

No. 26-299

IN THE
Supreme Court of the United States

MARY JO FLAHERTY AND JENNIFER DAVENPORT,
Petitioners,
v.
KALSHIEX, LLC,
Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit**

**BRIEF OF *AMICUS CURIAE*
CABAZON BAND
OF CAHUILLA INDIANS
IN SUPPORT OF PETITIONERS**

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INTEREST OF THE *AMICUS CURIAE*¹

The Cabazon Band of Cahuilla Indians (formerly known as the Cabazon Band of Mission Indians) (the “Cabazon Band” or the “Tribe”) is a federally recognized Indian tribe that occupies and exercises jurisdiction over the Cabazon Indian Reservation in southern California. In the 1980s, the Cabazon Band exercised its tribal sovereignty by being one of the first Indian tribes in the country to offer gambling activities on its Reservation. After six years of litigation against the City of Indio, the County of Riverside and eventually the State of California, this Court affirmed Cabazon’s right to engage in these gaming activities and held that the State of California had no authority to regulate or prohibit these tribal activities. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

The 1987 *Cabazon* decision prompted Congress to enact the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*, the following year. That legislation, in turn, has led to the development of the Indian gaming industry which in 2025 pumped more than \$46 billion of desperately needed funding into Indian Country.

The Third Circuit’s decision in this case does not involve Indian tribes or tribal sovereignty over gaming activities. But the Petition makes several passing

¹ Under Supreme Court Rule 37.6., *amicus curiae* affirms that no counsel for a party authored this brief in whole or in part, and that no person other than *amicus curiae* or its counsel contributed money intended to fund preparing or submitting this brief. Under Rule 37.2, *amicus* affirms that all parties received timely notice of the intent to file this brief.

references to Indian gaming, and the results of this case could have unforeseen and devastating impacts on tribal gaming nationwide. As the tribe whose actions “opened the door” for tribal gaming, the Cabazon Band is uniquely positioned to draw the Court’s attention to this critical situation.

SUMMARY OF ARGUMENT

The Third Circuit’s decision in *KalshiEX, LLC v. Flaherty*, 172 F.4th 220 (3d Cir. 2026), unless reviewed and reversed by this Court, has the potential to cause devastating harm to the economies of hundreds of Indian tribes throughout the U.S.

Following this Court’s decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (“IGRA”). Under *Cabazon* and IGRA, more than 250 tribes today are using tribal gaming as the economic engine to provide desperately needed programs and services for their members on their reservations.

In IGRA, Congress directed that “Indian Tribes have the exclusive right to regulate gaming activities on Indian lands ...” *Id.* § 2701(5) (emphasis added). In the exercise of that explicit authority, the Cabazon Band has made mobile sports betting on its Reservation illegal, but Respondent Kalshi is engaging in that activity on the Cabazon Reservation today. Yet, under the Third Circuit’s decision below, the Tribe’s exclusive right to regulate on-reservation gaming is threatened under questionable reasoning that would presumably sanction and give exclusive

jurisdiction over Kalshi's unlawful sports betting activities on the Cabazon Reservation (and other tribal reservations around the country) to the Commodity Futures Trading Commission.

The Third Circuit's holding would have direct and devastating impacts on the \$46 billion Indian gaming industry; impacts that can only be avoided by this Court reviewing and reversing that decision.

ARGUMENT

I. TRIBAL GAMING IS THE ECONOMIC LIFEblood FOR HUNDREDS OF INDIAN TRIBES AROUND THE COUNTRY.

Almost forty years ago, this Court decided *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). That decision was the culmination of seven years of litigation by *amicus* Cabazon Band (now known as the Cabazon Band of Cahuilla Indians) to establish its right to offer high-stakes bingo and poker games to non-Indians on its reservation. Litigating first against the City of Indio, California, in *Cabazon Band of Mission Indians v. City of Indio*, 694 F.2d 634 (9th Cir. 1982), then against the County of Riverside in *Cabazon Band of Mission Indians v. County of Riverside*, 783 F.2d 900 (9th Cir. 1986) and finally here, against the State of California, 480 U.S. 202 (1987), this small southern California tribe fought for years, against a changing cast of governmental opponents, to confirm its sovereign right to operate gaming activities on its lands.

