



DAVE YOST

OHIO ATTORNEY GENERAL

Administration
Office 614-728-5458
Fax 614-466-5087

April 30, 2026

Michael S. Selig
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Comments related to the notice regarding Commission regulations that apply to prediction markets, the types of event contracts that may be prohibited as contrary to the public interest, cost-benefit considerations related to prediction markets, and other topics, Docket No. 2026-05105

Dear Commissioner Selig,

Ohio, Nevada, New Jersey, New York, Tennessee, Utah, 34 other States, and the District of Columbia are submitting this comment in response to the Commodity Futures Trading Commission's Advanced Notice of Proposed Rulemaking regarding potential regulation of "prediction markets." 91 Fed. Reg. 12516 (Mar. 16, 2016). Specifically, the States write to emphasize that the CFTC lacks exclusive jurisdiction over a broad range of sports-related contracts currently offered as event contracts. These contracts do not fall within the statutory definition of a "swap" and are contrary to the public interest. Moreover, as the CFTC has long maintained, the Commission lacks the means or ability to regulate sports gambling. States, however, possess the experience and expertise to protect their citizens from the harms associated with sports gambling. Accordingly, the Commission should acknowledge it lacks any jurisdiction over such contracts and should confirm as much through rulemaking, thus leaving the regulation of sports gambling with States.

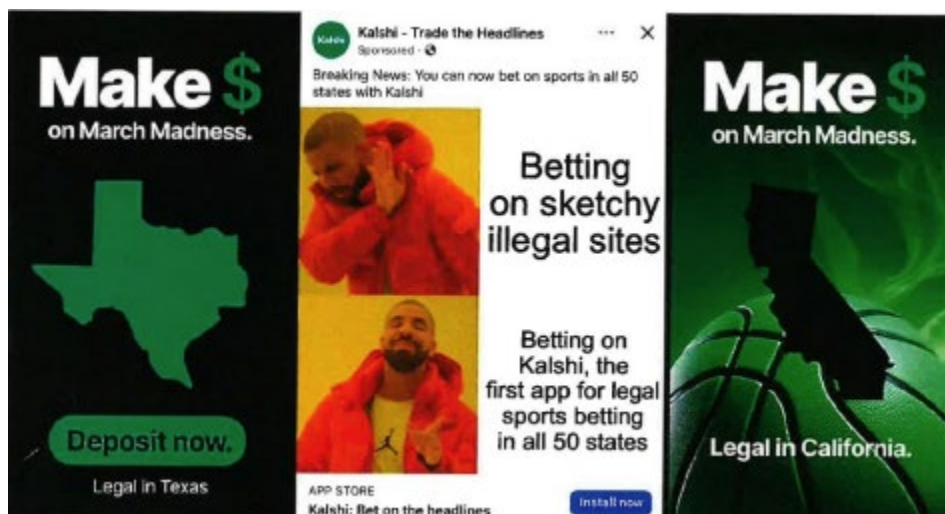
I. Sports betting on prediction markets through "event contracts" is indistinguishable from traditional sports betting.

Traditional sports bets and sports-related event contracts offered on designated contract markets ("DCMs") have no meaningful differences. In both, the transaction is precisely the same for the consumer. In both, a player chooses among uncertain outcomes. In both, the outcome is binary—either the bet pays, or it does not. And in both, players bet relative to specific "odds" that the wager will win. And

neither serves the traditional hedging, price-information discovery, or risk-allocation purposes of derivatives typically regulated by the CFTC.

Any distinction between sportsbook bets and prediction-market bets is illusory. Examples prove the point. On so-called “prediction markets,” users can make all the same wagers they can make at a traditional sportsbook. What team will win a game. The potential spread of a game. The total number of points in a game, and “prop” bets—asking how many points, rebounds, or some other statistic for each player. The same bets are made on sportsbooks. And nothing is different for the bettor.

For good reason, then, prediction-market companies describe their offerings as sports bets. For example, Kalshi has an entire category dedicated to sports where users can bet on who will win a game, whether a team will cover a points spread, and “prop” bets that focus on a particular player’s statistics in a given game. See Kalshi Website, Sports, <https://kalshi.com/sports/>. Some of these markets began in 2025 and were advertised as sports bets. Dustin Gouker, *Ten Times Kalshi Said People Could Bet On Things*, Event Horizon (April 3, 2025), <https://perma.cc/CWK2-TZCV>. And these sports-bets offerings quickly became popular. See, e.g., Lev Akabas, *Kalshi’s Volume Has Been 90% Sports During Football Season*, Sportico (Oct. 3, 2025), <https://perma.cc/X5WL-8LGM>. So prediction markets quickly expanded the types of sports bets they offer. Dustin Gouker, *Kalshi Rolls Out Same-Game Parlays For Monday Night Football Games*, Event Horizon (Sept. 30, 2025), <https://perma.cc/V3M9-L59R>. As just one example, consider this advertisement boasting “legal sports betting in all 50 states.”



Dustin Gouker, *Ten Times Kalshi Said People Could Bet On Things*, Event Horizon (April 3, 2025) <http://perma.cc/CWK2-TZCV>.

Legal definitions further show why these contracts are simple sports bets. State law in Ohio defines “wager” or “bet” as the act of “risk[ing] a sum of money or thing of value on an uncertain occurrence.” Ohio Rev. Code §3775.01(DD); *see also* Tenn. Code Ann. §4-49-102(39) (defining the same); Alaska Stat. §11.66.280 (defining “gambling” to include “stak[ing] or risk[ing] something of value upon the outcome of ... a future contingent event not under the person’s control or influence.”). Nevada law defines a wager as “a sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain.” NRS 463.01962. And New Jersey law broadly defines a “Sports pool” as “the business of accepting wagers on any sports event by any system or method of wagering, including but not 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.” N.J. Stat. Ann. §5:12A-10.

Federal law gives similarly broad definitions. For example, the Unlawful Internet Gambling Enforcement Act defines a “bet or wager” as, among other things, “the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, 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). And the Illegal Gambling Act defines an “illegal gambling business” as an act that “is a violation of the law of a State or political subdivision in which it is conducted.” 18 U.S.C. §1955(b)(1)(i). In short: both federal and state law confirm that sports betting occurs whenever someone stakes money on the outcome of a sports contest. That ordinary definition applies to event contracts on prediction markets.

