payout after the event occurs. Before the event occurs, the price for the yes or no position fluctuates, depending on the likelihood of each outcome. Kalshi has an affiliated entity that places buy and sell orders, ensuring that both yes and no contracts can be purchased for any given event at all times. It also has an affiliated clearinghouse under common ownership that finalizes and settles contracts and issues payouts.

Kalshi launched its platform in 2021, with event contracts focused on topics including inflation, the consumer price index, unemployment, and macroeconomic benchmarks. In October 2024, Kalshi began offering political event contracts, which invited users to take positions on issues such as which party would control Congress, or whether a presidential candidate would win a particular swing state. In January 2025, Kalshi began offering sports-related event contracts. Examples included predicting the winner of New England Patriots games, or the Women’s Tennis Association tournament. Sports-related event contracts quickly became the majority of Kalshi’s trading volume (about seventy percent between February 25, 2025, and May 17, 2025), and it profited more from its sports-related event contracts than licensed sports wagering platforms Draftkings and Fanduel during that same timeframe. In August and September 2025, Kalshi added contracts for the number of touchdowns a given

player will score in a game, how much a given team will win by, the overall total score in a game, and on various combinations of sports outcomes.

The manner in which Kalshi's contracts are offered mirrors other digital gambling experiences, including through continuous feedback and engagement loops that are modeled after operant conditioning and slot machine dynamics, leaderboard rankings, and countdown clocks. Users may also create profiles and avatars to publicly compete with other users on Kalshi's site. Kalshi borrows gambling terminology, using the term "football spread" when referring to a point spread contract. A point spread bet is a defined sports wager in Massachusetts. See G.L c. 23N, §3. Likewise, over/under, proposition, and parlay contracts are now being offered, which likewise are defined sports wagers under G.L c. 23N, §3. Prior to March 2025, Kalshi referred to itself in advertisements as "the first nationwide legal sports betting platform," and its CEO has referred to its offerings as "bets." It now describes itself as a "regulated exchange dedicated to trading," where "investments [are] directly tied to the outcome of specific events."

As of June 2025, Kalshi has about two million users nationwide, and is valued at over two billion dollars.

2. CFTC Regulation of Kalshi

In 2020, the CFTC registered Kalshi as a DCM. The CFTC is an independent federal agency charged under the Commodity Exchange Act ("CEA") with regulating derivative markets, including those that offer events contracts. 7 U.S.C. § 2(a)(1). Consistent with the above description of Kalshi's business, "[a]n event contract is a derivative contract for which the 'payoff is based on a specified event, occurrence, or value'—for example, the level of snowfall from a certain storm or the dollar amount of hurricane damage." *KalshiEX LLC v. Commodity*

Futures Trading Comm'n, 119 F.4th 58, 61 (D.C. Cir. 2024), quoting CFTC, Contracts & Products: Event Contracts, <https://perma.cc/4FPT-L2SN>. “Businesses and individuals can use event contracts to hedge against economic risk.” *Id.* (citation omitted). See *KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667, 671 (D. Md. 2025) (“*Martin*”).

Under the CEA, only federally regulated exchanges can offer event contracts. 7 U.S.C. § 2(e). As an alternative to the CFTC’s pre-approval of a particular event contract, under the CEA, a DCM may self-certify to the CFTC that a contract it seeks to offer complies with the CEA and the CFTC’s regulations. 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. § 40.2. However, since 2010, the CEA has included a “Special Rule” under which the CFTC can review and prohibit specific types of event contracts if it determines those contracts are “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C)(i). In particular, the Special Rule provides:

In 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 designated contract market . . . , the [CFTC] may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve: (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 [CFTC], by rule or regulation, to be contrary to the public interest.

Id. By regulation, the CFTC has ninety days to determine whether to prohibit a DCM’s proposed event contract under the Special Rule. 17 C.F.R. § 40.11(c). During this review, the DCM cannot list or trade the contract. 17 C.F.R. § 40.11(c)(1).

Kalshi self-certified to the CFTC each of its sports event contracts. The CFTC has taken no regulatory action against Kalshi under the Special Rule as to any of these contracts. However, on September 30, 2025, certain CFTC divisions issued a “Staff Advisory” to all DCMs and certain other regulated entities, “to be prepared for all foreseeable conditions that may result from facilitating the trading and clearing of sports-related event contracts for customers, market

participants, and clearing members.” The letter further “caution[ed] . . . DCMs . . . that State regulatory actions and pending and potential litigation, including enforcement actions, should be accounted for with appropriate contingency planning, disclosures, and risk management policies and procedures.” As relevant to this case, further explanation and discussion of the CEA’s jurisdiction over, and regulation of, DCMs will be set forth below.

3. Sports Wagering in Massachusetts

Following the United States Supreme Court’s decision in *Murphy v. National Collegiate Athletic Ass’n*, 584 U.S. 453 (2018), Massachusetts enacted the Sports Wagering Law in 2022. See G.L. c. 23N; *Murphy*, 584 U.S. 453 (holding that the federal Professional and Amateur Sports Protection Act’s restriction on states’ ability to regulate sports gambling violates the anticommandeering doctrine). The Sports Wagering Law defines sports wagering as: “the business of accepting wagers on sporting events or portions of sporting events,” while “wager” is defined as a sum of money or thing of value risked on an uncertain occurrence.” G.L. c. 23N, § 3. An entity’s eligibility to accept sports wagers in the Commonwealth is conditioned on state licensure by the Massachusetts Gaming Commission (“MGC”), under a regulatory framework promulgated pursuant to the Sports Wagering Law, G.L. c. 23N. See 205 Code Mass. Regs. §§ 202-258. Both the application for licensure, and any license granted, are subject to fees. G.L. c. 23N, §§ 6, 7. An apportioned fee is also collected for the state’s Public Health Trust Fund, to support efforts combating compulsive gambling and to aid in understanding the social and economic effects of gambling. G.L. c. 23N, §§ 15(e), 23. If licensure is granted, the MGC levies a twenty percent excise tax on sports wagering adjusted gross receipts for mobile wagers. G.L. c. 23N, § 14.

A licensed sports wagering operator in Massachusetts is subject to several obligations under the statutory and regulatory framework, including: 1) implementing responsible gambling features; 2) reporting suspected illegal activity; 3) preventing certain individuals from wagering on sporting events, including those related to the event and the sports wagering operator; 4) preventing underage sports wagering through the use of electronic age and identity verification; 5) offering users betting limits, as well as employing other methods to promote responsible gaming; and 6) complying with the Massachusetts voluntary self-exclusion program, which allows gamers to exclude themselves from casino gambling and sports wagering. See G.L. c. 23N, §§ 4(d)(2), 11, 13(d); 205 Code Mass. Regs. §§ 248.16, 256.07. Kalshi has not applied for a Massachusetts sports wagering license, and is not licensed in the state to offer sports wagering.

