COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
No. SJC-13906
Appeals Court Case No. 2026-P-244

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff–Appellee,

v.

KALSHIEX LLC,

Defendant–Appellant.

ON A REVIEW FROM A JUDGMENT
OF THE SUFFOLK SUPERIOR COURT

BRIEF OF PARADIGM OPERATIONS LP AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT

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CORPORATE DISCLOSURE STATEMENT

In accordance with Massachusetts Rule of Civil Procedure 16(a)(2) and Supreme Judicial Court Rule 1:21, *Amicus* discloses that it has no parent corporations and that no publicly held corporations hold 10% or more of its stock. No publicly held corporation not a party to this proceeding has a financial interest in the outcome of this proceeding.

Dated: April 24, 2026

/s/ Patrick Strawbridge
Patrick Strawbridge
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INTEREST OF *AMICUS CURIAE*

Paradigm Operations LP is a frontier technology investment firm that invests and builds in crypto, AI, robotics, and across new frontiers from the earliest stages. Paradigm has an interest in this case because prediction markets are an exciting frontier technology that drive innovation in a field in which Paradigm invests. Recently, Paradigm invested in Kalshi because of its leadership in the prediction market space. Paradigm also has an interest in supporting the broad availability of regulated prediction markets, which are a valuable source of public information and allow market participants (including investors and entrepreneurs) to hedge exposure to specific events that have no easy replacement in existing financial products. As a market participant in this developing field, Paradigm brings a valuable perspective and a wealth of experience that the other parties and regulatory authorities do not offer.

Pursuant to Mass. R. App. P. 17(c)(5), *amicus* declares that (a) no counsel for any party authored this brief in whole or in part, (b) no entity or person, aside from *amicus curiae* and its counsel, made any monetary contribution toward the preparation or submission of this brief, (c) neither *amicus* nor its counsel represents or has represented one of the parties in a similar proceeding, and neither *amicus* nor its counsel was a party or represented a party in a proceeding or transaction at issue in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The birth and growth of this country's financial markets in the 20th century led to corresponding birth and growth of financial market regulations. In some areas, the resulting tangle of conflicting state regulations left Congress no choice but to set uniform, national rules. One such area was the futures market, where Congress established the Grain Futures Act in 1922, even before securities laws were created. Subsequently, Congress in 1974 created the Commodity Futures Trading Commission and gave it "exclusive jurisdiction" over derivatives, which includes a wide swath of predictive financial instruments. 7 U.S.C. §2(a)(1)(A). Over time, those categories expanded to newer financial instruments, including the variety of futures known as "event contracts" that Kalshi offers. *Infra* at 7.

Though derivatives have changed form, states' objections to them have not. Retreading a century-old and long-rejected battle cry, Massachusetts sounds the gambling horn here, mimicking objections that long precede the CFTC: When farmers traded the first futures contracts on Chicago exchanges in the 19th century, the states called that gambling, too. But even before creating the CFTC, Congress quashed those earlier objections with the Commodity Exchange Act of 1936, adopting uniform federal regulations governing then-developing financial instruments like commodity futures

contracts. And as the industry developed more sophisticated contracts, Congress expanded federal jurisdiction. *Infra* at 10, 12.

Since 1974, when Congress passed the CFTC Act establishing the CFTC, the preemptive force of federal rules governing derivatives markets hasn't been subject to reasonable dispute. In the CFTC Act, Congress preempted state regulation of instruments traded on CFTC-designated exchanges. Congress has consistently reiterated since then that the CFTC—not states—has authority over contracts traded on those designated futures exchanges. The Superior Court's contrary policy reasons, still focused largely on gambling, do nothing more than rehash arguments Congress first rejected over a century ago when it concluded that national markets require national rules. As federal statutes make clear, the CFTC has exclusive jurisdiction over futures contracts, full stop. *Infra* at 19, 25, 27.

Kalshi's event contracts are thus subject to the CFTC's "exclusive jurisdiction," not to disparate state-by-state regulation. *Infra* at 29. The event contracts comfortably fit in a number of the CFTC's exclusive jurisdictional buckets as futures, options, swaps, or excluded-commodities contracts. The Superior Court assumed that premise, taking for granted that the event contracts fall under the CFTC's jurisdiction. Add. 82. But the court nevertheless held that the CFTC's "exclusive jurisdiction" didn't preempt state gambling laws. That rationale occludes the text's clear meaning with

decades' old thinking rejected long ago by Congress and recently by courts. The Superior Court's grant of a preliminary injunction to the Commonwealth improperly strips the CFTC of some of its exclusive jurisdiction over commodity futures. This Court should reverse.