Dressing up sports bets as alleged derivatives does nothing to change that simple fact. These are sports bets—as Congress recognized when amending the Commodity Exchange Act (“CEA”). At the time of the CEA’s amendment through the Dodd-Frank Act, Senators Lincoln and Feinstein noted that the CEA should not allow “gambling through supposed ‘event contracts,’” including “gaming contract[s],” which are “used predominantly by speculators or participants not having a commercial or hedging interest.” *See* 156 Cong. Rec. S5902, S5906–07 (daily ed. July 15, 2010). And as sports bets, these transactions fall within the States’ sovereign power to regulate—not the CFTC’s jurisdiction.

II. The CFTC lacks jurisdiction over sports bets.

Sports event contracts fall outside the CFTC’s jurisdiction. All relevant statutory text suggests as much, as do well-worn clear-statement rules of statutory interpretation, and plain common sense. Gambling regulation, after all, is part of the States’ traditional police powers. *Ah Sin v. Wittman*, 198 U.S. 500, 505–06 (1905). And States “largely banned” sports betting for much of our country’s history. *Murphy v. NCAA*, 584 U.S. 453, 458 (2018). While many States now allow some gambling,

such activity is strictly regulated. States can legalize and regulate—or flat-out ban—sports betting, as they are “free to act” on the “controversial subject.” *Id.* at 486.

The CFTC, meanwhile, has jurisdiction over only specific things: “accounts, agreements ..., and transactions involving swaps or contracts of sale of a commodity for future delivery ..., traded or executed on a” DCM. 7 U.S.C. §2(a)(1)(A). To be within the CFTC’s reach, then, the contract must be the type of financial derivative envisioned by the CEA. Sports bets are not. So the CFTC lacks jurisdiction, and the CFTC should recognize as much in rulemaking here.

To see why, start with the CEA. It regulates derivatives. Futures, swaps, puts, calls, options, and swaps fall within that category. A derivative is a financial instrument that depends on another asset or commodity, such as the price of a stock or bushel of wheat. John C. Hull, *Options, Futures, and Other Derivatives* 1 (8th ed. 2012). The federal government has long regulated such derivatives. In 1921, it began regulating things like grain futures. *Merrill Lynch, Pierce, Fenner & Smith v. Curran*, 456 U.S. 353, 360–62 (1982). In 1936, Congress enacted the CEA and enlarged the federal government’s authority to regulate other agricultural commodities. *Id.* at 362. The CFTC came along in 1974 when Congress amended the CEA and gave the CFTC “exclusive jurisdiction” over both agricultural and nonagricultural futures and options on DCMs. *Id.* at 365–66, 386.

Then came the 2008 financial crisis. Partially fueled by speculation and trading of certain types of unregulated swaps, the Great Recession sparked Congress to enact the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, extending the CFTC’s exclusive jurisdiction to “swaps,” 7 U.S.C. §2(a)(1)(A), and giving “swap” a six-part definition, 7 U.S.C. §1a(47)(A). By giving the CFTC exclusive jurisdiction over “swaps,” “Congress, in Dodd–Frank, charged the CFTC with the task of illuminating previously dark markets in the complex derivative instruments at the heart of the crisis known as ‘swaps.’” *Inv. Co. Inst. v. U.S. CFTC*, 891 F. Supp. 2d 162, 174 (D.D.C. 2012), *as amended* (Jan. 2, 2013) (quotation and brackets omitted), *aff’d*, 720 F.3d 370 (D.C. Cir. 2013). So it makes sense that Dodd-Frank made it generally “unlawful for any person ... to enter into a swap unless the swap is entered into on” a designated contract market. 7 U.S.C. §2(e); *see also* 7 U.S.C. §1a(18).

Derivatives like swaps serve markets in several ways, including by sending price signals to the relevant parties and as a mechanism to “hedg[e]” against “risks in the economy.” Hull, *Options*, *supra* at 1. The CEA recognizes as much. It says that derivatives subject to CFTC jurisdiction “provid[e] a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.” 7 U.S.C. §5(a). And it directs the CFTC to, before promulgating any regulation, consider (among other things) “price discovery,” and “sound risk management practices.” 7 U.S.C. §19(a)(2). So contracts offered on a prediction market—futures, options, swaps

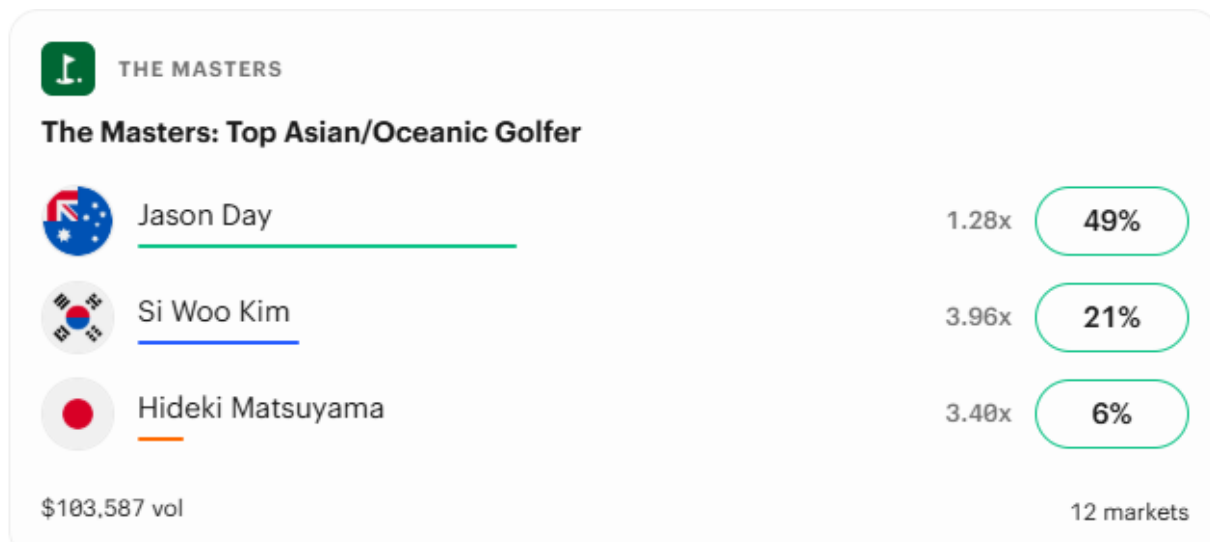
or otherwise—are largely meant to serve the purposes offered by derivatives: hedging and price discovery.