3. Present Action

On September 12, 2025, the Commonwealth commenced this action. The Complaint asserts a single claim for violation of G.L. c. 23N, § 5(a), based on Kalshi's alleged operation of a sports betting platform in Massachusetts without a license. On the same day, the Commonwealth filed a motion for a preliminary injunction "seeking to enjoin Kalshi from offering and accepting sports wagers while this action is pending, unless and until it obtains a license from the MGC."¹

DISCUSSION

I. Commonwealth's Motion for Preliminary Injunction

Before issuing a preliminary injunction, the court "must determine that the plaintiff has shown a likelihood of success on the merits of the case at trial." *Commonwealth v. Mass.*

¹ Massachusetts is not the only state seeking enforcement action against Kalshi. Attorneys General from Nevada, New Jersey, Maryland, Ohio, Illinois, Montana, and Arizona, have sent cease and desist letters to Kalshi seeking to end its unlicensed operation in those states, as well.

CRINC, 392 Mass. 79, 87 (1984), citing *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). “If the plaintiff is the Attorney General, the judge must then determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” *Commonwealth v. Fremont Inv. & Loan*, 452 Mass. 733, 741 (2008) (citation omitted).

A. Likelihood of Success on the Merits

In its opposition to the Commonwealth’s motion, Kalshi does not argue that its sports-related event contracts do not meet the definition of sports wagering in the Commonwealth. Neither does it challenge the Commonwealth’s assertion that it is operating in Massachusetts without a license. Rather, consistent with its litigation strategy in other states that have challenged its operation, Kalshi argues that the Commonwealth’s attempt to regulate its exchange through the state’s Sports Wagering Law is preempted by federal law. As explained below, I disagree.

1. The Law of Preemption

Under the Supremacy Clause of the United States Constitution, Congress has “the power to preempt state law,” which it may exercise either expressly or impliedly. *Capron v. Office of Attorney Gen. of Massachusetts*, 944 F.3d 9, 20-21 (1st Cir. 2019), quoting *Arizona v. United States*, 567 U.S. 387, 399 (2012). “Express preemption occurs only when a federal statute explicitly confirms Congress’s intention to preempt state law and defines the extent of that preclusion.” *Grant’s Dairy--Maine, LLC v. Commissioner of Maine Dep’t of Agric., Food & Rural Res.*, 232 F.3d 8, 15 (1st Cir. 2000), citing *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990). Implied preemption can occur in one of two ways: field preemption or conflict preemption. *Massachusetts Ass’n of HMO v. Ruthardt*, 194 F.3d 176, 179 (1st Cir. 1999).

“Field preemption occurs when a federal regulatory scheme is so pervasive as to warrant an inference that Congress did not intend the states to supplement it. . . . Conflict preemption takes place either when compliance with both state and federal regulations is impossible or when state law interposes an obstacle to the achievement of Congress’s discernible objectives.” *Grant’s Dairy--Maine, LLC*, 232 F.3d at 15 (1st Cir. 2000) (citations omitted). Only implied preemption is at issue in this case.

Implied preemption analysis rests on two fundamental principles. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). First, “the purpose of Congress is the ultimate touchstone.” *Id.*, quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). Congressional intent is informed by examining the federal law at issue, as well as Congress’s history of regulating in that area. *Id.* at 566; *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 373 (2000).

Second, every preemption case starts with the presumption that Congress did not intend to displace state law. *Wyeth*, 555 U.S. at 565. Because this presumption rests on “respect for the States as independent sovereigns in our federal system,” *id.* at 565 n.3 (internal quotation marks omitted), it is especially strong in areas where states traditionally wield police powers. *Id.* at 565. See *English*, 496 U.S. at 79; *New York Pet Welfare Ass’n, Inc. v. New York*, 850 F.3d 79, 86-87 (2d Cir. 2017). The regulation of gambling falls squarely within a state’s “core,” historic police powers. *Abdow v. Attorney Gen.*, 468 Mass. 478, 489 (2014). Accordingly, the presumption guides the court’s analysis in this case. See *Robinhood Fin. LLC v. Secretary of Commonwealth*, 492 Mass. 696, 717 (2023) (Because State securities laws . . . fall within a field of “‘traditional’ [S]tate regulation,” the assumption guides our analysis”), quoting *Oneok, Inc. v.*

Learjet, Inc., 575 U.S. 373, 374 (2015).² “The party asserting preemption bears the burden of establishing it.” *Stephens v. Target Corp.*, 694 F. Supp. 3d 1136, 1141 (D. Minn. 2023).

2. Field Preemption

Kalshi argues that the Sports Wagering Law is field-preempted as applied to Kalshi’s sports-related event contracts under the CEA’s statutory text, and due to its statutory purpose, its drafting history, and the “comprehensive” federal regulatory scheme for DCMs. As stated in *Martin*, “Kalshi’s burden with respect to its field preemption claim is to establish that Congress clearly and manifestly intended to strip states of their authority to regulate gambling if the company offering such wagering opportunities has been approved to sponsor a [DCM] for commodities trading.” 793 F. Supp. 3d at 677. Consistent with the court’s conclusion in *Martin*, applying the presumption to the facts here, Kalshi fails to meet its burden.

Beginning with statutory text, under the CEA, the CFTC has “exclusive jurisdiction” over all “transactions involving swaps” and “future delivery contracts” that are “traded or executed on a contract market designated” by the CFTC. 7 U.S.C. § 2(a)(1)(A). A savings clause further states: “[e]xcept as herein provided, nothing contained in this section shall . . . supersede or limit the jurisdiction . . . conferred on . . . other regulatory authorities under the laws of the United States or any State.” *Id.* The United States Supreme Court has explained that the CEA’s exclusive jurisdiction provision was intended to “consolidate federal regulation of commodity

² Citing *United States v. Locke*, 529 U.S. 89, 108 (2000), Kalshi nevertheless asserts that the presumption against preemption does not apply in this case because the federal government has a significant history of legislating in the field of futures and derivatives markets. In determining Congress’s intent to preempt, however, the relevant frame of reference is the targeted state law — here, the Sports Wagering Law. After *Locke*, the United States Supreme Court clarified that “the presumption against preemption is not triggered only if there is a significant history of extensive federal regulation to the exclusion of state regulation.” *Massachusetts Ass’n of Private Career Sch. v. Healey*, 159 F. Supp. 3d 173, 215 (D. Mass. 2016) (emphasis added), quoting and discussing *Wyeth*, 555 U.S. at 565 n.3. As stated, states have historically regulated local gambling through their police powers. See, e.g., *Marvin v. Trout*, 199 U.S. 212, 224 (1905). For the same reasons, the Maryland District Court likewise concluded that the presumption applies. See *Martin*, 793 F. Supp. 3d at 676-677.

futures trading in the [CFTC]” and to “separate the functions of the [CFTC] from those of the [SEC] and other regulatory agencies.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 386-387 (1982) (“*Merrill Lynch*”). When originally enacted in 1974, the exclusive jurisdiction provision concerned only future delivery contracts; in 2010, the Dodd-Frank Wall Street Reform And Consumer Protection Act (“Dodd-Frank”) added swaps to the CFTC’s exclusive jurisdiction. See 7 U.S.C. § 2(a); Pub. L 111-203, 124 Stat. 1376 (July 21, 2010). For purposes of this decision, I assume without deciding that Kalshi’s event contracts are swaps.