ARGUMENT

In 1974, Congress preempted state regulation of financial instruments that fall under the CFTC's jurisdiction. Four years later, it doubled down on the CFTC's exclusive jurisdiction. And in 2010, Congress extended that broad preemption to a type of financial instrument called a swap. Because Kalshi's event contracts are traded on CFTC-approved exchanges, the CFTC's regulatory authority preempts Massachusetts's regulatory authority over those instruments. Text, context, history, as well as the only federal appeals court to consider the question all support that conclusion. *KalshiEx, LLC v. Flaherty*, 2026 WL924004, at *2 (3d Cir. Apr. 6, 2026) ("The Act preempts state laws that directly interfere with swaps traded on DCMs. Kalshi's sports-related event contracts are swaps traded on a CFTC-licensed DCM, so the CFTC has exclusive jurisdiction."); *see also KalshiEx v. Johnson*, 2026 WL 976055 at *2 (D. Ariz. Apr. 10, 2026) (enjoining "enforcement of Arizona's gambling laws … due to the CFTC's exclusive jurisdiction over DCMs" like Kalshi).

I. Congress preempted state regulation of instruments within the CFTC's jurisdiction.

Congress passed the Commodity Futures Trading Commission Act of 1974 to finally resolve a tension between state gambling laws and federal financial regulation that had been brewing for the better part of a century. Manifesting the innovation typical of free markets, investors and business owners had, by the end of the 1800s, developed new financial products to manage risk. But states sought to quash those practices as unlawful gambling and a half-century of contested litigation, territorial disputes, and political squabbling ensued. The CFTC Act overrode the states' objections during the 1930s, bringing order and national uniformity. And buoyed by that success, over time Congress strengthened the CFTC Act's preemptive scope by granting the CFTC exclusive jurisdiction and expanding its authority to new financial instruments. Each of those succeeding steps untangled a morass of state and federal regulation by preempting state laws where they overlap with the CFTC's "exclusive jurisdiction."

A. Over the last century, Congress brought a largely unregulated market under a single federal regulatory regime.

The story of futures-market regulations begins with so-called "bucket shop" laws of the early 20th century. That term originally referred to "abandoned shops" that resold "drained beer kegs thrown out by pubs." David Hochfelder, *"Where the Common People Could Speculate": The Ticker,*

Bucket Shops, and the Origins of Popular Participation in Financial Markets, 1880-1920, 93 J. Am. Hist. 335, 335 (2006). In the late 19th century, investors appropriated the derogatory term to refer to shops that took "bets or wagers … on the rise or fall of the prices of stocks, grain, oil, etc.," without facilitating the "transfer or delivery of the stock or commodities nominally dealt in.'" *Gatewood v. North Carolina*, 203 U.S. 531, 536 (1906). In other words, in an objection that echoes throughout the Commonwealth's action here, "customers simply gamble upon stocks, and never have any intention of purchasing outright." *MacDonald v. Gessler*, 57 A. 361, 362 (Pa. 1904). A Chicago Board of Trade member at the time called the bucket shop "a gambling den, and nothing else." John Hill, Jr., *Gold Brick of Speculation* 20 (1903). (This critique is particularly ironic given that, as noted below, the Chicago Board of Trade would be forced to defend itself against bucket shop allegations in the Supreme Court just two years later). He dedicated his anti-bucket-shop book to "exposing the methods of a class of vampires whose enterprises differ in no way from those of the highwayman or the burglar." *Id.* at xv.

Also as with the present dispute, the practice was popular but controversial. States thus passed laws prohibiting trades that didn't require the purchaser to take physical delivery. North Carolina's 1905 law, for example, "made void all contracts for the sale of articles therein named for

future delivery, wherein … it is not intended that the articles agreed to be sold and delivered shall be actually delivered." *North Carolina v. McGinnis*, 51 S.E. 50, 51 (N.C. 1905). New Jersey passed a similar law in 1923 declaring "[a]ll contracts and agreements" for the sale of "securities" and "commodities" "utterly void and of no effect whatsoever" if they were made without "intending a bona fide purchase or sale or the actual bona fide receipt or delivery." 1923 N.J. Laws 125. "These statutes treated 'bucketing' as a form of gambling and made futures contracts criminally illegal where the parties to the agreement never intended delivery of the underlying commodity but were dealing only for its prospective rise or fall in price." Kevin T. Van Wart, *Preemption and the Commodity Exchange Act*, 58 Chi.-Kent L. Rev. 657, 663 (1982).

But the bucket-shop laws were "ill-suited to determining the validity of commodity futures contracts entered into on organized exchanges." *Id.* at 664. Even at that time, "actual delivery on futures contracts occurred on less than three percent of all such transactions." *Id.* Policymakers and jurists were equally flummoxed at distinguishing the financial-instrument wheat from the gambling chaff. Courts thus "experienced great difficulty in trying to distinguish between valid commodity transactions and those which were simply wagers on the price movement of specified commodities." *Id.* And in the absence of federal legislation, constitutional challenges to those bucket-

shop laws failed. *See Gatewood*, 203 U.S. at 542-43 (rejecting Fourteenth Amendment challenge to a conviction under North Carolina's bucket-shop law).