Sports event contracts do no such thing. They are not financial derivatives. They are not swaps. They are simply bets. The CEA’s definition of “swap” shows as much. Most relevant here, a swap is “any agreement, contract, or transaction ... that provides for any purchase, sale, payment, or delivery ... that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. §1a(47)(A)(ii). That definition contains several constituent parts, but the bottom line is this: a swap is a financial derivative used for hedging that involves payment when an event happens. But the definition leads to at least two additional questions: (1) what constitutes an “event”? and (2) what events are “associated” with the relevant economic consequences?

The plain text supplies the answers. An event cannot be *anything and everything* that occurs. After all, the swap definition uses both “occurrence” and “event,” so the two terms mean different things. *See Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017). An “occurrence” is “something that takes place.” *Webster’s Third New International Dictionary* 1561 (2025). An event is “a noteworthy occurrence or happening.” *Id.* at 788. So “event,” to be distinct from a mere “occurrence,” must be a “noteworthy” happening.

Congress knows “event” and “occurrence” are not the same thing. If “event” and “occurrence” were one and the same, there would be no reason to have both in the definition of swap. So “event” must *limit* “occurrence.” Otherwise, the “event” underlying a “swap” would be boundless, despite the statute’s focus on hedging and price information. 7 U.S.C. §5(a). As the CFTC previously acknowledged, allowing “swap” to extend this far would mean contracts to “acquire or lease real or personal property” or “to obtain a mortgage” could be treated as swaps. 77 Fed. Reg. 48208, 48246 (Aug. 13, 2012). Nothing in the text, context, or the purpose of the statute supports that approach.

And sports bets are not dependent on the occurrence of an “event.” They turn on an “outcome,” which is “something that comes out of or follows from an activity or process: consequence, result.” *Webster’s*, *supra* at 1601. Whether golfer Jason Day, Si Woo Kim, or Hideki Matsuyama scores as “The Masters: Top Asian/Oceanic Golfer” is, under no reasonable definition, an “event” contemplated by the CEA. It is just a bet for entertainment purposes. If such bets counted as an “event,” then *anything* would be an “event,” and the word would simply collapse into “occurrence.” For that reason alone, sports bets are not swaps.



But the plain text makes clear that sports bets are not “swaps” for another reason: any alleged “event” in a sports bet is not “associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. §1a(47)(A)(ii). To “associate” means to “connect” or “join” together things in one’s mind. *Webster’s, supra* at 132. And each of the surrounding parts of the “swap” definition refers to financial instruments, indices, or measures. Parts (i), (iii), and (v) list specific financial instruments that involve “financial or economic interests” such as “interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind.” 7 U.S.C. §1a(47)(A)(i), (iii), (v). Part (iii) further lists 22 specific “commonly known” swaps all tied to the idea that parties transfer “the financial risk associated with a future change” in some quantitative measure “without also conveying a current or future direct or indirect ownership interest in an asset.” *Id.* §1a(47)(A)(iii). And part (v) covers certain “security-based swap agreement[s]” in which “a material term is based on the price, yield, value, or volatility of any security.” *Id.* §1a(47)(A)(v). These all concern financial instruments. When “several items in a list share an attribute,” that “counsels in favor of interpreting the other items as possessing that attribute as well.” *Beecham v. United States*, 511 U.S. 368, 371 (1994). So the definition of “swap” in part (ii) is likewise limited to “event[s]” that are inherently connected to potential financial, economic, or commercial instruments or measures. *See* 7 U.S.C. §1a(47)(A)(ii). That reading makes sense given the basic purpose of swaps: to allow traders to hedge against financial risks. *See Power & Tel. Supply Co. v. SunTrust Banks, Inc.*, 447 F.3d 923, 926 & n.1 (6th Cir. 2006). And a sports bet does not hedge against any financial risk—it itself *creates* the risk.

Accordingly, the consequences of the event must relate to a financial or commercial measure or instrument that a person would wish to hedge against or that would allow them to obtain price information—consistent with the purposes of the CEA. The Commission has recognized as much, noting that when reviewing event

contracts for listing on a DCM, it must “evaluat[e] ... an event contract’s utility for hedging and price basing purposes.” *Order Prohibiting the Listing or Trading of Political Event Contracts* (Apr. 2, 2012), <https://perma.cc/UY6F-B9L3>. The CFTC has recognized that swaps should not be read in a way that would disrupt “customary business arrangements” that “historically have not been considered to involve swaps.” 77 Fed. Reg. 48208, 48247 (Aug. 13, 2012). Swaps, according to the CFTC, “involve risk-shifting arrangements with financial entities.” *Id.* at 48248. So “swaps” did not include transactions over “personal or family activities” that ordinary “consumers” regularly partake in. *Id.* at 48247. And in banning event contracts involving “gaming,” 17 C.F.R. §40.11(a), the CFTC said it recognized “Congress’s intent to prevent gambling through the futures markets.” 76 Fed. Reg. 44776, 44786 (July 27, 2011) (quotation omitted).

The CFTC recently acknowledged the importance of “hedging” as “the use of derivatives to manage the various price risks incidental to commercial activity.” CFTC Br., *KalshiEX LLC v. Johnson*, Case No. 2:26-cv-01715, Dkt. No. 49 at 3–4 (D. Ariz. Apr. 8, 2026). And at least one prediction market company has itself admitted that allowing sports bets on DCMs as event contracts would be contrary to the “basic purpose” of DCMs, which is to “allow ‘hedging’ of economic risk.” Appellee Br.44–45, *KalshiEX LLC v. CFTC*, No. 24-5205, 2024 WL 4802698 (D.C. Cir. Nov. 15, 2024). Sports betting does not serve this purpose because it is merely “for diversion or amusement.” *Id.* Bets are not used to hedge against potential economic consequences.

The CEA’s text, context, and purpose confirm this approach. Broader statutory context, of course, is always considered in “deciding whether the language” of a statute “is plain,” because courts “must read the words in their context and with a view to their place in the overall statutory scheme.” *King v. Burwell*, 576 U.S. 473, 486 (2015) (quotation omitted). So deciphering statutory meaning must involve “interpret[ing] the relevant words not in a vacuum, but with reference to the statutory context, structure, history, and purpose.” *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quotation omitted). “Context,” after all, “is a primary determinant of meaning.” Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012). And “[o]f course, words are given meaning by their context, and context includes the purposes of the text.” *Id.* at 56. Here, the statutory context and purpose are no mystery: the CEA applies to derivatives that “manag[e] ... price risks, discover[] prices, or disseminat[e] pricing information.” 7 U.S.C. §5(a). Each of the six parts of the “swap” definition embodies these principles. *See* 7 U.S.C. §1a(47)(A)(i)–(vi).

