IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KALSHI EX LLC,

Plaintiff,

v.

JOHN A. MARTIN, et al.,

Defendants.

Case No. 25-cv-1283-ABA

BRIEF OF INDIAN GAMING ASSOCIATION, NATIONAL CONGRESS OF AMERICAN INDIANS, CALIFORNIA NATIONS INDIAN GAMING ASSOCIATION, ARIZONA INDIAN GAMING ASSOCIATION, OKLAHOMA INDIAN GAMING ASSOCIATION, UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND, TRIBAL ALLIANCE OF SOVEREIGN INDIAN NATIONS, AND 27 FEDERALLY RECOGNIZED INDIAN TRIBES AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS

Indian tribes are sovereign nations with primary jurisdiction over their lands and the activities occurring on their lands. Both the United States Supreme Court and Congress have recognized tribes' inherent and exclusive sovereign right to conduct and regulate gaming on their Indian lands. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987); 25 U.S.C. § 2702. The Indian Gaming Regulatory Act ("IGRA") was enacted to provide a comprehensive regulatory framework for tribal governmental gaming intended to balance federal, tribal, and state interests. *Amador County v. Salazar*, 640 F3d 373, 376 (D.C. Cir. 2011); *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1031 (9th Cir. 2022). This delicate balance of federal, tribal, and state interests has allowed tribes to generate substantial gaming revenue, which goes directly to advance tribal self-sufficiency and fund important tribal government services that benefit tribal citizens. Indeed, tribal gaming "is not only 'a source of

substantial revenue' for tribes, but the lifeblood on 'which many tribes ha[ve] come to rely.'" *Chicken Ranch*, 42 F.4th at 1032 (quoting *In re Indian Gaming Related Cases*, 331 F.3d 1094, 1099–100 (9th Cir. 2003) (alteration in original)).

KalshiEX LLC's ("Kalshi") unlawful and unfair entrance into the gaming market has adversely impacted tribal gaming revenue and the benefit of tribes' bargained-for compacts. Additionally, by offering its so-called sports event contracts under the guise of commodity trading pursuant to the Commodity Exchange Act ("CEA"), Kalshi impedes tribes' inherent sovereign right to regulate gaming activity on Indian lands. Contrary to Kalshi's arguments: (1) the CEA does not govern its sports event contracts; (2) such contracts are expressly prohibited by the CEA and Commodity Futures Trading Commission's ("CFTC") own regulations; and (3) federal, state, and tribal gaming laws apply to the contracts (including IGRA).

Because Kalshi has failed to establish a likelihood of success on the merits of its claims, this Court should deny Kalshi's motion for preliminary injunction.

I. IGRA Governs Kalshi's Sports Betting Conduct on Indian Lands

A. Kalshi's sports event contracts constitute "Class III Gaming" under IGRA

Congress enacted IGRA in 1988 in the wake of *Cabazon* to protect the sovereign authority of tribes to regulate gaming activity on their own lands and to provide states the ability to coordinate with tribes in the regulation of that gaming. IGRA advances the longstanding national policy of promoting and sustaining tribal self-sufficiency. *See* 25 U.S.C. § 2701(4). In this regard, IGRA has been an incredible success.[1] Tribal gaming revenue supports thousands of

[1] *See* FY 2023 Gross Gaming Revenue Report, Nat'l Indian Gaming Comm'n 4–5 (July 2024), available at https://www.nigc.gov/images/uploads/GGR23_Final.pdf.

jobs in hundreds of communities and provides critical funding to state and local governments through revenue-sharing agreements, tax revenue generation, and economic stimulus.

IGRA establishes a three-tier regulatory structure for Class III gaming on Indian lands, providing that such gaming is only lawful if it is: (1) authorized by tribal ordinance or resolution; (2) located in a state that permits such gaming; and (3) conducted in accordance with a tribal-state gaming compact. 25 U.S.C. § 2710(d)(1). This regulatory regime occupies the entire field of gaming on Indian lands. *See Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians*, 63 F.3d 1030, 1033 (11th Cir. 1995) (IGRA was "intended to expressly preempt the field in the governance of gaming activities on Indian lands" (quoting S. Rep. No. 100-446, at 6 (Aug. 3, 1988))); *Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 547 (8th Cir. 1996).

IGRA's implementing regulations define "Class III Gaming" to expressly include sports betting. 25 C.F.R. § 502.4(c). Notably, the regulations state that sports betting constitutes class III gaming regardless of whether the wagering is house banked. *Id.* In other words, sports betting constitutes a class III gaming regardless of whether the wager is made against the house.