Kalshi argues that the CFTC’s exclusive jurisdiction over transactions involving swaps, as confirmed by the “except as hereinabove provided” language in the savings clause, must mean that Congress intended to preempt state sports gaming laws that would otherwise require licensure of DCMs. But its view of the relevant field of preemption is overly broad, particularly in light of the presumption against preemption. Although I agree that the exclusive jurisdiction provision evidences an intent to preempt *some* state law, I disagree that it extends as far as state gaming laws. While it would make sense for Congress to displace a state’s targeted attempt to regulate a derivative market, for example, or to clarify the roles of separate federal agencies, as addressed in *Merrill Lynch*, that logic does not suggest Congress intended to displace traditional state police powers, such as gambling regulation — particularly in the absence of the express language so stating.

As the court recognized in *Martin*, “in assessing field preemption, courts must avoid ‘interpreting the scope of the preempted field too broadly.’” 793 F. Supp. 3d at 679, quoting *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680, 689 (3d Cir. 2016). See generally, *Martin ex rel. Heckman v. Midwest Exp. Holdings, Inc.*, 555 F.3d 806, 809 (9th Cir. 2009) (aviation

preemption analysis looks “to the pervasiveness of federal regulations in the specific area covered by the tort claim or state law at issue”). That none of the CEA preemption cases Kalshi cites in support of its exclusive jurisdiction argument concern state gambling regulation, or the CEA’s preemption of other equivalent historical state police powers, speaks to its overbroad view of relevant preemptory field. See, e.g., *Leist v. Simplot*, 638 F.2d 283, 285 (2d Cir. 1980) (concerning the existence of private right of action under CEA).

A lack of preemption here is further supported by looking at the CEA as a whole. The Special Rule, as quoted *supra*, which also was added by Dodd-Frank, Pub. L 111-203, 124 Stat. 1376 (July 21, 2010), provides the CFTC with the authority to prohibit event contracts that “involve . . . activity that is unlawful under . . . State law.” 7 U.S.C. § 7a-2(c)(5)(C)(i). This language “reflects an affirmative intent to *preserve* state laws governing whether particular conduct is lawful or unlawful. The fact that Congress expressly authorized the [CFTC] to prohibit particular categories of transactions as contrary to the public interest *based on the fact that the conduct at issue would violate state law* severely undercuts Kalshi’s suggestion that Congress intended to displace all state laws that would otherwise apply to transactions that fall within the scope of the CEA.” *Martin*, 793 F. Supp. 3d at 680 (emphasis in original).

The CEA’s express preemption provision, 7 U.S.C. § 16(e), also reflects Congress’s intended scope of preemption. That provision expressly states that the CEA preempts state gaming regulations as to certain types of operations, see *id.*,³ which Kalshi does not argue apply

³ 7 U.S.C.A. § 16(e)(2) provides:

This chapter shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of--

- (A) an electronic trading facility excluded under section 2(e) of this title; and
- (B) an agreement, contract, or transaction that is excluded from this chapter under section 2(c) or 2(f) of this title or sections 27 to 27f of this title, or exempted under section 6(c) of this title (regardless of whether any such agreement, contract, or transaction is otherwise subject to this chapter).

here. The statute does not, however, provide that the CEA preempts state gaming laws of general application, *or state sports wagering laws*. That Congress chose to explicitly preempt only some state gaming laws indicates an intent to limit the scope of preemption to only those expressly stated areas.⁴ See *Martin*, 793 F. Supp. 3d at 681.

Finally, my conclusion is consistent with “the traditional balance between state and federal regulation of gaming.” *KalshiEX, LLC v. Hendrick*, 2025 WL 3286282, at *8 (D. Nev. 2025) (“*Hendrick*”). See *Martin*, 793 F. Supp. 3d at 682 (“the Supreme Court has long recognized, states have strong interests in regulating gambling”), citing *Murphy*, 584 U.S. 453. As the Nevada District Court observed in ruling against Kalshi in similar litigation, if indeed Congress had intended “such a sea change” in the regulatory landscape of gambling regulation, surely it would have said so explicitly. *Hendrick*, 2025 WL 3286282, at *8 (citation omitted). Moreover, in adding swaps to the CEA in 2010,

Congress was bringing risky financial products out of the shadows that had threatened the stability of the entire U.S. financial sector, and which had catastrophic ripple effects on the U.S. and world economies during the financial crisis of 2007-2008. Congress was not enabling nationwide gambling on CFTC-designated exchanges. “[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.” *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). It is absurd to think that Congress intended for DCMs to turn into nationwide gambling venues on every topic under the sun to the exclusion of state regulation and with no comparable federal regulator without ever mentioning that was the goal when Congress added swaps to the CEA in 2010.

Hendrick, 2025 WL 3286282, at *9.⁵ This conclusion is further strengthened by the fact that the 2010 Dodd-Frank amendments occurred at a time when federal law prohibited nearly all state-

⁴ For the same reasons stated in *Martin*, I reject Kalshi’s argument that § 16(e)(2) somehow means the opposite based on a distorted reading of the prior subsection. See 793 F. Supp. 3d at 681.

⁵ Although *Hendrick* reached its decision by concluding that Kalshi’s sports event contract were not “swaps” under the CEA, rather than through a preemption analysis, Congressional intent was integral to that conclusion, — i.e., “what Congress was trying to achieve when it added swaps to the CEA.” 2025 WL 3286282, at *9.

level regulated sports betting, prior to the Supreme Court’s 2018 ruling in *Murphy*. See *Martin*, 793 F. Supp. 3d at 683. Nothing in the 2010 legislative history of the CEA suggests that any member of Congress envisioned or intended that predictive market “swaps” would include the sports event contracts offered by Kalshi, or intended CFTC authority over swaps to displace state police power to regulate gaming. See Senate Report 111-176.

For these reasons, Kalsi has failed to establish that Massachusetts’s Sports Wagering Laws are field preempted by the CEA.⁶

3. Conflict Preemption

As already noted, “[a] state law is preempted by conflict preemption when ‘it is impossible for a private party to comply with both state and federal requirements’ or where state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Triumph Foods, LLC v. Campbell*, 742 F. Supp. 3d 63, 72 (D. Mass. 2024), S.C., 156 F.4th 29 (1st Cir. 2025), quoting *English*, 496 U.S. at 79. “What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.” *Maine Forest Prod. Council v. Cormier*, 51 F. 4th 1, 6 (1st Cir. 2022), quoting *Crosby*, 530 U.S. at 373. The presumption against preemption likewise applies to conflict preemption. *Robinhood Fin. LLC*, 492 Mass. at 717.