Instruments that do not serve those purposes are simply not derivatives at all. And sports bets serve no hedging purpose or price information gathering role. So they cannot fall within the CEA’s reach. Indeed, which team wins a sports game or

how many points a particular player scores in a match has no direct economic consequences a person may wish to hedge against.¹

Lest any doubt linger, both the major-questions doctrine and federalism canon confirm that sports bets are not swaps. Both rules require Congress to supply clear statements before handing agencies like the CFTC novel and sweeping power over issues typically left to States. *Bond v. United States*, 572 U.S. 844, 857 (2014); *West Virginia v. EPA*, 597 U.S. 697, 722–23 (2022). Sports gambling has long been a major political and economic topic regulated by States. *Murphy*, 584 U.S. at 459–60, 486.

Sports betting checks all the clear-statement boxes. It implicates “billions of dollars” and affects “millions of people.” *King*, 576 U.S. at 485; Doug Greenberg, *U.S. sports betting industry posts record \$13.7B revenue for '24*, ESPN (Feb. 19, 2025), <https://perma.cc/LJ7Y-DQG9> (“legal sportsbooks took nearly \$150 billion worth of bets” in 2024). That falls well within the threshold for major-questions cases. See *NFIB v. OSHA*, 595 U.S. 109, 119 (2022); *Ala. Ass’n of Realtors v. DHHS*, 594 U.S. 758, 764 (2021); *West Virginia*, 597 U.S. at 714 (“billions of dollars”). CFTC-regulated sports betting would allow a federal agency to take control of a “significant portion of the American economy.” *West Virginia*, 597 U.S. at 722 (quotation omitted).

Sports betting also raises important political issues. As the Supreme Court has recognized “Americans have never been of one mind about gambling,” and “[s]ports gambling ... has long had strong opposition.” *Murphy*, 584 U.S. at 458, 460. Congress even tried to stop States from legalizing sports gambling, but the Supreme Court ruled the law unconstitutional. See *id.* And in doing so, the Court noted that “[t]he legalization of sports gambling requires an important policy choice.” *Id.* at 486. *Murphy* makes plain what everyone already knows: sports gambling is a major political topic. Plus, giving the CFTC power over sports gambling upsets state-federal

¹ The Advanced Notice of Proposed Rulemaking also suggests that these sports bets “may also be contracts for the future delivery of a commodity (futures contracts) that are covered by the CEA.” 91 Fed. Reg. 12516, 12517. That is incorrect. A “contract of sale of a commodity for future delivery” is an agreement to sell “a commodity” that can be delivered, and “commodity” covers only “goods,” “articles,” “services, rights, and interests ... in which contracts for future delivery are presently or in the future dealt in.” 7 U.S.C. §1a(9). This tracks the CEA’s core concern, which was regulating “[f]utures trading”—“purchases and sales of contracts for delivery at some future date of certain *quantities of specified commodities* at fixed prices.” S. Rep. 93-1131, 1974 U.S.C.C.A.N. 5843, 5856 (1974) (emphasis added); see, e.g., *Futures Contract*, Black’s Law Dictionary (12th ed. 2024) (“An agreement to buy or sell a standardized *asset* (such as a commodity, stock, or foreign currency) at a fixed price at a future time, usu. during a particular time of a month.” (emphasis added)). The outcome of a sports game or election is not a “good,” “article,” “service,” “right,” or “interest” that can be “delivered” by a contract.

relations. The major-questions doctrine applies when the federal government “intrudes into an area that is the particular domain of state law” in such a way. *Ala. Ass’n of Realtors*, 594 U.S. at 764

Congress does not use “vague terms or ancillary provisions” to make such fundamental changes. *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). “[I]t does not, one might say, hide elephants in mouseholes.” *Id.* Nor does it smuggle away the States’ power through obscure statutory definitions. But that is precisely what would occur if the CFTC took control of sports betting. Recall that Congress amended the CEA in response to the financial crisis. But Congress did not, in Dodd-Frank, legalize sports betting nationwide and crown the CFTC as the nation’s gambling czar. Indeed, the CFTC chairman at the time Congress passed Dodd-Frank “never once ever heard a member of Congress or their staffs suggest that the law they were writing, acting upon, and voting on was for our little agency, the CFTC, to have oversight over sports betting.” Grant Mitchell, *Former CFTC Chair Talks Prediction Markets: ‘Betting On Sports is Gaming,’ Covers* (Apr. 15, 2026), <https://perma.cc/MR7S-WVX8>, (quoting former CFTC Chair Gary Gensler).

And no one thought otherwise. Indeed, eight years *after* Dodd-Frank, the Supreme Court held that States remained “free to act” on sports gambling. *Murphy*, 584 U.S. at 486. That is because Dodd-Frank was not about regulating sports bets. In fact, at the time of Dodd-Frank, sports gambling was illegal in nearly every State but Nevada. *Id.* at 462. So if “swap” means sports betting, Dodd-Frank called into question four-dozen States’ laws prohibiting unlicensed sports betting, upended traditional powers of States, and legalized sports bets nationwide. Yet no one—not the States, not Congress, not the Supreme Court, and not even the CFTC itself—noticed.

Put simply, the “modest” definition of swap cannot bear the weight placed upon it. It lacks the clear statement required to radically alter an agency’s power over the national economy. *West Virginia*, 597 U.S. at 723. And moving sports-gambling regulation to the CFTC results in a “significant change in the sensitive relation between” the federal and state governments, thus triggering the federalism canon and major-questions doctrine. *Bond*, 572 U.S. at 858–59 (quotation omitted); *West Virginia*, 597 U.S. at 723. A more straightforward answer solves this problem: sports bets are not derivatives subject to the CFTC’s jurisdiction. The CFTC should confirm as much in rulemaking and explain that States can continue to regulate sports wagering, while providing protections for their citizens.

III. Sports gambling presents serious potential harms to the States' citizens that States have the expertise and experience to address.

Since *Murphy* paved the way for legalization, sports gambling has been on the rise. And without careful regulation, it can present real problems for the States' citizens. In fact, most evidence shows that gambling can affect a person's health and financial security, and increase the odds of criminal behavior. States are best positioned to regulate gambling and protect their populations from these potential harms. The CFTC is not.