Justice Holmes, himself a former Chief Justice of this august court, is credited for reversing "the rigid, if not unthinking, application of … bucket-shop statutes" to contracts that divorced trading from physical delivery. Van Wart, *supra*, at 665. In a case challenging the Chicago Board of Trade as a bucket shop, the Supreme Court held that futures contracts serve "a legitimate and useful purpose" by allowing a transaction to "be offset before the time of delivery in case delivery should not be needed or desired." *Bd. of Trade of City of Chi. v. Christie Grain & Stock Co.*, 198 U.S. 236, 249 (1905). The practice allows "collectors and exporters of grain or other products, and manufacturers who make contracts in advance for the sale of their goods, [to] secure themselves against the fluctuations of the market by counter contracts for the purchase or sale." *Id.* The Court distinguished futures contracts traded on the exchange from other bucket-shop contracts that were "merely a speculation entered into for its own sake." *Id.* The result "was to exempt from state bucket-shop laws those transactions executed on exchanges between brokers." Van Wart, *supra*, at 665. But courts continued to wrestle with bucket-shop laws as applied to various futures contracts.

So in 1922, a decade before the federal securities laws were even being drafted, Congress stepped in. Responding to the manipulation of grain prices, Congress enacted the Grain Futures Act. *See* Pub. L. No. 67-331, 42 Stat. 998 (1922). The Act made it a misdemeanor to execute certain grain futures contracts unless performed through exchanges designated as "contract markets" by the Secretary of Agriculture, a precursor to the CFTC's modern designated contract markets. This Act was the first modern financial regulatory law, passed more than a decade before the more famous financial regulatory laws governing securities.

In a case about the Grain Futures Act's preemptive scope, the Supreme Court held that the "Act did not supersede any applicable provisions of the Missouri law making gambling in grain futures illegal." *Dickson v. Uhlmann Grain Co.*, 288 U.S. 188, 198 (1933). That was because the Act set a compliance floor, not a ceiling—Congress established minimum regulatory conditions for grain futures, but it "[did] not purport to validate any dealings." *Id.* "Nor [was] there any basis for the contention that Congress occupied the field in respect to contracts for future delivery; and that necessarily all state legislation in any way dealing with that subject is superseded." *Id.* Contemporary commentators feared that the decision would let states loose against futures traders, and the bucket-shop statutes "would render speculation impossible, hedging illegal, and subject all brokers to criminal

liability." Telford Taylor, *Trading in Commodity Futures—A New Standard of Legality?*, 43 Yale L.J. 63, 101 (1933).

Congress responded to *Uhlmann Grain Co.* by enacting the Commodity Exchange Act. *See* Pub. L. No. 74-675, 49 Stat. 1491 (1936). The Act expanded regulation to the "'transactions and dealings of brokers and of customers'" and activities that might "'affect such trading on the futures exchanges.'" Van Wart, *supra*, at 669. It "contained its own anti-bucketing provision," and violations "would result in the federal government withholding designation of the exchange as a contract market." *Id.* The Act also liberalized investing by prohibiting only "*[e]xcessive* speculation in any commodity under contracts of sale … for future delivery … causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity." §5, 49 Stat. at 1492 (emphasis added).

Still, Congress didn't include an explicit preemption provision. So when the Supreme Court heard another preemption challenge to Illinois regulations, it held that the Commodity Exchange Act didn't supersede state trade laws. *Rice v. Bd. of Trade of Chi.*, 331 U.S. 247 (1947). The Act provided that "[n]othing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections." §5, 49 Stat. at 1494. That provision "preserv[ed] state control in two areas where state and federal law overlap." *Rice*, 331 U.S. at 255. So

absent "any conflict with the federal law," Illinois could enforce its own regulations. *Id.* Largely due to *Rice*, commodity futures were almost entirely self-regulated into the 1970s.

But Congress finally and firmly put its foot down in 1974 when it passed the Commodity Futures Trading Commission Act and empowered the CFTC to regulate the futures trading industry. Pub. L. No. 93-463, 88 Stat. 1389 (1975). The Act enlarged the definition of "commodity" to include not just agricultural products but also "all other goods and articles … and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt." *Id.* §201. This marked the moment where the CFTC's exclusive jurisdiction went from quietly implied to explicitly obvious and signposted.

This time, Congress directly addressed the preemption problems identified in *Uhlmann* and *Rice*. The Act gave the CFTC "exclusive jurisdiction with respect to accounts, agreements … and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market designated" under the Act. *Id.* The Act "wholly and unequivocally eliminated each of the bases the Supreme Court had relied on in *Rice v. Board of Trade* to hold that the CEA did not preempt state regulation of commodities trading." Van Wart, *supra*, at 692-93. Given the history of prior legal fights over preemption, the inclusion of clear

preemptive language cannot seriously be read as anything other than Congress' clear choice to broadly and comprehensively preempt state regulations of commodity futures. To draw a sharper point, this is not a new and open question either; it has been settled law for half a century now that the CFTC has exclusive jurisdiction over all futures markets. The Commonwealth is not trying to spark a debate about the current state of federal-state jurisdictional perimeters but to unearth a long-buried dispute and, in doing so, damage an intricate system of established federal regulation.