While the term "sports betting" is not defined within IGRA or its implementing regulations, it is generally understood to mean:

> [T]he staking or risking by any person of something of value upon the *outcome* of . . . a sporting event . . . upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.

31 U.S.C. § 5362(1)(A) (defining "bet or wager" under the Unlawful Internet Gambling Enforcement Act ("UIGEA")) (emphasis added). This is precisely what Kalshi is offering: contracts that stake or risk something of value (money) upon the outcome of a sporting event based on the understanding that the person will receive something of value (money) based on that outcome. Kalshi has expressly and repeatedly referred to its own sports event contracts as

"bets" or "sports betting,"[2] Kalshi's sports event contracts therefore clearly constitute sports betting and are thus Class III gaming.[3]

Kalshi's platform allows users as young as 18 years-old to bet on sports on the lands of hundreds of tribes across the United States. But Kalshi has not obtained a license to offer these bets pursuant to any tribal ordinance or resolution; nor has Kalshi been authorized to conduct its sports betting pursuant to any tribal-state compact. Thus, each bet Kalshi offers and facilitates on Indian lands is a violation of IGRA. These violations are highly impactful—they undermine tribal sovereignty and encroach on tribal gaming revenue and critical government funding.

B. The CEA does not preempt IGRA

Kalshi's argument—that the CEA governs and the CFTC has exclusive jurisdiction over Kalshi's sports event contracts—presumes that the CEA preempts IGRA in its entirety. In fact, Kalshi has explicitly made such an argument here, stating: "[E]ven if [IGRA's definition of 'gaming' included sports event contracts], the CEA's exclusive jurisdiction provision would displace any attempt by tribes to regulate those contracts." ECF No. 29 at 7. While the issue is more accurately one concerning a conflict of law, the CEA neither preempts nor conflicts with IGRA, and IGRA therefore governs Kalshi's sports event contracts on Indian lands.

Congress has been regulating commodity futures for more than a century, historically in the context of agricultural commodities. *See Merrill Lynch v. Curran*, 456 U.S. 353, 357–63 (1982). Following the 2008 financial crisis, Congress amended the CEA, in part, to include the "Special Rule" concerning event contracts. 7 U.S.C. § 7a-2(c)(5)(C). The Special Rule

[2] *See* Dustin Gouker, *Ten Times Kalshi Said People Could Bet On Things*, Event Horizon (Apr. 3, 2025), available at https://nexteventhorizon.substack.com/p/ten-times-kalshi-said-people-could.

[3] Since first offering betting on the Super Bowl in February of 2025, Kalshi has vastly expanded its sports betting operation to virtually every sports contest—including betting, not just on single game outcomes, but also on specific tournament statistics. Prop bets and parlays are weeks, if not days, away.

authorizes the CFTC to prohibit event contracts that are contrary to the public interest, including certain enumerated categories identified by Congress. These enumerated categories expressly include gaming or activity that is unlawful under federal or state law. *Id.*

Shortly after the Special Rule's enactment, the CFTC adopted its implementing regulations. Those regulations explicitly prohibit the listing and trading of any event contract that "involves, relates to, or references . . . gaming, or an activity that is unlawful under any State or Federal law." 17 C.F.R. § 40.11(a)(1). In promulgating § 40.11(a)(1), the CFTC therefore made the categorical determination that event contracts involving these specific activities are contrary to the public interest.[4] Indeed, when announcing its rule, the CFTC clarified:

> [I]ts prohibition of . . . "gaming" contracts is consistent with Congress's intent [for the CEA's Special Rule] to "prevent gambling through the futures markets" and to "protect the public interest from gaming and other events contracts."

Adopting Release, 76 Fed. Reg. 44,786 (July 27, 2011) (citations omitted). Nothing in any of this language preempts, amends, diminishes, or even conflicts with IGRA. If anything, this statutory and regulatory language reinforces the longstanding view that IGRA's comprehensive structure dominates the regulation of gaming on Indian lands.