Kalshi’s various conflict preemption arguments are all variations on a theme — allowing Massachusetts to impose its sports gambling regulations and licensing scheme on Kalshi would lead to “chaos” disrupting Congress’s intent to have the CFTC uniformly regulate and enforce derivatives markets. For many of the reasons already discussed, the arguments are unavailing. Requiring Kalshi to become licensed to offer its sports related event contracts in Massachusetts

⁶ I likewise find persuasive the several other reasons the *Martin* court discussed in concluding that the CEA does not preempt state gaming laws. See 793 F. Supp. 3d at 682-684.

neither displaces federal derivatives regulations or enforcement efforts, nor frustrates Congress's purpose in consolidating regulatory power in the CFTC. The Sports Wagering Law is an exercise of traditional state police power. It imposes an *additional* regulatory burden on an event contract platform that seeks to offer sports related event contracts, in service of the public health. It is not a competing attempt to regulate derivatives markets, or an outright ban on event contracts in the state. That both systems may operate in harmony demonstrates a lack of frustration to Congress's intent. See *Zuri-Invest AG v. Natwest Fin. Inc.*, 177 F. Supp. 2d 189, 197 (S.D.N.Y. 2001) ("There can be no implied conflict preemption when the federal and state laws co-exist in harmony"); *Vanlaningham v. Campbell Soup Co.*, 492 F. Supp. 3d 803, 806 (S.D. Ill. 2020) (same). See also *Martin*, 793 F. Supp. 3d at 686 ("Kalshi has not shown how obtaining a license in Maryland and otherwise complying with Maryland law would prevent it from complying with federal law").⁷ The undercurrent to Kalshi's argument is that it would prefer to avoid the burden and expense of state licensure. That is an insufficient reason, however, to overcome the strong presumption against conflict preemption in this case.⁸

Because Kalshi has failed to establish that the CEA preempts the Sports Wagering Law, the Commonwealth is likely to succeed on the merits of its single claim that Kalshi requires licensure under G.L. c. 23N to offer sports-related event contracts in the Commonwealth.

⁷ Kalshi cites a November 13, 2025, letter the MGC sent to licensed sports betting operators in support of its conflict preemption argument. I agree with the Commonwealth, however, that the letter does not state an intention to prohibit sports-related event contracts in Massachusetts. See Valente Ex. 5. Because it is a problem of its own making, Kalshi's ability to comply with federal regulations due to the disruption the issuance of an injunction would cause likewise has no bearing on the conflict preemption analysis.

⁸ Kalshi raised the same conflict preemption arguments it raises here in *Martin*. 793 F. Supp. 3d at 685-686. I concur in the *Martin* court's analysis and rejection of each of those arguments. See *id.*

B. Public Interest

“Because the Attorney General, in the name of the Commonwealth, brings this case to carry out her statutory mandate to enforce [the Sports Wagering Law, see G.L. c. 23N, 4(g),] it is necessary to consider whether the preliminary injunction order promotes the public interest.” *Fremont Inv. & Loan*, 452 Mass. at 751. As detailed above, the Sports Wagering Law and its related regulations require vetting and licensure through the MGC, and the payment of taxes and fees, partly to support public health measures related to gambling. The MGC also oversees and supervises licensed, operating entities for compliance with state laws and regulations. Licensed entities must undertake measures to avoid unlawful wagers, underage betting, and to aid in preventing gambling addiction. There is no real question that licensure, and the consequent oversight, of sports wagering operations in the state serve both public health and safety, and the Commonwealth’s financial interest. Seeking enforcement against non-complying entities also serves the public interest of fair competition and equal oversight among all sports wagering operations in the state.

Kalshi’s opposition centers on its claim that compliance with an injunction will harm Massachusetts Kalshi users, risk its DCM status and reputation, and pose burdensome feasibility challenges. On the first point, the Commonwealth states in its brief that it is not seeking to unwind existing event contracts that Massachusetts users have purchased. I agree that the injunctive relief ordered will be forward-looking only, which will minimize disruption but require Kalshi to begin complying with Massachusetts law.

On the remaining points, even assuming they are relevant to the analysis, Kalshi’s argument is not compelling. First, Kalshi knowingly proceeded in Massachusetts and other states that require sports wagering entities to be licensed, even after the CFTC warned it to be

cautious in light of ongoing state enforcement efforts. Thus, any hardship it faces in removing its non-compliant Massachusetts offerings is of its own making. There can be little question that Kalshi well understood that its business model—especially once it began offering bets on sporting events—came into direct conflict state enforcement regimes; Kalshi chose to take that risk head-on. Second, compliance with state regulations is a typical challenge many federally regulated, nationwide companies face as part of their normal business operations because of our federal system. I am therefore unconvinced that compliance with a preliminary injunction in this case poses an unusual degree of hardship for Kalshi to overcome, or will be fatal to its business or CFTC designation. See *Hendrick*, 2025 WL 3286282, at *12-*13 (noting, in the context of a public interest analysis, that “there is no evidence before [the court] that the CFTC would take adverse action against Kalshi for complying with court orders and state law while the various lawsuits play out,” citing a lack CFTC enforcement action against another CFTC designated entity that limited its offerings based on location following state enforcement action).

Accordingly, upon weighing the competing arguments, requiring Kalshi to be licensed to offer its sports-related event contracts in Massachusetts serves the public interest.

C. Conclusion

Because the Commonwealth has succeeded both in demonstrating that it is likely to succeed on the merits of its claim that Kalshi requires licensure under G.L. c. 23N, and that such licensure will serve the public interest, its motion for a preliminary injunction is **ALLOWED**.

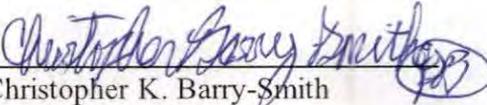
II. Kalshi’s Motion to Dismiss

Because Kalshi’s motion to dismiss is predicated entirely on its preemption argument, which fails for the reasons outlined above, that motion also fails. Accordingly, the motion to dismiss is **DENIED**.

ORDER

For the foregoing reasons, the Commonwealth's motion for a preliminary injunction is **ALLOWED**. Kalshi's motion to dismiss is **DENIED**. The Commonwealth is entitled to a preliminary injunction prohibiting Kalshi from offering sports-related event contracts in the absence of the required license under the Sports Wagering Law. At the hearing both parties discussed, but did not resolve, certain details of the Commonwealth's requested injunction, including how to prohibit new contracts without impacting already existing contracts. For that reason, I will enter a preliminary injunction consistent with this decision on the following schedule: i) not later than January 21, 2026 at 4:00 p.m. the Commonwealth shall submit a proposed preliminary injunction consistent with this decision; ii) not later than January 23, 2026 at 10:00 a.m., Kalshi may submit a response to the Commonwealth's proposed order; iii) if either side requests to be heard or if I determine a hearing is necessary, a hearing will take place on Friday, January 23, at 12:00 noon, after which I will enter a preliminary injunction. Any motion to stay may also be raised in this time period. If both parties wish to confer with respect to the terms of the preliminary injunction and request to extend these deadlines, they may notify the clerk and I will respond promptly to any such joint request.