B. Congress made preemption of state regulations a central pillar of the 1974 CFTC Act.

Congress meant what it said when it gave the CFTC "exclusive jurisdiction" over the instruments it regulated. 88 Stat. 1389, §201. "[P]reemption was a central issue in the proceedings which culminated in the 1974 amendments to the CEA." Van Wart, *supra*, at 692. From the first committee witness to the final reports to early cases interpreting the CFTC Act, virtually everyone recognized that the Act preempted state regulation of instruments traded on CFTC-approved exchanges.

The Committee on Agriculture kicked off the hearings in 1973. The first witness, Congressman Neal Smith, recommended "that trading in all futures should be under Federal regulation." *Review of Commodity Exchange Act and Discussion of Possible Changes, Hearings Before the H. Comm. on*

Agriculture, 93d Cong. 10-11 (1973) (statement of Rep. Neal Smith). Representative Smith's testimony started a wave of support for federal legislation superseding state regulations. The chairman of the Chicago Board of Trade—one of the major players (and targets) in the industry—placed "particular emphasis" on the provision that "would give the commodity regulatory agency exclusive jurisdiction over futures trading." *Id.* at 128 (statement of Frederick G. Uhlmann). Uniform, exclusive federal regulation "would prevent any possible conflicts over jurisdiction over futures trading." *Id.*

Several witnesses called for stronger federal regulation of commodities. New York commodities exchanges submitted a comment summing up the rationale: Because previous laws were "virtually silent on those questions," the commodities industry had been mired in confusion, conflict, and mounting legal fees. *Id.* at 121 (statement of Reed Clark). "In addition to the unfairness which is inherent in exposing exchanges to this sort of civil liability, it is extremely important that federal policy regarding commodities futures trading be uniform throughout the United States…." *Id.* at 121 (statement of Reed Clark). The message was clear: remove the jurisdictional mist that had ensnared commodities futures regulation for decades.

"On the basis of these hearings," Representative Bob Poage, Chairman of the House Committee on Agriculture, introduced H.R. 11955 to amend the Commodity Exchange Act. Van Wart, *supra*, at 675. When introducing the bill, Representative Poage explained that "many State laws are exercising jurisdiction over these same markets to fill what had become a vacuum of regulation." 119 Cong. Rec. H41333 (1973). The resulting "[v]aried and often conflicting regulation," he feared, "could become a burden on commerce, if it is not already." *Id.* But H.R. 11955 did little to address the states' concurrent jurisdiction over derivatives. "The only provision … directly related to jurisdictional issues was one which preserved the jurisdiction of the Securities Exchange Commission." Van Wart, *supra*, at 676. Yet that omission was not overlooked for long. The Continental Grain Company sent a letter warning that "[f]ailure to clarify … the exclusive and preemptive jurisdiction of the CFTC over regulation of all aspects of commodities and commodity trading will result in major conflicts of policy and regulation between the CFTC and the S.E.C. and between Federal and State regulatory bodies." *Commodity Futures Trading Commission Act of 1974: Hearings Before the H. Comm. on Agriculture*, 93d Cong. 322 (1974).

The committee responded by strengthening the preemption provisions. "Recognition of the need for exclusive federal jurisdiction pervaded" the committee report. Van Wart, *supra*, at 677-78. The report

concluded that "[i]t is abundantly clear that all futures trading must be brought under a single regulatory umbrella." H.R. Rep. No. 93-975, at 41-42 (1974). The new version thus "provide[d] for the exclusive jurisdiction of the CFTC over all futures transactions and all cash transactions related thereto which are executed on not only domestic boards of trade but also 'on any other board of trade, exchange, or market.'" *Id.* at 7-8. The committee spent a good deal of time writing and rewriting that "exclusive jurisdiction" provision, mostly to clarify the relationship between the jurisdiction of the CFTC and of the Securities and Exchange Commission. Philip F. Johnson, *The Commodity Futures Trading Commission Act: Preemption as Public Policy*, 29 Vand. L. Rev. 1, 11-13 (1976). In the end, the express purpose was to "put all exchanges and all persons in the industry under the same set of rules and regulations for the protection of all concerned." H.R. Rep. No. 93-975, *supra*, at 76. It was thus "apparent that the committee intended that the proposed amendments to the CEA would serve as a check on renewed state regulatory efforts." Van Wart, *supra*, at 678.

The Senate hearings were even clearer about the need to rein in state regulations. One Senator asked a witness whether "[f]ederal legislation really ought to preempt State legislation so that we do not have the 50 different States legislating in this area." *Commodity Futures Trading Commission Act: Hearings Before the S. Comm. on Agriculture and Forestry*, 93d

Cong. 396 (1974) (statement of Sen. Dick Clark). The witness, a Minnesota commodities exchange executive, responded, "Very definitely." *Id.* at 384-85, 396. He observed that "State legislation would make an impossible situation for exchanges." *Id.* at 396. Many witnesses highlighted the need for "'federal legislation'" that would "'preempt the states in making a determination that the various commodity contracts are, in fact, classified, regulated and traded as commodities and not as securities.'" Van Wart, *supra*, at 683 (collecting cites from *1974 S. Comm. Hearings*, *supra*). Neglecting to give the CFTC exclusive jurisdiction would result in "'confusion'" and a regulatory "'nightmare'" for exchanges. *Id.* at 682-83.