In *Cabazon*, this Court did just that. In a 6-3 decision, it held that the State of California was without jurisdiction to regulate or prohibit the tribal games. After rejecting a series of state arguments, the Court concluded that California's efforts to regulate or prohibit the Cabazon's gaming activities would impermissibly infringe on the Tribe's sovereign governmental authority to engage in that conduct.

The long-term impact of the *Cabazon* decision in Indian Country throughout the United States cannot be overstated. Respected commentators have said that *Cabazon* "may be the most momentous decision in federal Indian law in the last 50 years" and that it "remains one of the most important decisions in Indian law of the modern era dating back to the 1950s. Courts and commentators have cited the ruling more than 2,300 times" Matthew L. M. Fletcher, "California v Cabazon: A Quarter Century of Complex Litigious Self-Determination," *The Federal Lawyer*, pp. 50, 53 (Apr. 2012). Others have agreed with this assessment. "[T]he *Cabazon* decision was the most important case in the modern era for federal Indian law." Molly M. Fleming, "Legacy of a Lawsuit: 30 Years After Cabazon Decision State Tribes Harvesting Economic Benefits," *The Journal Record* (Mar. 1, 2017).

The reason for these accolades is simple:

By recognizing the sovereign right of tribes to use a new tool for reservation economic development – gaming – with limited state interference, *Cabazon* kicked the door to Indian Gaming wide open.

Steven Andrew Light, “The Cabazon Decision: Opening the Door to Indian Gaming – 20 Years Later,” *Indian Gaming*, p. 22 (Apr. 2007). Professor Light continued

Cabazon ushered in Indian gaming as we know it today and changed the fortunes of American Indians tribes throughout the U.S. For many tribes on isolated reservations that have faced crushing poverty and other social ills, gaming revenue translates into better reservation infrastructure and more effective and efficient provision of government services. Gaming has funded new schools, elder and day care centers, better housing, improved health services, language and cultural preservation programs, and – most importantly – jobs.

Id. at 23.

The *Cabazon* decision had a second—and equally important—impact on Indian Country: it prompted Congress to enact IGRA. Congress had been considering different versions of Indian gaming legislation as early as 1983, but without reaching agreement on how such legislation should deal with the issue. The *Cabazon* decision, however, broke the deadlock. As this Court has correctly noted, *Cabazon*

helped catalyze new legislation. After *Cabazon*, “congressional efforts to pass [Indian gaming] legislation ... that had been ongoing since 1983 gained

momentum, with Indian tribes' position strengthened." W. Wood, "The (Potential) Legal History of Indian Gaming," 63 *Ariz. L. Rev.* 969, 1027, and n. 353 (2021).

Ysleta del Sur Pueblo v. Texas, 596 U.S. 685, 692 (2022). As a result, in the fall of 1988, Congress passed, and President Ronald Reagan signed IGRA into law.²

The combined impact of the *Cabazon* decision and the resulting enactment of IGRA was, and continues to be, of monumental importance to Indian Country. By providing a statutory basis for Indian gaming that "codified the *Cabazon Band* holding," IGRA "has provided an important measure of predictability and legitimacy to Indian gaming." Fletcher, *Id.* at 51. IGRA has been called "the most successful economic development law in the history of the United States" in that

[t]he tribes that had always been political entities were now political entities with a revenue stream.... This resulted in significant advancement of health care facilities, education, economic development and the growing of non-gaming, tribally owned facilities. This

² The direct link between *Cabazon* and IGRA is unquestioned. See *West Flagler Associates, Ltd. v. Haaland*, 71 F.4th 1059, 1062 (D.C. Cir. 2023) ("In response to [Cabazon], Congress the following year enacted IGRA."); *Colorado River Indian Tribes v. National Indian Gaming Commission*, 383 F. Supp. 2d. 123, 126 (D.D.C. 2005) ("The decision in *Cabazon Band* led to the enactment of the Indian Gaming Regulatory Act.").

strengthened tribal infrastructure and allowed the growth of tribal self-sufficiency such as government, tribal courts, legislatures and executive branches.