So ordered.



Christopher K. Barry-Smith
Justice of the Superior Court

DATE: January 20, 2026

NOTIFY

Commonwealth v. Kalshiex LLC, Civil Action No. 2584cv02525-BLS-1.

Following my decision on January 20, 2026 that the Commonwealth was entitled to a preliminary injunction that prohibited Kalshiex (“Kalshi”) from offering sports wagering in Massachusetts absent a license under G.L. c. 23N, I held a hearing on January 23, 2026 concerning the details of a preliminary injunction. At that hearing I stated that I would consider the parties’ positions, submitted in writing and orally at the hearing, then provide my preliminary views on the contours of a preliminary injunction, so that the parties could explore whether the terms of a preliminary injunction might be negotiated between the parties (reserving all rights). I stated that I would separately consider Kalshi’s emergency motion to stay any preliminary injunction, after further briefing from the parties. This order provides my preliminary views with respect to the preliminary injunction, so that the parties may confer. In the absence of agreement, each side may submit a proposed order on or before Wednesday, February 4, 2026, the same day Kalshi will submit its reply memorandum with respect to the motion to stay.

I intend to issue a preliminary injunction that focuses on my essential ruling: that Kalshi may not offer sports-related “contracts” to persons in Massachusetts, directly or indirectly. This concept is captured in paragraphs 1 and 2 of the Commonwealth’s proposed order, except for the reference to “fees” with respect to “pre-existing contracts” discussed below. I also agree that, given Kalshi’s nationwide business and that this injunction unquestionably would be implemented through technological controls, an affirmative requirement like paragraph 7 is necessary to ensure implementation. To effectuate the preliminary injunction, proposed paragraph 7 (a) through (c) is appropriate, although I intend to provide thirty (30) days after entry for implementation. As to notice to Massachusetts users (proposed para. 8), once the prohibition is implemented, a notice to Massachusetts users need only be provided in response to a user’s attempt to place a bet/contract. A reasonable compliance mechanism (para. 9) is wise, though I would make it due in thirty (30) days to coincide with the implementation time period, and paragraph 10 likewise is fair (although already required given the pending litigation).

Pre-injunction contracts. Because the preliminary injunction reflects a new restriction on conduct, I do not believe it should affect contracts entered prior to my preliminary injunction order, with one exception. Namely, increasing the amount of an existing bet/contract is the equivalent of placing a new bet/contract and should not be permitted. In contrast, selling an existing position (rather than settling the contract in accordance with its terms) is one of the options that a Massachusetts buyer had at the time of purchase, and to interfere with that option goes beyond the prospective order that I view as

appropriate. Likewise, Kalshi receiving fees when an existing contract is settled or transferred qualifies for the same characterization.

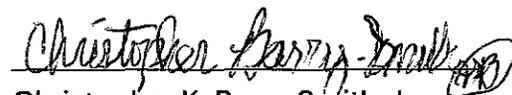
Marketing and Notice. Kalshi operates nationally. Even if it were feasible to distinguish marketing campaigns directed specifically to Massachusetts, more important than marketing is the requirement that persons in Massachusetts be foreclosed from purchasing bets/contracts. As stated above, if a Massachusetts buyer seeks to make a transaction, they will receive notice that a court order prohibits the bet/contract. So long as those provisions are in force, the potentially thorny issue of marketing directed into Massachusetts need not be part of the preliminary injunction.

Account creation. In this lawsuit, the Commonwealth has sought to enjoin only those bets/contracts that constitute sports wagering. Because Kalshi offers bets/contracts that do not relate to sporting events, which are not impacted by this lawsuit, and because it is unclear how one would determine whether an account is “for the purpose of trading sports-wagering contracts,” a prohibition on account creation, funding, maintenance or use, should not be part of any preliminary injunction.

The parties may continue to confer concerning the terms of a preliminary injunction. Should they reach an agreed order, they may submit a proposed order (reserving all rights) on or before February 4, 2026. In the absence of agreement, both sides may submit a proposed order for consideration. After receipt, I will issue the preliminary injunction or schedule a prompt hearing. I anticipate deciding Kalshi’s emergency request for a stay pending appeal on the same time line.

So ordered.

January 27, 2026


Christopher K. Barry-Smith, J.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2584CV02525

COMMONWEALTH OF MASSACHUSETTS

vs.

KALSHIEX, LLC

**ORDER CONCERNING PRELIMINARY INJUNCTION AND DEFENDANT'S
MOTION FOR A STAY PENDING APPEAL**

1. Form of Preliminary Injunction

Following my January 20, 2026, decision, and the hearing on January 23, 2026, I issued an order on January 27, 2026, reflecting the contours of the preliminary injunction that I intended to issue prohibiting KalshiEX, LLC (“Kalshi”) from continuing to offer sports wagering in Massachusetts absent the license required by G.L. c. 23N. I also asked the parties to confer to see if they could reach agreement on certain details. After conferring, on February 5, 2026, the parties submitted a joint status report together with a proposed form of preliminary injunction. Because the proposed preliminary injunction adheres to the guidance I provided in my January 27, 2026, order, and appropriately implements my January 20, 2026, decision, I have entered that proposed order as the Preliminary Injunction in this action, effective today—Friday, February 6, 2026. By conferring with the Commonwealth as requested, Kalshi did not waive any rights and reserves its comprehensive objection to the Preliminary Injunction and my prior decision.

2. Kalshi’s Motion to Stay Preliminary Injunction Pending Appeal

Kalshi moves to stay the Preliminary Injunction while it appeals the January 20, 2026, decision and order. The Commonwealth opposes a stay.

An appellant seeking a stay pending appeal ordinarily must satisfy four criteria: “(1) the likelihood of appellant’s success on the merits; (2) the likelihood of irreparable harm to appellant if the court denies the stay; (3) the absence of substantial harm to other parties if the stay issues; and (4) the absence of harm to the public interest from granting the stay.” *C.E. v. J.E.*, 472 Mass. 1016, 1017 (2015), quoting *J.W. Smith & H.B. Zobel*, Rules Practice § 62.3, at 409 (2d ed. 2007).

Substantially for the reasons set forth in the Commonwealth’s opposition, Kalshi has not satisfied these four requirements. Although I accept that Kalshi’s appeal raises meaningful issues

on which recent decisions are divided, the existence of unsettled law does not equate to a likelihood of success on the merits. See *C.E.*, 472 Mass. at 1017 (suggesting that likelihood of success on the merits requires showing that trial court “likely erred or abused her discretion”); *Gaskins v. Hollomon*, No. 2024-J-0086, 2024 WL 1705772, at *2 (Mass. App. Ct. 2024) (Single Justice Dec.).