The Senate committee report confirmed that the Act would "supersede" state laws on commodity futures. S. Rep. No. 93-1131, at 23 (1974). In fact, the Senate added "clarifying amendments" confirming that "the Commission's jurisdiction over futures contract markets or other exchanges is exclusive." *Id.* at 6, 23. And "the Commission's jurisdiction, where applicable, supersedes State as well as Federal agencies," including the SEC. *Id.*

The conference report was even clearer about what this meant for state laws: "Under the exclusive grant of jurisdiction to the Commission, the authority in the Commodity Exchange Act (and the regulations issued by the Commission) would preempt the field insofar as futures regulation is

concerned." S. Rep. No. 93-1194, at 35 (1974). So "if any substantive State law regulating futures trading was contrary to or inconsistent with Federal law, the Federal law would govern." *Id.* at 35-36. The conference committee thus did "not contemplate that there will be a need for any supplementary regulation by the States." *Id.* at 36.

When it came time to reconcile the bills, "the Senate version prevailed in the Conference," with one exception. Johnson, *supra*, at 17. "The one exception was that the House's language bringing all domestic and foreign commodity markets under the CFTC's exclusive jurisdiction was accepted in lieu of the Senate's narrower provision limiting that exclusive authority to 'contract markets.'" *Id.* Most of the concern was over whether the CFTC Act would divest the SEC of jurisdiction over traditional stocks—it was accepted as a given that the Act divested states of regulatory authority over derivatives. *Id.* at 18-21.

In fact, Congress was generally of one mind about superseding state authority. The Senate rejected an amendment trying to introduce a presumption that the law shouldn't "be construed to impair any State law applicable to any transaction enumerated or described in such sections." 93 Cong. Rec. S16133 (1974). In fact, "the strongest statement *in favor* of a state regulatory role was not submitted until after the formal Senate hearings had concluded." Van Wart, *supra*, at 685. That sole witness advocated "the need

and urgency to decentralize the structure of the commodity futures industry." *1974 S. Comm. Hearings*, *supra*, at 814. But the witness missed the "major feature of the proposed amendments," which was to bring "all commodities under federal regulatory authority," calling doubt on the "validity" of his "remarks." Van Wart, *supra*, at 686.

With this unmistakable design of federal supremacy, Congress passed the CFTC Act by a 281–43 vote in the House and by voice vote in the Senate. On October 23, 1974, President Ford signed it into law, noting that he "fully support[ed]" the "new regulatory structure to apply to all commodity futures trading." *CFTC Act of 1974: Statement by the President on Signing the Bill Into Law*, 10 Wkly. Comp. of Pres. Docs. (No. 44), at 1366 (1974).

C. The 1978 CEA amendments reaffirmed the CFTC's exclusive jurisdiction over futures.

It wasn't long before Congress took up the CFTC's exclusive jurisdiction again. Just four years later, the House Subcommittee on Conservation and Credit held hearings on additional amendments to the Commodity Exchange Act. "Battle lines over the issue of the CFTC's exclusive jurisdiction began to form quite early in these hearings." Van Wart, *supra*, at 699. The CFTC Commissioner explained that "[t]he idea behind the exclusive jurisdiction provisions of the Commission was to simplify and centralize regulation of the commodity market." *Extend Commodity Exchange*

Act: Hearings on H.R. 10285 Before the Subcomm. on Conservation & Credit of the H. Comm. on Agriculture, 95th Cong. 80 (1978) (statement of John Rainbolt).

Even critics of the Act demonstrated their awareness that Congress had established preemption over state law. A Texas securities commissioner criticized the "grant of exclusive jurisdiction to the CFTC," which he claimed had "dismantled an effective regulatory system within the states that was adequately policing the commodity option problem." *Id.* at 364. The Minnesota Secretary of State urged Congress to "abolish the exclusive jurisdiction of the CFTC and the consequent preemption of state action against commodity-related fraud." *Id.* at 379. But he was mainly concerned with state efforts "to help protect investors from commodities frauds." *Id.* at 380. He claimed that "[t]he simple abolition of the CFTC's exclusive jurisdiction would immediately bring fifty-one more experienced regulatory agencies into the field and vastly expand the available funding and manpower." *Id.* Even those recommendations demonstrated "virtual unanimity among participants in the [House and] Senate hearings that the 1974 amendments had preempted a state regulatory role." Van Wart, *supra* at 712.

The Senate committee report concluded that clearer, stronger regulation was necessary. The report observed that the 1974 Act "reflects the congressional awareness that futures markets would not remain static." S.