Kalshi's sports betting operation rests entirely on its assertion that it alone has the preemptive authority to self-certify that its gaming activities do not violate the CEA, CFTC regulations, IGRA, or other federal statutes governing gaming such as the UIGEA and the Wire Act.[5] This is incorrect. It is inconceivable that Congress would have granted private entities (like Kalshi) the unlimited authority to offer mobile sports betting throughout the United

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[4] *See* Statement of Commissioner Caroline D. Pham (Aug. 26, 2022), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement082622 ("In promulgating [§] 40.11(a)(1) pursuant to Section [7a-2](c)(5)(C), the [CFTC] determined that an event contract that 'involves, relates to, or references' . . . gaming, or illegal activity is prohibited because it is contrary to the public interest.").

[5] 31 U.S.C. § 5361 *et seq.*; 18 U.S.C. § 1084.

States—including on Indian lands—without explicitly stating as much, especially in the face of existing, comprehensive statutes and regulations governing gaming on Indian lands. It is axiomatic that "Congress . . . does not alter the 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'ns*, 531 U.S. 457, 468 (2001).

Ignoring this history and the longstanding principles of federal statutory interpretation, Kalshi now presents an alternate reality—one in which a statutory scheme whose scope is limited to addressing the allocation of risk, price discovery, and dissemination of commodity pricing information, *see* 7 U.S.C. § 5(a)–(b), exclusively governs nationwide sports betting, including sports betting that occurs on Indian lands, thereby preempting IGRA in its entirety. Clearly, this cannot be the case. The CEA is only preemptive with respect to **lawful** transactions that fall under the CFTC's exclusive jurisdiction. *See* 7 U.S.C. § 2(a)(1)(A). Kalshi's sports event contracts are neither lawful transactions nor transactions that fall under the CFTC's exclusive jurisdiction.

1. Kalshi's sports event contracts are not lawful transactions under the CEA

Kalshi's sports event contracts fall within the class of contracts that the CFTC categorically prohibited as contrary to the public interest. 17 C.F.R. § 40.11(a)(1). Thus, Kalshi is not authorized to offer such contracts under the CEA, and such contracts fall beyond the scope of the CFTC's jurisdiction.

The CFTC may determine that event contracts are "contrary to the public interest" if they involve "activity that is unlawful under any Federal or State law" and "gaming." 7 U.S.C. § 7a-2(c)(5)(C)(i). Where the CFTC makes such a determination, the CEA prohibits those contracts. *Id.* § 7a-2(c)(5)(C)(ii). Here, the CFTC expressly made such a determination when it

promulgated 17 C.F.R. § 40.11(a)(1), wherein it categorically prohibited all event contracts that "involve[], relate[] to, or reference[] . . . gaming, or an activity that is unlawful under any State or Federal law."

Kalshi contends that the CFTC's prohibitions in § 40.11(a)(1) entail a two-step process, whereby: (1) the event contract must involve one of the enumerated, prohibited activities under § 40.11(a)(1); and (2) the CFTC must conduct a separate 90-day public interest review under § 40.11(c) and conclude such an event contract is contrary to the public interest. *See* ECF No. 29 at 11–12. Not so.

Contrary to what Kalshi suggests, § 40.11(a)(1) is a categorical prohibition on certain event contracts; there is no two-step process because the CFTC has already made the determination that such event contracts are contrary to the public interest. This determination negates the need for a 90-day review of such event contracts. Rather, § 40.11(c) is meant to allow the CFTC discretion to review event contracts that "*may* involve" one of the prohibited categories under § 40.11(a)(1); it in no way requires a 90-day review for event contracts that *do* involve such prohibited categories, like Kalshi's sports event contracts.

In promulgating § 40.11(a)(1), the CFTC acted consistently with Congress's intent that the Special Rule prevent event contracts used "to enable gambling"—particularly including sports betting. In fact, in a colloquy on the Senate floor, one of the principal architects of the Special Rule explained:

> [It] is our intent . . . [that the Special Rule] prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed "event contracts." It would be quite easy to construct an "event contract" around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling.

Statement of Sen. Lincoln, 156 Cong. Rec. S5906–7 (2010).

Kalshi's sports event contracts involve both gaming and activity that is unlawful under state and federal law. As such, they expressly violate 17 C.F.R. § 40.11(a)(1) and therefore fall outside the scope of the CFTC's exclusive jurisdiction.

First, because Kalshi's sports event contracts constitute sports betting, they necessarily involve gaming in violation of § 40.11(a)(1). In fact, Kalshi's own position before the D.C. Circuit confirms the categorical determination the CFTC made under § 40.11(a)(1) regarding "gaming" extends to Kalshi's sports event contracts:

> An event contract . . . involves "gaming" if it is contingent on a game or a game-related event—like the *Kentucky Derby*, *Super Bowl, or Masters golf tournament*, all of which were mentioned in the provision's only legislative history.