A. The increase in sports gambling, without careful regulation, poses risks for the States' citizens.

Gambling has grown exponentially in recent years, so robust state gambling laws are vital. After all, the popularity of sports gambling has exploded, resulting in almost \$150 billion wagered in 2024 alone. Brandon Gustafson, *2024: A year of growth for sports betting revenue*, *CBS Sports* (Mar. 28, 2025), <https://tinyurl.com/yje8srnp>. And while some use sports-betting as mere entertainment, gambling is dangerous for many. Millions of Americans qualify as problematic or pathological gamblers. See National Gambling Impact Study Commission Final Report, *Chapter 4: Problem and Pathological Gambling*, 4-1 (1999), <https://perma.cc/NDE6-GRQK>; Charita M. Goshay, *Ohio offers Voluntary Exclusion List for problem gamblers as calls to helpline rise*, *Canton Repository* (Sept. 2, 2024), perma.cc/BQY6-YBC3. And research has linked gambling to many other problems—substance abuse and psychological distress, to name two. See Randi Richardson, *Online gambling has fueled an industry boom that threatens public health, commission finds*, *NBC News* (Oct. 24, 2024), perma.cc/XL7W-QS2L.

So the States have a strong interest in addressing gambling to protect individuals within their borders. And States have done so for over 100 years. Yet, today, the gambling threat has grown given the existence of unregulated prediction markets offering sports bets. Even the United States military has taken note. As reported on the U.S. Army's website, "[a]s access to online betting and new, unregulated prediction markets grows" the "quiet threat" of gambling "poses a direct risk to the financial stability, mental health, and overall readiness of the force—prompting the Department of War to take a closer look." Douglas Holl, *Betting your future: Is gambling a threat to your career and well-being?* (Apr. 13, 2026), <https://perma.cc/W8SB-U9EZ>. If States cannot guard against the gambling threat from prediction markets, State citizens face serious dangers.

Consider the breadth of gambling addiction. "[G]ambling disorder could affect ... 8.9% of the adults and 16.3% of the adolescents who gamble using sports betting products." Heather Wardle et al., *The Lancet Public Health Comm'n on Gambling*, 9

Lancet Publ Health Comm'ns e950–e994, e951 (Nov. 2024), <https://perma.cc/FU4V-QGBW>. “Gambling disorder is described alongside substance use disorders in both the Diagnostic and Statistical Manual of Mental Disorders, fifth edition (DSM 5), and the International Classification of Diseases, eleventh revision (ICD 11).” World Health Organization, *Gambling Fact Sheet* (Dec. 2, 2024), <https://perma.cc/69AC-5KT5>. And “[g]ambling disorder severely impacts the affected individual’s daily life and is considered to be a major public health issue” that “may be a risk factor for suicidal behavior.” Adonay Kidane et al., *Suicide and attempted suicide in gambling disorder—results from a nationwide case-control study* (Mar. 31, 2025), <https://pubmed.ncbi.nlm.nih.gov/40215800/>. As the Lancet explains, “children and young people” “face an elevated risk of gambling harms.” Wardle, *The Lancet Public Health Comm’n on Gambling* at e954. “The effect is especially potent among sports fans.” *Id.* And “in-play betting” makes sports betting a potential “high-speed, continuous form of betting, which is likely to be associated with increased risk of harms.” *Id.* at e960. Easy access to gambling without State regulation will only cause more harm.

The effects can be disastrous. One recent study found that “increased online sports betting substitutes for risky investments,” and that “sports betting significantly reduces net deposits to brokerage accounts.” Baker et al., *Gambling Away Stability: Sports Betting’s Impact on Vulnerable Households* at 2 (Oct. 31, 2024), <https://perma.cc/4SF5-VGZH>. Sports gambling also correlates with “complementary entertainment-related categories increases, likely reflecting spillovers from increased sports betting.” *Id.* And these factors “lead[] to more financial instability as households run-up credit card balances and more frequently overdraw their bank accounts.” *Id.* at 2–3. Indeed, “[s]ports bettors are more than twice as likely as non-bettors to have overdrawn their bank account, and those issues are more pronounced among financially constrained households.” Weston Blasi, *Here are all the ways sports gambling is hurting bettors’ finances*, MarketWatch (Nov. 5, 2024), <https://perma.cc/D8B6-966N>. In sum, “online sports betting ... can exacerbate financial difficulties faced by constrained households.” Baker et al., *Gambling Away Stability* at 3. And excess gambling is often correlated with an increased risk of things like suicide, divorce, and homelessness. The National Gambling Impact Study Commission, Final Report, *Chapter 7: Gambling’s Impacts on People and Places*, 7-24–28 (1999), <https://perma.cc/BC2P-CQC4>.

This is no abstract problem. Real people gamble to the point of financial ruin. See Kelly Kennedy, *‘I didn’t care who was playing’: Has the legalization of sports betting impacted problem gambling in Ohio?*, Cleveland 19 News (July 18, 2024), <https://perma.cc/JG9G-P7QT>. Others place gambling over the health of loved ones. See Erin Gottsacker, *A statewide telehealth service is changing the game for Ohioans with gambling addictions*, The Ohio Newsroom (Nov. 18, 2024), perma.cc/E4ZU-U3MN. Still others gamble to the point of contemplating suicide. See Matt Stone, *Risk*

of Gambling Addiction Up 30%, 21-WFMJ (Feb. 16, 2025), <https://perma.cc/76KG-5ZGS>.

A 2022 survey performed by the Ohio Casino Control Commission signaled that the prevalence of at risk/problem gamblers in the Buckeye State had nearly quadrupled over the last decade. See *Ohio Gambling Survey 2022*, Ohio Casino Control Commission, perma.cc/4GG3-SGQE (slide five of PowerPoint). As another datapoint, calls to Ohio’s gambling hotline were up 55% in 2023—the first year of legal sports betting in the State. Katie Mogg & Aria Bendix, *Gambling addiction hotlines say volume is up and callers are younger as online sports betting booms*, NBC News (April 5, 2024), <https://tinyurl.com/mtjnna33>. Minors are particularly vulnerable, as online sports betting attracts a younger crowd. A recent New Jersey-based survey reflected that nearly one in every five people surveyed between the ages of 18 and 24 was at high risk of a gambling problem. See Lia Nower et al., *The Prevalence of Online and Land-Based Gambling in New Jersey*, Rutgers University: Center for Gambling Studies, at 33 (2023), perma.cc/V3KH-BPHC. And research reflects that those who start gambling at a young age run a “much higher lifetime risk of developing a gambling problem. See National Gambling Impact Study Commission, Final Report at 4-12. Many States protect younger citizens by banning sports betting for anyone younger than 21. See, e.g., N.J. Stat. Ann. §5:12A-11(e); Ohio Rev. Code §3775.99(A)(2). But prediction market gambling allows 18-year-olds to gamble. E.g., Kalshi Member Agreement (Nov. 4, 2025), <https://perma.cc/ZH3B-2G9P>. This is no small matter. Individuals who begin gambling at a young age face a higher risk of long-term problems.