Rep. No. 95-850, at 22 (1978). As the Dodd-Frank Act would confirm nearly four decades later, *infra* at 20, new technologies and financial instruments were reasons to give the CFTC more leeway, not clamp down on its jurisdiction. As for the states' authority, the committee clarified that "it will remain possible, as it has been in the past, for an authorized State official to proceed in State court on the basis of an alleged violation of any *general* civil or criminal antifraud statute." *Id.* at 25. But "[t]he States would not, in these actions, be involved in enforcement of their local laws" regulating futures. *Id.* "As to the question of state jurisdiction," both chambers thus decided "in favor of the CFTC." Van Wart, *supra*, at 718.

Even today, Congress understands the significant political consequences that accompany preempting the states on policymaking and regulation. Preempting state regulatory power is a major step. For the CFTC Act's statutory text to so clearly preempt "any state or local law" on the subject of commodities futures regulation confirms that Congress intended to establish strong federal preemption.

II. The Dodd-Frank Act extended the CFTC Act's preemptive reach to swaps.

In the 1980s, swaps gained traction as a popular type of derivative. Michael Greenberger, *Overwhelming a Financial Regulatory Black Hole with Legislative Sunlight*, 6 J. Bus. & Tech. L. 127, 131-32 (2011). The CFTC first defined "swaps" through rulemaking: "an agreement between two parties

to exchange a series of cash flows measured by different interest rates, exchange rates, or prices with payments calculated by reference to a principal base (notional amount)." *Statement of Policy Concerning Swap Transactions*, 54 Fed. Reg. 30,694 (July 21, 1989). Over time, the industry developed more complex variants that became increasingly popular. *See* Greenberger, *supra*, at 136-43.

After the 2008 financial crisis, Congress stepped in again. The Dodd-Frank Wall Street Reform and Consumer Protection Act "transform[ed] the regulation of OTC derivatives." *Id.* at 152. Dodd-Frank defined a "swap," "swap dealer," and other key terms. And it imposed a variety of restrictions, "generally requiring that swaps be subject to clearing and exchange-like trading." *Id.* "The basic rule of the Dodd-Frank Act is that swaps must be cleared and exchange traded." *Id.* at 156.

Once again, Congress "revisited the question of state law preemption." Barry Taylor-Brill, *Cracking the Preemption Code: The New Model for OTC Derivatives*, 13 Va. L. & Bus. Rev. 1, 1 (2019). It faced a familiar choice—whether to "maintain or repeal" the "protections against gaming and bucket shop laws for qualifying contracts." *Id.* And once again, "[i]nstead of backing away from preemption, Congress embraced it." *Id.*

Congress couldn't have been clearer about removing state regulatory authority over swaps. "The Commission shall have exclusive jurisdiction"

over transactions "involving swaps or contracts of sale of a commodity for future delivery … traded or executed on a [designated] contract market." 7 U.S.C. §2(a)(1)(A). The law remains the same today. This provision grafted swaps into the federal preemption framework, putting swaps "on the same exclusive jurisdictional footing as exchange-traded commodity futures." Taylor-Brill, *supra*, at 3. The CFTC thus "received an explicit congressional mandate to carry out regulation of the swap markets under federal law free from potential state interference, potentially including a patchwork of conflicting laws." *Id.* at 13. Congress never suggested that the CFTC's jurisdiction over futures and swaps was anything other than total. If anything, in the wake of the 2008 financial crisis where unregulated swaps worsened the crisis, the animating force behind Congress was ensuring that there was always a federal regulator with unquestioned authority over futures and swaps. That impetus is why Congress again made clear that the CFTC is the final authority on futures and swaps regulations and not merely the first among a large set of equals.

III. The Superior Court erred by crediting policy arguments instead of the text and history of commodities regulations.

Because Kalshi is a CFTC-designated exchange, its sports event-contract offerings fall under the CFTC's "exclusive jurisdiction." 7 U.S.C. §2(a)(1)(A). That's the necessary result of the 20th century's federal regulatory evolution traced above. From the U.S. Supreme Court's

exempting certain exchanges from state bucket-shop laws, *Christie Grain & Stock*, 198 U.S. at 249; to Congress's exempting designated exchanges from grain futures regulations, *1922 Act*, 42 Stat. 998; to Congress's expanding federal jurisdiction over designated exchanges, *1936 Act*, 49 Stat. 1491; to Congress's creating the CFTC and giving it "exclusive jurisdiction" over designated exchanges, H.R. Rep. No. 93-975, at 7-8, the conclusion is clear: if it's traded on a CFTC exchange, it's exempt from state regulation.

The Superior Court "assume[d] without deciding that Kalshi's" sports-event contracts are in fact "swaps." Add. 82. But this Court needn't assume anything: the CFTC itself said that those event contracts are swaps. *See* CFTC Release No. 8478-22, *CFTC Orders Event-Based Binary Options Markets Operator to Pay $1.4 Million Penalty* (Jan. 2, 2022), perma.cc/G9E8-ABYW. Correctly so. The CFTC's conclusion tracks statutory text. Congress defined "swap" broadly—a conclusion self-evident from Congress's choice to provide six definitions of "swap" to cover a wide variety of financial arrangements. 7 U.S.C. §1a(47)(A)(i)-(vi). At a minimum, Kalshi's sports-event contracts concern "an event or contingency associated with a potential financial, economic, or commercial consequence" because the occurrence and outcome of those sporting events have significant (and at least "potential") economic effects. *Id.* §1a(47)(A)(ii).