Br. of Appellee, *KalshiEX LLC v. CFTC*, No. 24-5205, Doc. No. 2085055 at 31 (D.C. Cir. Nov. 15, 2024) (emphasis added).[6] Kalshi's sports event contracts, thus, involve "gaming."

Additionally, Kalshi's sports events contracts also violate various federal and state laws. Kalshi allows participants to purchase its sports event contracts—and therefore engage in mobile sports betting—throughout the United States, including on Indian lands. Kalshi's sports event contracts do not meet any of the requirements for gaming on Indian lands under IGRA. *See* 25 U.S.C. § 2710(d)(1). Kalshi's sports event contracts therefore involve activity that is unlawful under federal law[7] and are not lawful transactions under the exclusive jurisdiction of the CFTC.

2. Kalshi's sports event contracts do not qualify as "swaps" or swaps based on "excluded commodities," and are therefore not subject to the CFTC's exclusive jurisdiction

[6] Although it did not directly rule on the legality of sports event contracts, the U.S. District Court for the District of Columbia effectively adopted Kalshi's definition of "gaming" under the CEA. *See KalshiEX LLC v. CFTC*, No. 1:23-cv-03257 (JMC), 2024 WL 4164694, *12 (D.D.C. Sept. 12, 2024); *see also id.* at *38–39 ("Nor does [the question of whether a specific party will control a chamber of Congress] bear any relation to any game—played for stakes or otherwise. Accordingly, the Court concludes that Kalshi's congressional control contracts do not involve unlawful activity or gaming.").

[7] In addition to IGRA, Kalshi's sports event contracts also violate other federal laws including the Wire Act, 18 U.S.C. § 1084, and UIGEA, 31 U.S.C. § 5361 *et seq.*, as well as state gaming laws.

Kalshi presumes to offer its sports event contracts as "swaps" that are based on "excluded commodities." However, Kalshi's sports event contracts do not qualify as "swaps" or swaps based on "excluded commodities," and therefore are not under the CFTC's exclusive jurisdiction.

Under the CEA, a "swap" is defined as:

> [A]ny agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) 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). Similarly, an "excluded commodity" means, among other things, "an occurrence, extent of an occurrence, or contingency . . . that is—(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence." *Id.* § 1a(19)(iv). Kalshi's sports event contracts do not meet these definitions because they are not dependent on the *occurrence* or *nonoccurrence* of a sports event—i.e., whether the sports event occurs[8]—but rather on the *outcome* of the sports event—i.e., which team wins.[9] Kalshi's sports event contracts are quite simply sports bets.

Moreover, although the parties to such contracts presumably have no direct control over whether that team wins or loses, any "financial, commercial, or economic consequence" that may potentially be associated with Kalshi's sports event contracts are related to the *outcome* of the games, not the *occurrence* or *nonoccurrence* of the games. In Kalshi's own words, the games

[8] An example of what could arguably be a valid "sports event contract" would be: If bad weather is threatening to cause the cancellation of a baseball game in Baltimore, the owner of Oriole Park could purchase an event contract that the Baltimore Orioles will not play their next game. This would allow the stadium owner to hedge against the loss of revenue in the event the baseball game does not occur. This type of contract is not dependent on the *outcome* of the Baltimore Orioles' game, but rather on the *occurrence* or *nonoccurrence* of the game.

[9] Ostensibly, Kalshi presumes that the act of a particular team winning a sports game is the "event" underlying its sports event contracts—not so. The "events" at the heart of *valid* sports event contracts are the sports games themselves.

upon which its sports event contracts are based have "no inherent economic significance" or "any real economic value." *See* Transcript of Motion Hearing at 15, *KalshiEX LLC v. CFTC*, No. 1:23-cv-03257-JMC (D.D.C. May 30, 2024). Kalshi's sports event contracts are not hedging opportunities for interested parties to supplement the risk of a cancelled sporting event; instead, they are speculative wagers on the outcome of that sporting event. Thus, they are not dependent upon, or otherwise related to, any potential "financial, commercial, or economic consequence."