On the second criterion, Kalshi focuses on the financial consequences of having to conform to Massachusetts law and the Preliminary Injunction, but “economic loss alone does not usually rise to the level of irreparable harm which a party must establish to obtain a preliminary injunction.” *Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co.*, 399 Mass. 640, 643 (1987); *Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007) (same). Rather, a determination of irreparable harm generally requires a showing, beyond mere speculation, that the injunction will “threaten the very existence” of the business. *Hull Mun. Lighting Plant*, 399 Mass. at 643-644. The record before me does not credibly establish that complying with the Preliminary Injunction will irreparably threaten Kalshi’s business, or that any unrecoverable monetary damage that it may incur to comply with the Preliminary Injunction outweighs the Commonwealth’s substantial interest in licensing and regulating all state sports gaming operators.

Further, the preliminary injunction is tailored to mitigate harm to Kalshi’s business by: (i) applying only prospectively (and not interfering with existing “contracts”); and (ii) providing thirty days for implementation (forty-seven days from my initial decision). Moreover, Kalshi adopted its business model—relying on CFTC regulation of “swaps” to offer nationwide sports betting in contravention of state gaming laws—with eyes wide open; it plainly must have appreciated the risk—or likelihood—of an order like this Preliminary Injunction. Being a sophisticated entity, it presumably prepared for that risk.

Because of the thirty-day period for implementation in the Preliminary Injunction, Kalshi’s alternative request for a short stay to provide time to request a stay from the Appeals Court is unnecessary. Kalshi is, of course, welcome to seek a stay from the Appeals Court, which presumably can be decided within the implementation period.

ORDER

The preliminary injunction in the form proposed by the Commonwealth, attached, is entered as a Preliminary Injunction, effective today—Friday, February 6, 2026. Kalshi’s motion for a stay of the Preliminary Injunction while its appeal is pending is **denied**.

So ordered.



Christopher K. Barry-Smith
Justice of the Superior Court

DATE: February 6, 2026

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
BUSINESS LITIGATION SESSION

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

KALSHIEX LLC,

Defendant.

CIVIL ACTION NO. 2584CV02525-BLS1

~~COMMONWEALTH'S PROPERTY~~ PRELIMINARY INJUNCTION

This matter having been heard by the Court on December 9, 2025, pursuant to Mass. R. Civ. P. 65(b), and after having reviewed the motion, memoranda, affidavits, and docket, and after hearing the arguments of all counsel and in consideration thereof, and pursuant to the Memorandum of Decision and Order issued January 20, 2026, and subsequent hearing held on January 23, 2026, and Order entered on January 27, 2026, it is hereby **ORDERED** that:

Defendant KalshiEX LLC ("Kalshi"), and its officers, agents, employees, attorneys, successors, and assigns, whether acting individually or in active concert or participation with Kalshi, directly or indirectly, through any corporation, trust or other device controlled by or in common control with Kalshi, are **hereby enjoined from engaging in the following conduct beginning no later than thirty (30) calendar days after entry of this Order:**

1. Offering, listing, matching, executing, clearing, settling, or otherwise facilitating any contract, instrument, or product that is a wager on sporting events, or portions of sporting events, or the individual performance statistics of athletes in sporting events, or a combination of any of the same (a "Sports Contract"), as defined by

G.L. c. 23N, §3,¹ to any person located in Massachusetts, except as provided herein;

2. Accepting any increase, addition to, or otherwise expansion of any position existing before the entry of this Order in any contract, instrument, or product that constitutes a Sports Contract by any person located in Massachusetts;

It is hereby **ORDERED FURTHER** that Kalshi shall, also beginning no later than thirty (30) calendar days after entry of this Order:

3. Implement measures reasonably designed to prevent any person located in Massachusetts from:
 - a. Entering into any contract, instrument, or product that constitutes a Sports Contract; or
 - b. Increasing, adding to, or otherwise expanding any existing position in any contract, instrument, or product that constitutes a Sports Contract²;
4. Provide notice to all persons Kalshi determines to be located in Massachusetts, through use of the measures implemented in Paragraph 3 above, who attempt to purchase a contract, instrument, or product that constitutes a Sports Contract that:
 - a. Kalshi is subject to this Court's Order; and
 - b. Entering into, or accepting any increase, addition to, or otherwise expansion of any existing position in a contract, instrument, or product that constitutes a

¹ During the pendency of this injunction, Kalshi's decision to offer or not offer a particular contract shall not be construed as an admission that such contract falls within the scope of c. 23N.

² For the avoidance of doubt, this preliminary injunction shall not apply to any contracts or transactions entered into prior to the deadlines set forth in this Order, or to any contracts or transactions entered into outside Massachusetts. Holders of such positions located in Massachusetts shall remain free to sell their positions or accept any resulting proceeds upon settlement in accordance with the contract's terms, and Kalshi shall remain free to effectuate any such sales or settlements and receive contractually applicable fees in connection with such sales or settlements.

Sports Contract by persons located in Massachusetts is prohibited while this Court's Order is in effect; and

5. File with the Court and serve on the Commonwealth a written certification, supported by a declaration under penalty of perjury by corporate representative with knowledge, describing the steps taken to comply with the foregoing paragraphs, including the approximate dates those steps were implemented.

In addition, Kalshi shall preserve all records reasonably related to Massachusetts users and any sports-wagering contracts accessible in Massachusetts, including logs, communications, geolocation/location determinations, and marketing/targeting data, until further order of the Court.

If this Order (or any portion of it) is stayed, the deadlines set forth in Paragraphs 1-5 shall run from the date the stay is lifted as to the applicable provisions.

This Order shall remain in effect until further order of the Court.

SO ORDERED

DATE: February 6, 2026



Hon. Christopher Barry-Smith
Justice of the Superior Court

APPEALS COURT
Single Justice
Case Docket

COMMONWEALTH OF MASSACHUSETTS vs. KALSHIEX LLC
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
2026-J-0143

CASE HEADER

| | |
|-------------------|-------------------------------|
| Case Status | Disposed: Case Closed |
| Status Date | 02/17/2026 |
| Nature | MAC Rule 6.0 - Motion to stay |
| Entry Date | 02/09/2026 |
| Pet Role Below | Defendant |
| Single Justice | Singh, J. |
| Brief Status | |
| Brief Due | |
| Case Type | Civil |
| Lower Ct Number | 2584CV02525 |
| Lower Court | Suffolk Superior Court |
| Lower Court Judge | Christopher Barry-Smith, J. |

INVOLVED PARTY

Commonwealth of Massachusetts
Plaintiff/Respondent

Kalshiex LLC
Defendant/Petitioner

ATTORNEY APPEARANCE

[Louisa Emily Gibbs, Assistant Attorney General](#)
[Gerard Cedrone, Assistant Attorney General](#)
[Alda Chan, Assistant Attorney General](#)
[Frances S. Cohen, Assistant Attorney General](#)
[Joshua Edlin, Assistant Attorney General](#)
[M. Patrick Moore Jr., Assistant Attorney General](#)
[Jared Rinehimer, Assistant Attorney General](#)
[Kristyn M. DeFilipp, Esquire](#)
[Beth Neitzel, Esquire](#)
[Jack Smith, Esquire](#)