On top of all that, state-level regulation of sports betting protects the integrity of sports games themselves. After all, sports have seen their fair share of betting scandals. Dozens of people—including current and former NBA players—were allegedly involved in illegal bets on professional basketball games. Santul Nerkar et al., *U.S. Charges N.B.A. Coach and Players in Gambling Schemes*, The New York Times (Oct. 23, 2025), <https://tinyurl.com/yux8k2nk>. Baseball has seen controversy, too. A pitcher allegedly manipulated his pitches to win certain bets. See Ryan Morik, *Ohio governor calls for an end to player prop betting amid investigation into Guardians pitchers*, Fox Business (July 31, 2025), perma.cc/CA26-SA28. Before that, gamblers even threatened a coach of the Cleveland Cavaliers. See Tom Withers, *Cavs coach Bickerstaff says he received threats from gamblers, feels sports betting ‘gone too far’*, AP News (Mar. 20, 2024), perma.cc/4KR5-3F56. Without state regulation, all these harms—to the States’ citizens and to the games themselves—are more likely to take place. That is because the States—and not the CFTC through DCMs—have the institutional capacity and expertise to regulate and protect their citizens.

B. States have the tools to address problem gambling and protect their residents.

States are well-equipped to deal with these problems. They have done so for over a century. Through their police powers, the States have traditionally regulated gambling, including gambling on sports. *Ah Sin*, 198 U.S. at 505–06. And even the Supreme Court recognized—eight years after Dodd-Frank—that States remain “free to act” on sports gambling. *Murphy*, 584 U.S. at 486. Today, some States continue to bar sports betting entirely, while other States allow sports betting but regulate the activity. See *Am. Gaming Ass’n, State of the States 2025: The AGA Analysis of the Commercial Casino Industry*, at 12–13 (May 13, 2025), perma.cc/J27S-WLSB.

States make decisions related to gambling based on local judgments. These include things like licensing, consumer protections, advertising regulations, problem-gambler limits, tax rates, and more. Different States can make different choices to match the needs and desires of their citizens. Ohio can require one licensing scheme, while New Jersey offers a different one. Taxes in Tennessee might be different from those in Nevada. State-level gaming commissions have experience dealing with and implementing these policy decisions. And state regulation of gambling “has been highly effective for consumers, states, tribes and the legal gaming industry.” National Conference of State Legislatures, *NCSL Urges Congress to Address Unregulated Sports Betting via Prediction Markets* (Jan. 29, 2026), <https://www.ncsl.org/resources/details/ncsl-urges-congress-to-address-unregulated-sports-betting-via-prediction-markets>. Still others ban sports betting altogether. See *Am. Gaming Ass’n, State of the States 2025*, at 12–13.

Take New Jersey as an example. Like many States, New Jersey’s laws offer many levels of protections to gamblers. Those protections include a robust licensing requirement that protects the integrity of the industry and protects against influence from organized crime or other criminal elements. See N.J. Stat. Ann. §§5:12A-10, -11, -13(a). Further, New Jersey strictly regulates all gambling activities to ensure the public’s continued “confidence and trust.” N.J. Stat. Ann. §5:12-1(b)(6) (outlining New Jersey’s public policy on gambling). A central part of New Jersey’s mission is ensuring that the gaming industry is “controlled and fostered” so as to “provid[e] a substantial contribution to the general welfare, health and prosperity of the State and its inhabitants.” *Id.* at (b)(1).

To that end, New Jersey requires those that conduct gaming operations to conspicuously post information about resources for problem gamblers. N.J. Stat. Ann. §5:12A-13(a)(11); N.J. Admin. Code §§13:69N-1.8(g), 13:69O-1.2(b). New Jersey law also includes various safeguards to protect against improper betting practices, including improper wagers on sports. See, e.g., N.J. Stat. Ann. §§5:12A-10 to -11; N.J. Admin. Code §§13:69N-1.6 to -1.12. Of particular note, New Jersey prohibits sports wagers by referees, owners, coaches, players, or other team staff. See N.J. Stat. Ann.

§5:12A-11(f). To protect the integrity of college sports, the State even—by constitutional amendment—prohibits wagers on college sports events taking place in New Jersey or in which a New Jersey college team participates. N.J. Const. art. IV, §7, ¶2(D). And New Jersey requires that those facilitating sports betting report suspicious activity. *See* N.J. Stat. Ann. §5:12A-11(i). Beyond that, New Jersey requires licensed operators to verify age before any wagering can occur and upholds a 21+ minimum age standard. *See* N.J. Stat. Ann. §5:12-119.

Similar to New Jersey, Ohio prohibits companies from offering sports betting without a license. Ohio Rev. Code §3775.03(A). A company must establish that it can responsibly facilitate such gambling. *See* Ohio Rev. Code §3775.09(A)–(B). Along related lines, Ohio facilitates an exclusion program whereby people worried about their sports gambling habits may place themselves on a voluntary exclusion list. *See* Ohio Rev. Code §3775.02(B)(11). To enforce that list, sports gaming proprietors are required to “employ commercially reasonable methods to prevent any person who is participating in the sports gaming voluntary exclusion program from engaging in sports gaming.” Ohio Rev. Code §3775.13(C)(1). Tennessee has the same requirements and prohibitions. *See* Tenn. Code Ann. §§ 4-49-117 (license requirement), -119 (exclusion list licensee requirements).