Lastly, the other provisions within the definitions of "swap" and "excluded commodity" evidence Congress's intent to limit the nature of these transactions. *See* 7 U.S.C. §§ 1a(19)(i)–(iii), (47)(A)(i), (iii)–(vi). Specifically, under the canon of *noscitur a sociis*, the potential "financial, economic, or commercial consequence[s]" required must be related to rates, currencies, commodities, securities, instruments of indebtedness, indices, and other such quantitative measures. *Id.* The outcome of a sporting event is not so limited.

C. The CEA does not impliedly repeal IGRA

In arguing that the CFTC has exclusive jurisdiction over sports betting conducted on Indian lands, Kalshi asserts that the CEA impliedly repealed IGRA. *See* ECF No. 29 at 7. But Congress did not express the requisite intent for implied repeal. Courts apply "the strong presumption that repeals by implication are 'disfavored' and that 'Congress will specifically address' preexisting law when it wishes to suspend its normal operations in a latter statute." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (quoting *United States v. Fausto*, 484 U.S. 439, 452 (1988)). Congress's intent to repeal must be "clear and manifest." *Posadas v. Nat'l City Bank of N.Y.*, 296 U.S. 497, 503 (1936). An implied repeal is only justified "when the earlier and later statutes are irreconcilable." *Morton v. Mancari*, 417 U.S. 535, 550 (1974). "[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly

expressed congressional intention to the contrary, to regard each as effective." *Id.* at 551. In that regard, "the specific governs the general," particularly where "a general permission or prohibition is contradicted by a specific prohibition or permission." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). And under the Indian Canons of Construction,[10] courts must resolve statutory ambiguities in favor of tribes. *Bryan v. Itasca Cnty*, 426 U.S. 373, 392 (1976).

If the Court accepts Kalshi's position that its sports event contracts—which constitute Class III gaming under IGRA—are "swaps" subject to the CFTC's exclusive jurisdiction, then it must also accept that Congress intended to upend the entire federal framework for tribal gaming and repeal key provisions of IGRA.[11] Congress had no such intent. As discussed above, the definition of "swaps" is, at best, ambiguous as to whether it includes sports event contracts. Ambiguity is not "clear and manifest" intent and an ambiguous statutory provision cannot overcome the strong presumption against repeals by implication. Ambiguity also implicates the Indian canon of statutory construction that requires the ambiguous definition of "swaps" to be interpreted in favor of tribes to maintain IGRA and all its provisions.

The legislative history of the CEA amendments further evidences that Congress did not clearly or manifestly intend to repeal IGRA, but rather reveals Congress's concern about event contracts facilitating gambling, and in particular sports betting. Indeed, as mentioned above,

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[10] As the Justice Blackmun has concisely explained:

> Because Congress' authority to legislate unilaterally on behalf of the Indians derives from the presumption that Congress will act with benevolence, courts "have developed canons of construction that treaties and other federal action should when possible be read as protecting Indian rights and in a manner favorable to Indians."

Hagen v. Utah, 510 U.S. 399, 423 n.1 (1994) (Blackmun, J., dissenting) (quoting F. Cohen, Handbook of Federal Indian Law 221 (1982 ed.)).

[11] To the extent IGRA grants the NIGC regulatory authority over gaming on Indian lands, Congress also did not "clearly and manifestly" intend to repeal that authority; rather it expressly reserved it. *See* 7 U.S.C. § 2(a)(1)(A).

Congress expressly intended the Special Rule to prevent derivatives contracts from being used to facilitate gambling. *See* 156 Cong. Rec. S5906–7 (2010). Rather than demonstrate intent to repeal federal gaming laws, this legislative history shows the exact opposite: Congress designed the Special Rule to prevent sports betting through supposed event contracts.

Additionally, IGRA's criminal provisions provide that the DOJ has "exclusive jurisdiction over criminal prosecutions of violations of State gambling laws that are made applicable . . . to Indian country" under 18 U.S.C. § 1166(a), unless tribes otherwise consented to the transfer of criminal jurisdiction to the state. 18 U.S.C. § 1166(d). If Kalshi's sports event contracts are subject to exclusive CFTC jurisdiction, as Kalshi contends, then the DOJ's jurisdiction over such criminal prosecutions will also have been impliedly repealed. However, Congress expressly disclaimed such a repeal in the text of the CEA. 7 U.S.C. § 16(e) ("Nothing in this chapter shall supersede or preempt . . . criminal prosecution under any Federal criminal statute."). It is impossible for the CFTC to exercise exclusive jurisdiction over sports event contracts while the DOJ exercises its exclusive jurisdiction over criminal prosecutions of violations of state gambling laws made applicable by IGRA to Indian Country.