DOCKET ENTRIES

| Entry Date | Paper | Entry Text |
|------------|-------|--|
| 02/10/2026 | | IMPOUNDED INFORMATION: Lower Court Order: Exhibits 1&2 to the Valente Declaration are provisionally impounded and may be filed under seal. |
| 02/09/2026 | #1 | Motion to stay/vacate stay of judgment or sentence filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/09/2026 | #2 | Memorandum of law in support filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/09/2026 | #3 | Appendix (IMPOUNDED) filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/09/2026 | #4 | Notice of appearance filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/10/2026 | #5 | Copy of docket, received from Suffolk Superior Court. |
| 02/10/2026 | #6 | Appendix filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/10/2026 | #7 | Notice of Filing Containing Impounded Materials filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/10/2026 | #8 | Motion for admission Pro Hac Vice filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/10/2026 | #9 | Motion for admission Pro Hac Vice filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/10/2026 | #10 | Motion for admission Pro Hac Vice filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/10/2026 | #11 | Motion for admission Pro Hac Vice filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/10/2026 | #12 | Motion for admission Pro Hac Vice filed for Kalshiex LLC by Attorney Kristyn DeFilipp. |
| 02/17/2026 | | RE#8: Allowed. Attorney Andrew L. Porter is admitted pro hac vice on behalf of KalshiEX LLC, Defendant-Appellant, for purposes of this appeal only. *Notice |
| 02/17/2026 | | RE#9: Allowed. Attorney Grant R. Mainland is admitted pro hac vice on behalf of KalshiEX LLC, Defendant-Appellant, for purposes of this appeal only. *Notice |
| 02/17/2026 | | RE#10: Allowed. Attorney Joshua B. Sterling is admitted pro hac vice on behalf of KalshiEX LLC, Defendant-Appellant, for purposes of this appeal only. *Notice |
| 02/17/2026 | | RE#11: Allowed. Attorney Nicole D. Valente is admitted pro hac vice on behalf of KalshiEX LLC, Defendant-Appellant, for purposes of this appeal only. *Notice |

02/17/2026

RE#12: Allowed. Attorney William Havemann is admitted pro hac vice on behalf of KalshiEX LLC, Defendant-Appellant, for purposes of this appeal only. *Notice

02/17/2026

RE#1: After review, the defendant Kalshiex, LLC's Rule 6 motion to stay the 01/20/2026 memorandum of decision and order on plaintiff's motion for a preliminary injunction and defendant's motion to dismiss, and the 02/06/2026 order concerning the preliminary injunction and the defendant's motion for a stay pending appeal is allowed pending further order of this court or a single justice thereof. Without suggesting any view on the merits or the disposition of this litigation, the defendant's appeal is ordered expedited. Accordingly, the defendant is to forthwith, but no later than 02/19/2026, order expedited transcript(s). The Superior Court is requested to assemble the record upon receipt of the transcript(s), and the defendant is to enter its appeal within 2 business days of receipt of notice of assembly of the record. Both parties' briefs shall be filed without enlargement except under truly exigent circumstances. Upon the filing of the appellee's principal brief, the appeal shall be promptly referred to a panel for consideration. (Singh, J.). *Notice/Attest/ Barry-Smith, J.

As of 02/18/2026 3:15pm

MASSACHUSETTS APPEALS COURT

John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, MA 02108
(617) 725-8106

<http://www.mass.gov/courts/appealscourt/>

CIVIL DOCKETING STATEMENT INSTRUCTIONS

Each appellant or cross-appellant, other than a self-represented litigant who is incarcerated, is required to submit the attached docketing statement within fourteen days of issuance of the notice of entry of the appeal.

All attorneys must electronically file the docketing statement using eFileMA.com in non-impounded cases. Attorneys filing in impounded cases and self-represented parties in all cases are encouraged, but not required, to file the docketing statement using eFileMA.com. Filers may request waiver of the eFileMA.com convenience fee when e-filing a docketing statement by using a waiver account. Docketing statements that are not e-filed must be submitted on paper by mail or hand-delivery to the Appeals Court.

All fields and the certificate of service must be completed. If a request for information is inapplicable to your case, please enter "N/A." If inadequate space is provided for the information requested, please provide the additional information in an attachment. Incomplete docketing statements will not be accepted for filing.

The docketing statement and certificate of service may be signed electronically by the person filing the docketing statement. The proper format for an electronic signature is "/s/" followed by the name of the filer, e.g., "/s/ Jason Jones." Upon agreement between the parties, service of the docketing statement by electronic mail will be deemed in compliance with Mass.R.A.P. 13(c).

To the extent that any request for information on the docketing statement is not clear, please refer to the instructions for each section.

Section 1. Please provide the name or names of each appellant or cross-appellant on whose behalf this docketing statement is submitted.

Section 2. If the docketing statement is being submitted by an attorney, please enter the attorney's name and Board of Bar Overseers registration number. If the docketing statement is being submitted by a self-represented litigant, please check the box on the second line and provide the self-represented litigant's name in the space provided.

Section 3. Please provide the lower court department and division, (e.g. Chelsea District Court) on the line at subsection (a). Please provide the lower court docket number(s) on the line at subsection (b). For subsection (c), please list each judge whose order or judgment is the subject of the appeal and the judge's role in the proceedings. If a judge ruled on a motion, but you are not appealing that ruling, the judge need not be listed. In subsection (d), please provide information concerning any statute or court order deeming the case or any part thereof impounded. For the purposes of this form, the term "impounded" includes any portion of the record that is impounded, sealed, deemed confidential, or excluded from public access by statute, court order, rule, or standing order.

Section 4. From the dropdown menu, please select the case nature that most closely describes the case being appealed.

Section 5. Please provide the requested information pertaining to the perfection of the appeal. In subsection (a), please answer whether the appeal is from a final judgment or whether it is an appeal from an interlocutory order. In subsection (b), if it is an appeal from an interlocutory order, please specify the statute or rule that permits an interlocutory appeal, e.g., G.L. c. 231, s. 118, 1st para. or doctrine of present execution. In subsection (c) please provide the date that the judgment or order from which you are appealing was entered on the docket of the lower court. Please note that this date may be different than the date listed on the order or judgment. In subsection (d), please enter the date that the notice of appeal was filed in the lower court. In subsection (e), if the appeal is from a final judgment, please indicate whether any of the listed post-judgment motions were filed and if so, provide the date of service and not the date filed.

Section 6. Please list the appellate issues that you anticipate raising. If the interpretation of a particular statute or regulation is necessary to resolve the appeal, please provide an appropriate citation to the statute or regulation. Failure to list an appellate issue in the docketing statement will not result in waiver of that issue. This is for informational purposes only and is not an appropriate place for argument.

Section 7. Please identify any related appeals. Appeals may be related because they either involve the same parties or raise the same issue(s). For appeals that involve the same parties, please list all past, present, and anticipated appeals. For appeals that raise the same issue(s), please only list pending or anticipated appeals.