As set out in Nevada’s statutes: “public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related” to the operation of gaming in Nevada. NRS 463.0129(1)(c). Therefore, all entities that conduct gaming in Nevada must “be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of” Nevada. NRS 463.0129(1)(d). Additionally, Nevada upholds its strict regulation of gaming by requiring its patrons to be 21 years of age (NRS 463.350); by providing a patron dispute process (NRS 463.362, *et seq.*); by prohibiting wagers placed on an event by owners, coaches, players, and officials (Nev. Gam’g Comm’n Reg. 22.1205); by taxing gross gaming revenue (NRS 463.370, *et seq.*); by requiring a rigorous investigation and licensing process for all applicants which examines, among many other items, criminal record, associations, and financing (NRS 463.170); and by requiring reporting concerning potential match fixing or point shaving to Nevada regulatory authorities (Nev. Gam’g Comm’n Reg. 22.121). Nevada law also protects those suffering from problem gaming by requiring, among other measures, that gaming licensees letting patrons set deposit limits, “conspicuously display” information about responsible-gaming resources. Nev. Gam’g Comm. Reg. 5.225(18)(a)-(b).

New York also protects citizens through its laws and regulations. For those under the age of 21, New York prohibits sports betting. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1367(1)(j), (1)(r)(x). Even advertisements that depict a person under 21 engaged in gambling activities can be unlawful. *Id.* §1363(2)(c).

In contrast, prediction markets actively target vulnerable 18-year-olds who are more susceptible to addictive behavior and adverse outcomes. See Katherine Long et al., *Is This Insider Information? The Prediction Market Bets Driving a Campus Frenzy*, Wall Street Journal, (Mar. 5, 2026), <https://perma.cc/E4QB-M7VH>; see also Responsible Gambling Counsel, *Gambling & Young Adults*, <https://perma.cc/Q4JL-XJRM> (finding that players 18–20 years old are “significantly more likely to have chased their losses and bet more than they could afford in the past”). As a result, sportsbooks that follow state regulations have older patrons less susceptible to irresponsible gambling compared to prediction markets. A recent report from Citizens Bank found that almost a quarter of Kalshi’s users are under the age of 25, compared to just 7% for sportsbooks that are following state regulations. See Jordan Bender, *Prediction Markets vs. Sports Betting; Market Dynamics, ROI by Cohorts, and Competitive Implications*, Citizens Bank Industry update (Mar. 23, 2026), <https://perma.cc/9UYC-8A26>.

The States’ approach is nothing new. Local communities have regulated gambling since at least 1638 when the Puritans of Massachusetts enacted idleness laws barring people from possessing cards, dice, or other gambling devices. See George G. Fenich, *A Chronology of (Legal) Gaming in the U.S.*, 3 UNLV Gaming Rsch. & Rev. J. 65, 66 (1996), <https://perma.cc/QY6T-A4U9>. Although many States have legalized at least some forms of gambling today, the States’ “authorization of legalized gambling” over the years “has almost always been accompanied by the establishment of a corresponding regulatory regime and structure.” The National Gambling Impact Study Commission, Final Report, *Chapter 3: Gambling Regulation*, at 3-1 (1999), <https://perma.cc/ZZ7A-ZRGP>. For example, Ohio has comprehensive statutory schemes regulating the gambling it authorizes. See, e.g., Ohio Rev. Code §§3769.01–.99 (horse racing), 3770.01–.99 (lotteries), 3772.01–.99 (casino gaming), 3774.01–.09 (fantasy contests), 3775.01–.99 (sports gaming). As does New Jersey. N.J. Stat. Ann. §§5:5-22 to -206 (horse racing); 5:8-1 to -131 (games of chance); 5:9-1 to -25 (lotteries); 5:12-1 to -233 (casino gaming); 5:12A-10 to -19 (sports gaming). As does Tennessee. See Tenn. Code Ann. §§4-49-101 to -133 (Tennessee Sports Gaming Act), 4-49-201 to 214 (Fantasy Sports Act). Given this experience from States, even the CFTC has acknowledged that the States have “particular expertise” addressing the “risks and concerns associated with gambling,” including sports betting. 89 Fed. Reg. at 48982–83.

The States’ approach to regulating gambling today is comprehensive. States take many steps to regulate gambling, including, among other things, to (1) impose front-end screening to ensure that those facilitating gambling are suitable for the task, (2) set age limits to protect those most vulnerable to gambling addiction, (3) limit who may place bets to protect the integrity of sporting events, and (4) facilitate voluntary exclusion lists to assist problem gamblers. Prediction markets offer none of these protections. And the CFTC is ill-equipped to do so through rulemaking because it lacks the necessary tools and expertise.

IV. The CFTC lacks the expertise and experience to regulate sports gambling.

In line with the statutory text, the CFTC has long seen itself as lacking jurisdiction over sports bets. That makes sense. The CFTC has neither the tools nor the expertise to regulate in a space long governed by individual States.

For many decades, this has not been a contested point. Indeed, until recently, the CFTC recognized that it lacked the “statutory mandate” or “specialized experience” to regulate the “rapidly evolving field” of gambling. 89 Fed. Reg. 48968, 48982–83 (June 10, 2024). Instead, the CFTC emphasized, “gambling is overseen by state regulators with particular expertise,” and federal derivatives law is not “aimed at protecting against gambling-specific risks and concerns.” *Id.*

The CFTC has no history or experience with gambling risks. Instead, its rules “are focused on regulating financial instruments and markets, and do not include provisions aimed at protecting against gambling-specific risks and concerns, including customer protection concerns inherent to gambling.” *Id.* The CFTC’s regulatory power focuses on standard financial derivatives that do not align with the needs of sports betting. Many of those requirements—referred to as the “core principles” in the code of federal regulations—do not provide the types of protections offered by States. *See* 17 C.F.R. §§38.100–.1200.

Yet, now, the CFTC says it should be the sole regulator of sports betting. *See* Michael S. Selig, States Encroach on Prediction Markets, Wall Street Journal (Feb. 17, 2026), <https://perma.cc/R3FE-98AE>. The CFTC has even begun to sue States, arguing that States have no authority to regulate companies offering sports bets on DCMs. That stark change in course should raise eyebrows. For one thing, Congress is “especially unlikely” to delegate broad power to a federal agency that “has no expertise” crafting “policy” on a given topic. *King*, 576 U.S. at 486. The CFTC—on its own account—has no such expertise on sports gambling, but the States do. So States (and not the CFTC) should regulate sports bets.