Fleming, *supra*.

Examples of tribal success stories based on Indian gaming are legion. For example, almost twenty years ago, the D.C. Circuit found that “[a]s a result of [its] [c]asino . . . the [San Manuel Band of Serrano Mission Indians] can now boast full employment, complete medical coverage for all members, government funding for scholarships, improved housing, and significant infrastructure improvements to the reservation.” *San Manuel Indian Bingo & Casino v. NLRB*, 475 F.3d 1306, 1308 (D.C. Cir. 2007). And more generally, courts have found that tribal gaming “is not only a source of substantial revenue for tribes, but the lifeblood on which many tribes have come to rely.” *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1032 (9th Cir. 2022) (cleaned up).

To put the importance of this tribal “lifeblood” into perspective, prior to the *Cabazon* decision, the Cabazon Band and many of its neighboring tribes in southern California,

were utterly destitute; they occupied arid desert land with no natural resources and no prospects that their grim financial circumstances would ever change. Their members lived in abject poverty and faced a dismal future.

Ralph A. Rossum, “The Supreme Court and Tribal Gaming: California v. Cabazon Band of Mission Indians (Landmark Law Cases and American Society)” p. 3 (2011). But *Cabazon* changed that. As of 2022, approximately 250 Indian tribes in 29 states were operating gaming facilities on their reservations. Glenn M. Feldman, “35 and Counting,” Tribal Government Gaming, 19th Annual Edition, pp. 40, 42 (Apr. 8, 2022). And in July of this year, the National Indian Gaming Commission reported that in 2025, Indian gaming in the U.S. generated \$46.2 billion in revenues. National Indian Gaming Commission (July 21, 2026). That is \$46.2 billion in much needed funding going into Indian Country that was not there pre-*Cabazon*. For hundreds of Indian tribes across America, that is the legacy of the *Cabazon* decision. But that legacy is now under direct threat from Respondent Kalshi and its prediction market cohorts.

II. KALSHI’S ACTIVITIES POSE A DIRECT AND DEVASTATING THREAT TO INDIAN GAMING.

Kalshi’s activities, which Kalshi itself has described as “sports betting,” Petition, p.12, have the very real potential to devastate the economies of hundreds of Indian tribes around the country.

Under IGRA, tribes that wish to offer Class III gaming (that is, “Las Vegas” style casino games, including sports betting) must first enact a tribal ordinance that outlines the types of games the tribe will offer, as well as containing a host of other operational and regulatory requirements. That ordinance must then be approved by the Chairman of

the National Indian Gaming Commission. 25 U.S.C. § 2710(d)(1). Then, the Tribe must negotiate a “compact” with the state in which it is located. This contract adds additional operational and regulatory requirements that govern how and under what conditions the authorized games will be played. *Id.* § 2710(d)(3). Those compacts must then be approved by the governor of the state and the Secretary of the Interior. *Id.* § 2710(d)(3)(B). Together, the tribal ordinance and the tribal-state compact establish licensing standards, background investigation requirements and other regulatory checks and balances to ensure that, as required under IGRA, “Indian tribes have the exclusive right to regulate gaming activities on Indian lands,” *id.* § 2701(5), and that “the Indian tribe will have the sole proprietary interest” in those on-reservation gaming activities. *Id.* § 2710(b)(2)(A).

Kalshi’s sports betting activities violate both tribal law and IGRA. And make no mistake—these are not theoretical concerns. These violations are occurring at this moment. As described in the Declarations of Jonathan Rosser, the Director of Legal Affairs for the Cabazon Band, and Jose Escobar Rivera, the Executive Director of the Cabazon Tribal Gaming Commission, attached in the Appendix to this brief, as part of their investigation of illegal gaming on the Cabazon Reservation:

- On September 22, 2026, while located on the Cabazon Indian Reservation, Mr. Rosser was able to download the Kalshi app to his phone and place a \$25 bet on the outcome of the Minnesota Vikings-

Tampa Bay Buccaneers football game to be played the following Sunday. Appendix (“App.”) A at A1-A2.