**MASSACHUSETTS APPEALS COURT
CIVIL DOCKETING STATEMENT**

Caption used in the lower court Appeals Court Docket Number 2026-P-0244

Plaintiff(s): Commonwealth of Massachusetts

v.

Defendant(s): KalshiEX LLC

1. Party Information

Name of the appellant(s) or cross-appellant(s) on whose behalf this statement is being filed:

KalshiEX LLC

2. Attorney Information

Name Caroline Holliday BBO# 707301

Or, check this box if you are self-represented and provide your name _____

3. Lower Court, Board or Agency Information

a. Court Department Suffolk County Superior Court

b. Lower Court Docket Number(s) 2584CV02525

c. Specify the name and the role of each judge whose orders are at issue on appeal [not applicable for appeals directly from a board or agency]:

Judge, first and last name Christopher Barry-Smith Role

| |
|--------------|
| Heard Motion |
|--------------|

Judge, first and last name _____ Role

| |
|--|
| |
|--|

Judge, first and last name _____ Role

| |
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| |
|--|

d. Was the case or any information in the record designated as impounded in the lower court? (see Section 3) Yes No

In addition to providing the information below, parties filing a brief or record appendix that contains impounded materials must comply with Uniform Rule on Impoundment Procedure Rule 12(c), Supreme Judicial Court Rule 1:15 s. 2(c), and M.R.A.P. 16(d), 16(m), 18(a), and 18(g). If this case or any material therein is impounded, specify which documents are impounded and the authority for impoundment, e.g. court order, statute:

Exhibit 1 and Exhibit 2 to the Declaration of Nicole D. Valente in support of KalshiEX LLC's Motion to Dismiss and in Opposition to the Commonwealth's Emergency Motion for Preliminary Injunction are impounded. Justice Barry-Smith provisionally impounded these materials on November 24, 2025 via handwritten order, and he subsequently permanently impounded these materials on December 9, 2025 via oral ruling.

4. Nature of the Case

Select the most appropriate description, or enter description:

5. Perfection of Appeal

a. Is the appeal from a final judgment, i.e., judgment disposing of all parties and claims? Yes No

b. If no, identify the basis on which the interlocutory order is immediately appealable.

c. Docketing Date of Judgment or Interlocutory Order Appealed

d. Date Notice of Appeal Filed

Please provide information regarding the following post-judgment motions that may affect the timeliness of the notice of the appeal.

| Type of Motion | Check if filed | | Date Served (not date filed) |
|---|---------------------------|-------------------------------------|------------------------------|
| Motion for Judgment (Rule 50(b)) Notwithstanding the Verdict | <input type="radio"/> Yes | <input checked="" type="radio"/> No | |
| Motion to Amend or Make Additional Findings (Rule 52(b)) | <input type="radio"/> Yes | <input checked="" type="radio"/> No | |
| Motion to Alter or Amend Judgment (Rule 59) | <input type="radio"/> Yes | <input checked="" type="radio"/> No | |
| Motion for Relief from Judgment (Rule 60) | <input type="radio"/> Yes | <input checked="" type="radio"/> No | |
| Other (specify) _____ | <input type="radio"/> Yes | <input checked="" type="radio"/> No | |

6. Appellate Issues

In cases other than child welfare appeals, please provide a short statement of the anticipated issues on appeal. If the appellate issue involves the interpretation of a particular statute or regulation, please provide a citation to that statute or regulation. (Note: This statement is for informational purposes only and failure to raise an issue here will not preclude an appellant from raising the issue in its brief.):

Whether the federal Commodity Exchange Act ("CEA") preempts Massachusetts gaming law (G.L. c. 23N) as applied to event contracts offered by designated contract market KalshiEX LLC, where the CEA expressly provides that the federal Commodity Futures Trading Commission has exclusive jurisdiction over trading of such contracts on designated contract markets.

7. Related Appeals

Are there any pending, past, or anticipated future appeals or original appellate proceedings that involve these parties or this case which have been entered in the Appeals Court or Supreme Judicial Court? Yes No

Do you know of any pending or anticipated appeals raising related issues? Yes No

If you answered yes to either question, provide the case name and docket number and describe below the related matter or issue:

Commonwealth of Massachusetts v. KalshiEX LLC, No. 2026-J-0143. KalshiEX LLC moved for a stay of the Superior Court's preliminary injunction pending appeal with a single justice of the Massachusetts Appeals Court. The single justice granted KalshiEX LLC's motion on February 17, 2026.

Respectfully Submitted,

Caroline Holliday

Signature

/s/ Caroline Holliday

Address

Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210

BBO Number

707301

CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on this date of 2/25/2026
I have made service of a copy of the Massachusetts Appeals Court Docketing Statement filed on behalf of

KalshiEX LLC

_____, upon the attorney of record for each party, or if the party has no attorney then I made service directly to the self-represented party, by hand delivery first class mail e-mail to the following person(s) and at the following address(es). Note: Service may be made by e-mail only with the consent of each party or opposing counsel:

Louisa E. Castrucci, BBO # 692208; Joshua Edlin, BBO # 715110; Alda Chan, BBO # 705204; Jared Rinehimer, BBO # 684701; Frances Cohen, BBO # 542811; M. Patrick Moore, BBO # 670323; Gerard J. Cedrone, BBO # 699674
One Ashburton Place, Boston, Massachusetts 02108
617-963-2848 / louisa.castrucci@mass.gov; 617-963-2905 / joshua.edlin@mass.gov; 617-963-2525 / alda.chan@mass.gov
617-963-2594 / jared.rinehimer@mass.gov; 617-963-2006 / frances.cohen@mass.gov; 617-963-7491 / pat.moore@mass.gov; 617-963-2282 / gerard.cedrone@mass.gov

/s/ Caroline Holliday

Signature

Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210

Address

(617) 832-1000

Telephone

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I electronically filed the foregoing document with the Supreme Judicial Court through eFileMA and served a copy of the same by email upon counsel of record as follows:

Kristyn DeFilipp (kbuncedefilipp@foleyhoag.com)
Beth Neitzel (bneitzel@foleyhoag.com)
Jack C. Smith (jcsmith@foleyhoag.com)
Caroline Holliday (cholliday@foleyoag.com)
Grant R. Mainland (gmainland@milbank.com)
Andrew L. Porter (aporter@milbank.com)
Nicole D. Valente (nvalente@milbank.com)
Joshua B. Sterling (jsterling@milbank.com)
William Havemann (whavemann@milbank.com)

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing application complies with the rules pertaining to applications for direct appellate review, including, but not limited to, Mass. R. App. P. 11 and 20. The application has been set in 14-point Century Schoolbook, a proportional typeface, and the argument on the issue contains 1,955 non-excluded words as calculated by the word-count feature of Microsoft Word in Microsoft 365 for Enterprise.

February 27, 2026

/s/ Gerard J. Cedrone
Gerard J. Cedrone (BBO #699674)
Deputy State Solicitor
One Ashburton Place
Boston, MA 02108
(617) 963-2282
gerard.cedrone@mass.gov