The CEA is no substitute for the States’ regulations. Consider again Nevada and New Jersey as examples. Nevada and New Jersey have developed robust procedures for determining the suitability of any person involved in the gaming industry in New Jersey. This suitability determination is a front-loaded process in which the person seeking a gaming approval bears the burden of showing the person is qualified to hold a license. NRS 463.170; N.J. Stat. Ann. §§5:12-84 (casino license); 5:12A-11 (sports wagering license). As it relates to sports wagering, in Nevada only casinos, and in New Jersey only casinos and racetracks, may obtain licenses to “operate a sports pool” in accordance with state law and regulations. NRS 463.245(2)–(3); N.J. Stat. Ann. §5:12A-11(a). In addition to having already satisfied the requirements for casinos or racetracks, the sports-wagering-license applicant must

satisfy the gaming regulatory authority that the applicant is of “good character, honesty and integrity.” NRS 463.170(2)–(3), and has “financial stability, integrity and responsibility,” N.J. Stat. Ann. §5:12A-11(a). In Nevada, a sports pool may use communications technology to accept mobile wagers. *See* NRS 463.016425; Nev. Gam’g Comm’n Reg. 22.130, *et seq.* In New Jersey, the holder of a sports wagering license may then “authorize an internet sports pool operator” to “operate an online sports pool on its behalf provided the terms of the agreement are approved by the [D]ivision [of Gaming Enforcement].” N.J. Stat. Ann. §5:12A-11(a); *see id.* §5:12-104(a)(12), (13). Through these laws, Nevada and New Jersey screen out potentially predatory, bad actors from its system of legalized gambling. The CEA does none of that, and the “Commission regulations are focused on regulating financial instruments and markets” rather than “protecting against gambling-specific risks and concerns, including customer protection concerns inherent to gambling.” 89 Fed. Reg. at 48983.

Allowing sports gambling on DCMs threatens to undermine the States’ ability to protect their citizens. That is because if sports bets are swaps they *must* be traded on a DCM. 7 U.S.C. §2(e). That would place all sports bets within the CFTC’s regulatory power, thus calling into question sports-wagering laws around the nation that allow sports bets off DCMs. Those well-established state laws have long prevented negative consequences associated with unregulated gambling without being on a DCM. And the CEA does not displace those longstanding laws.

Instead of trying to crowd out effective state laws, the CFTC should simply enforce its own rules. The CFTC already has a binding rule *prohibiting* DCMs from listing any contract “that involves, relates to, or references ... gaming.” 17 C.F.R. §40.11(a)(1). Additionally, the CFTC likewise prohibits DCMs from listing any contract involving “an activity that is unlawful under *any* State or Federal law.” *Id.* (emphasis added). Unlicensed, unregulated, and untaxed “sports event contracts” offered on DCMs are *per se* unlawful activity under the state laws discussed here. And agencies, after all, have an obligation to follow their regulations issued through notice-and-comment rulemaking. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–67 (1954). “[I]t is elementary that an agency must adhere to its own rules and regulations.” *AT&T Corp. v. FCC*, 448 F.3d 426, 434 (D.C. Cir. 2006) (quotation omitted). Agencies seeking to reverse course must explain their change through notice and comment rather than simply ignore the law. *See Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 101 (2015).

The CFTC must seriously engage with this expertise and regulatory mismatch. It should recognize that States are best positioned to ensure their citizens are protected from the potential harms posed by sports gambling. The CFTC should also confirm that States are best equipped to regulate sports bets and acknowledge that allowing such gambling on DCMs would be against the public interest.

Agencies must follow the Constitution and federal statutes. And in our system of dual sovereignty, Congress must speak clearly before it hands over traditional state authority to federal agencies. It did no such thing here. The text of the CEA is clear on that point. The CFTC should recognize the limits of its power and affirm that States have the expertise, experience, and tools to regulate sports betting as they have for more than a century.

Yours,



DAVE YOST
Attorney General
State of Ohio



AARON D. FORD
Attorney General
State of Nevada



LETITIA JAMES
Attorney General
State of New York



JENNIFER DAVENPORT
Attorney General
State of New Jersey



JONATHAN SKRMETTI
Attorney General and Reporter
State of Tennessee

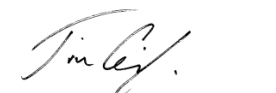


DEREK BROWN
Attorney General
State of Utah


STEVE MARSHALL
Attorney General
State of Alabama


STEPHEN J. COX
Attorney General
State of Alaska


KRIS MAYES
Attorney General
State of Arizona


TIM GRIFFIN
Attorney General
State of Arkansas


ROB BONTA
Attorney General
State of California


PHILIP J. WEISER
Attorney General
State of Colorado


WILLIAM TONG
Attorney General
State of Connecticut


KATHLEEN JENNINGS
Attorney General
State of Delaware


BRIAN L. SCHWALB
Attorney General
District of Columbia


ANNE E. LOPEZ
Attorney General
State of Hawai'i



RAÚL R. LABRADOR
Attorney General
State of Idaho



KWAME RAOUL
Attorney General
State of Illinois



TODD ROKITA
Attorney General
State of Indiana



BRENNA BIRD
Attorney General
State of Iowa



KRIS KOBACH
Attorney General
State of Kansas



RUSSELL COLEMAN
Attorney General
State of Kentucky



LIZ MURRILL
Attorney General
State of Louisiana



AARON M. FREY
Attorney General
State of Maine



ANTHONY G. BROWN
Attorney General
State of Maryland



ANDREA JOY CAMPBELL
Attorney General
State of Massachusetts



DANA NESSEL
Attorney General
State of Michigan



KEITH ELLISON
Attorney General
State of Minnesota



LYNN FITCH
Attorney General
State of Mississippi



MIKE HILGERS
Attorney General
State of Nebraska



RAÚL TORREZ
Attorney General
State of New Mexico



JEFF JACKSON
Attorney General
State of North Carolina



GENTNER DRUMMOND
Attorney General
State of Oklahoma



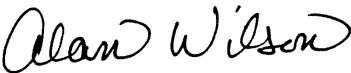
DAN RAYFIELD
Attorney General
State of Oregon



DAVID W. SUNDAY, JR.
Attorney General
State of Pennsylvania



PETER F. NERONHA
Attorney General
State of Rhode Island



ALAN WILSON
Attorney General
State of South Carolina



MARTY JACKLEY
Attorney General
State of South Dakota



CHARITY R. CLARK
Attorney General
State of Vermont



JAY JONES
Attorney General
State of Virginia



JOSH KAUL
Attorney General
State of Wisconsin