Kalshi cannot meet the "heavy burden" of proving congressional intent to repeal, *see Epic Sys. Corp.*, 584 U.S. at 510, because there is a reasonable way to interpret the CEA that would give full effect to both the CEA and IGRA: sports event contracts are not "swaps" subject to the CFTC's exclusive jurisdiction, but are in fact sports betting subject to IGRA and other federal and state gaming laws. Because these statutes are capable of coexistence, the court must read them in a way that gives effect to both and construe any ambiguity in favor of tribes.

Finally, IGRA provides very specific permissions and prohibitions related to sports betting on Indian lands. Therefore, Supreme Court precedent dictates that IGRA's specific

prohibitions and permissions must govern general prohibitions or permissions, such as Kalshi's interpretation of the catch-all definition of "swap."

II. Ignoring the Applicability of IGRA Raises Serious Policy Concerns and Violates Federal Indian Policy

Kalshi's sports betting violates well-established federal Indian policy supporting tribal sovereignty and self-determination. The U.S. Supreme Court has "consistently recognized that Indian tribes retain 'attributes of sovereignty over both their members and their territory.'" *Cabazon*, 480 U.S. at 207 (quoting *United States v. Mazurie*, 419 U.S. 544, 557 (1975)). A "key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on federal funding." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring). Congress has declared its "commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy . . . [and] to supporting and assisting Indian Tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities." 25 U.S.C. § 5302(b).[12]

In *Cabazon*, the U.S. Supreme Court recognized that "federal interests in Indian self-government, including the goal of encouraging tribal self-sufficiency and economic development, are important," and that tribal gaming has provided "the sole source of revenues for the operation of the tribal governments and are the major sources of employment for tribal members." 480 U.S. at 203. Following this decision, Congress declared that "a principal goal of

[12] The Executive Branch has consistently affirmed this policy. *See e.g.*, Exec. Order No. 13175, Consultation and Coordination with Indian Tribal Governments, 65 Fed. Reg. 67249, § 2(c) (Nov. 6, 2000); Exec. Order No. 13647, Establishing the White House Council on Native American Affairs, 78 Fed. Reg. 39539, § 1(a) (June 26, 2013).

Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government," and "Indian tribes have the *exclusive right* to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." 25 U.S.C. §§ 2701(4), (5) (emphasis added).

By offering its sports event contracts, Kalshi tramples upon established federal Indian policy by claiming that the CEA preempts the rights of tribes to regulate gaming on Indian land and siphons vital governmental revenue from tribes. Kalshi's intrusion is particularly dangerous because it evades gaming regulations and government oversight that would protect consumers, ensure fairness, and mitigate negative gaming impacts. As noted above, Kalshi not only violates IGRA, but strikes at the heart of tribal sovereignty by offering unregulated nationwide online sports betting.

In IGRA, Congress "intend[ed] that the two sovereigns—the tribes and the States—will sit down together in negotiations on equal terms and come up with a recommended methodology for *regulating class III gaming on Indian lands*." 134 Cong. Rec. S12643 (Sept. 15, 1988) (statement of Sen. Daniel Evans) (emphasis added). Kalshi usurps the rights of tribes to regulate that gaming within their borders and undermines the sovereign right of tribes to negotiate Class III gaming compacts with states. By using backdoor means to offer nationwide online sports betting, Kalshi diminishes tribal bargaining power in compact negotiations and diminishes the value of tribes' bargained-for benefits and exclusivity.

Finally, Kalshi is siphoning revenue from tribal governments in defiance of federal Indian policy. IGRA requires all revenues from tribal gaming be used for governmental or charitable purposes. 25 U.S.C. § 2710(b)(2)(B). Tribes rely on gaming revenue because

destructive former federal policies "left a devastating legacy" on tribes that are "largely unable to obtain substantial revenue by taxing members . . . [because] there is very little income, property, or sales [that tribal governments] could tax." *Id.* (quoting Matthew L.M. Fletcher, *In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue*, 80 N. D. L. Rev. 759, 771, 774 (2004)). If Kalshi's arguments are upheld, the impact to tribal governments will be devastating.

CONCLUSION

For these reasons, this Court should deny Kalshi's motion for preliminary injunction.

DATED: June 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2025, I electronically filed the foregoing document with the Clerk for the U.S. District Court for the District of Maryland using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

DATED: June 23, 2025

/s/ Ronald S. Connelly
Ronald S. Connelly