Despite assuming that Kalshi's contracts are CFTC-regulated "swaps," the Superior Court nevertheless held that those contracts are subject to *additional* regulation by "state sports wagering laws." Add. 84. The Superior Court's reasons for this conclusion demonstrate that it misunderstood the text and history of commodities regulations and substituted its own policy preferences for Congress's "exclusive" regime.

First, the court said that a "lack of preemption" is supported by the "CEA as a whole." Add. 83. It pointed to 7 U.S.C. §7a-2(c), which allows "the Commission" to delist event contracts that "involve … activity that is unlawful under any Federal or State law." The court reasoned that the provision "evidences an intent to preempt *some* state law," but not "state gaming laws." Add. 82. The opposite is true. Congress gave "the Commission" exclusive authority to determine whether an event contract violates "State law." 7 U.S.C. §7a-2(c). If the Commission concludes that a contract is valid, states can't second-guess that judgment. Otherwise, there would be no point in Congress giving "the Commission" the authority to determine how state law applies to exchange-traded contracts. The state of Massachusetts does not have a veto on the choices of a federal regulator; to do otherwise would be to turn federalism on its head and endanger our entire system of federal regulations writ large.

At a minimum, it makes no sense to infer (as the Superior Court did) more expansive *state* power from a provision granting power to *the Commission*. The CEA has a "limiting principle." *Flaherty*, 2026 WL 924004, at *4. It "shall [not] supersede or preempt … the application of any Federal or State statute … to any transaction … that is *not conducted on or subject to the rules of a registered* entity." 7 U.S.C. §16(e)(1)(B)(i) (emphasis added). But here, "registered entities" include DCMs like Kalshi, "so that limiting principle does not apply." *Flaherty*, 2026 WL 924004.[1]

The CFTC itself recognizes its exclusive regulatory role. The CFTC recently requested public comment on a proposed rulemaking regarding federal regulation of event contracts. *Prediction Markets*, 91 Fed. Reg. 12,516 (proposed Mar. 16, 2026). This request followed on the heels of the CFTC's guidance to registered entities that offer sports-event contracts, CFTC Ltr. No. 26-08, 2026 WL 734345 (Mar. 12, 2026), which recognized that "an event contract that is settled based on the outcome of a sporting event" falls squarely within the CEA's statutory scope because it "is an agreement providing for a payment dependent on a future occurrence." *See also* Amicus

[1] *See also Johnson*, 2026 WL 976055, at *1 (D. Ariz. Apr. 10, 2026) ("Event contracts, which are based on the occurrence or nonoccurrence of a specified future event, are associated with financial, economic, or commercial consequences. This finding is not boundless. It is constrained by a limiting principle that recognizes only those downstream financial consequences that are direct and proximate to the underlying event, as reflected by the examples provided by the CFTC on the record.").

Br. of CFTC, ECF 38.2, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 25-7187 (9th Cir. Feb. 17, 2026) ("CFTC Amicus Br."). And, in fact, the CFTC has now filed suit against three states that are engaged in misguided enforcement actions akin to that pursued by the Commonwealth here, securing an injunction in the only one of those cases to be heard by a federal judge to date. *See Johnson*, 2026 WL 976055 at *2; *see also CFTC v. Illinois*, No. 26-cv-3659, ECF 1 (N.D. Ill. Apr. 2, 2026); *CFTC v. Connecticut*, No. 26-cv-498, ECF 1 (D. Conn. Apr. 2, 2026).

Second, the Superior Court concluded from the CEA's express preemption clause that "the statute does not … provide that the CEA preempts state gaming laws of general application, *or state sports wagering laws*." Add. 84. In other words, "[t]hat 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." *Id.* But the immediately preceding code section makes clear that the Act does not "supersede or preempt … the application of any Federal or State statute … to any transaction … that is *not conducted on or subject to the rules of a registered entity*." 7 U.S.C. §16(e)(1)(B)(i) (emphasis added). What naturally follows from this limitation is that the CEA "*does* preempt application of state law to transactions that *are* conducted on DCMs." Kalshi Br. at 62; *see also Flaherty*, 2026 WL 924004 at *4.

Even setting aside the express preemption clause, "Congress's longtime regulation of futures trading dating back to the twentieth century" makes clear that by granting the CFTC "exclusive jurisdiction" over swaps, it meant to preempt "state laws that directly interfere with swaps traded on DCMs." *Flaherty*, 2026 WL 924004 at *4; *see also Philip Morris Inc. v. Harshbarger*, 122 F.3d 58 (1st Cir. 1997) (an express preemption provisions does not "foreclose an implied preemption analysis").

Third, the court tried to support its conclusion by citing the "traditional balance between state and federal regulation of gaming." Add. 84. States no doubt have interests in exercising their police powers, but a "gambling exception" to preemption cannot be reconciled with Congress's unmistakable choice to preempt those powers as they apply to futures contracts under the Commodity Exchange Act. Tipping the scales in the states' favor because of the *type of state law* at issue creates a new presumption with no precedential support.

Besides, the Superior Court misidentifies the scope of what is preempted, *cf. Flaherty*, 2026 WL 924004, at *3 ("Because Kalshi's sports-related event contracts are swaps under the Act," the proper scope of preemption is "the regulation of trading on a DCM … rather than…gambling"), and ignores the careful balance that Congress struck. "[T]he CEA's savings clause preserves the jurisdiction of state regulators to

regulate off-DCM transactions, which would include over-the-counter derivative transactions, insurance products, and sports bets offered by sportsbooks." Kalshi Br. at 64. "Far from upending state gambling regulations, Congress left them largely intact—just not with respect to trading on DCMs." *Id.* Only that reading gives effect to the CEA's grant of "exclusive jurisdiction" to the CFTC to regulate on-DCM transactions.

And the Superior Court thought it unlikely Congress intended such a "sea change" in the "regulatory landscape of gambling regulation," since Congress passed the CEA and its amendments "when federal law prohibited nearly all state-level regulated sports betting." Add. 84-85. But the court cited not a single commission report, speech, debate, or bit of other historical evidence to support its inference about Congress's intent. *See id.* (citing to *KalshiEx LLC v. Martin*, 793 F. Supp. 3d 667, 683 (D. Md. Aug. 1, 2025), referencing only two isolated quotes from legislators). At bottom, then, the Superior Court's conclusion treating CFTC-regulated instruments as illegal gambling repeats state policymakers' longstanding efforts to "declare[] futures contract[s] as illegal gambling contracts." 1978 H. Subcomm. Hearings, at 80; *see, e.g., Irwin v. Williar*, 110 U.S. 499, 508-09 (1884) (describing futures contracts as "nothing more than a wager"); *see also Cothran v. Ellis*, 16 N.E. 646, 647 (Ill. 1888) (describing futures as "gambling in grain"); William W. Mansfield, A Digest of the Statutes of Arkansas §1848

(U.M. Rose ed., 1884) ("The buying or selling or otherwise dealing in what is known as futures … with a view to profit, is hereby declared to be gambling"). In short, decades of history refute the Superior Court's premise by confirming that Congress regulated futures contracts specifically to override state gambling laws. *See supra* Sections I, II.

More evidence that the Superior Court erred comes from Congress's choice, in 2006, to exempt transactions conducted on a "registered entity … under the Commodity Exchange Act," 31 U.S.C. §5362(1)(E), from the definition of "unlawful internet gambling" in the Unlawful Internet Gambling Enforcement Act. *See generally* Amicus Br. of Paradigm Operations LP, *Blue Lake Rancheria v. Kalshi, Inc.*, No. 25-7504 (9th Cir. Mar. 16, 2026). That act generally prohibits using the internet to transmit wagers between states "where such bet or wager is unlawful." 31 U.S.C. §5362(10)(A). But it exempts from its otherwise broad definition of "bet or wager" exactly the kinds of transactions that occur on Kalshi's platform. This exclusion confirms "that Congress recognized that sports bets bear more than a passing resemblance to financial products that are regulated by the CFTC … and sought to ensure the preeminence of the CFTC regulatory scheme for derivatives over other federal and state regulation." Dave Aron & Matt Jones, *States' Big Gamble on Sports Betting*, 12 UNLV Gaming L.J. 53,

57 (2021). And it confirms Congress's ongoing intent that states cannot regulate transactions subject to the CEA as "gambling."

Congress has known "that futures markets would not remain static." S. Rep. No. 95-850, at 22. That's why it adopted flexible provisions that "sought to foster a climate in which the economic benefits of futures trading could be extended to other areas where such trading would be of value." *Id.* All this comports with Justice Holmes's observation more than a century ago: "People will endeavor to forecast the future, and to make agreements according to their prophecy. Speculation of this kind by competent men is the self-adjustment of society to the probable. Its value [is] well known as a means of avoiding or mitigating catastrophes, equalizing prices, and providing for periods of want." *Christie Grain & Stock*, 198 U.S. at 247. Prediction markets are a new development in futures markets, and they should and must be regulated by our federal futures regulator.

In short, states don't have to like what the CFTC allows. But they can't override the CFTC's choices and directly regulate the markets under its jurisdiction. Allowing a state to overrule federal regulators and claim jurisdiction for themselves is a path to a broader destruction of our entire system of federal regulation, and not just on financial matters. This Court should refrain from venturing down such a dangerous and ultimately destructive path.

CONCLUSION

For these reasons, the Court should reverse.

Respectfully submitted,

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RULE 16(K) CERTIFICATION

The undersigned hereby certifies that this brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Mass. R.A.P. 17 (brief of an amicus curiae) and Mass. R.A.P. 20 (form of briefs, appendices, and other documents). For purposes of the length limitation of Rule 20, this brief contains 6,791 non-excluded words and uses Palatino 14-point font in Microsoft Word.

Dated: April 24, 2026

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CERTIFICATE OF SERVICE

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