- According to Executive Director Rivera, the ability to place that mobile sports bet within the Cabazon Reservation is prohibited by the Tribe’s federally approved Tribal Gaming Ordinance, violates the Cabazon Band’s Tribal-State Gaming Compact with the State of California and is unlawful under IGRA. App. B at A3-A4.

The unlawful sports betting activities that Kalshi is engaged in on the Cabazon Reservation are being conducted on hundreds of other Indian reservations around the country, as many additional tribes and tribal organizations can and will attest to this Court. And the point is unmistakable: to the extent Kalshi is engaged in unauthorized sports betting throughout Indian Country, those activities violate tribal and federal law and unlawfully divert substantial gaming revenues from the tribes who, under IGRA, are intended to be the primary beneficiaries of on-reservation gaming and have the “exclusive right to regulate” those activities. 25 U.S.C. § 2701(5).

Thus, Kalshi’s activities pose a direct and devastating threat to the economic lifeblood upon which much of Indian Country today relies.

III. THE THIRD CIRCUIT'S DECISION SHOULD BE REVIEWED AND REVERSED.

The Third Circuit's decision, under which Kalshi may continue to offer mobile sports betting free from traditional state (or tribal) jurisdiction, should be reviewed and reversed by this Court. In addition to the state law-based reasons and concerns advanced by Petitioners, exceptionally important federal Indian law and tribal law principles and considerations are at issue here. In 1988, Congress explicitly decreed that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands" conducted in accordance with the principles announced in the *Cabazon* decision. 25 U.S.C. § 2701(5). The likelihood that Congress intended to repeal *sub silentio* this explicit grant of exclusive tribal authority through obscure language in 2010 legislation dealing with commodity regulation seems vanishingly remote.³

Equally important, the issue of Kalshi's sports betting authority is now the subject of a direct circuit split between the Third and Ninth Circuits. See *KalshiEX, LLC v. Assad*, No.25-7516, 2026 WL 2543846 (9th Cir. Aug. 28, 2026) and *Blue Lake Rancheria v. Kalshi, Inc.*, No. 25-7504, 2026 WL 2728466 (9th Cir. Sept. 16, 2026). With these two recent Ninth Circuit decisions (the latter of which involves tribal gaming under IGRA) directly rejecting the Third Circuit's rule and reasoning here, the importance of the Court granting the Petition and

³If ever a case called out for the proper application of the Court's "major questions" doctrine, this is surely it.

providing a definitive resolution to this issue is made crystal clear.

IV. CONCLUSION

The Court should grant the Petition for purposes of reversing the Third Circuit's decision.

Respectfully submitted,

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October 6, 2026

APPENDIX

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APPENDIX A

DECLARATION OF JONATHAN ROSSER

I, Jonathan Rosser, declare as follows:

1. I am the Director of Legal Affairs for the Cabazon Band of Cahuilla Indians ("Cabazon Band"). I have held my current position since August 2023. Prior to that, I served as Acting Director of Legal Affairs beginning in 2016 and as Staff Attorney for the Cabazon Band beginning in 2013.

2. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently to the matters contained herein.

3. The Cabazon Band, through its Tribal Gaming Commission, is conducting an investigation of possible illegal gaming on the Cabazon Indian Reservation.

4. As part of that investigation, on September 22, 2026, I downloaded the Kalshi app on my employer-provided cell phone.

5. While sitting in my office on the Cabazon Indian Reservation, by using the Kalshi app, I was able to place a \$25.00 bet on the Minnesota Vikings vs Tampa Bay Buccaneers football game to be played next Sunday, under which I would win \$45.66 if the Minnesota Vikings win that game.

A-2

6. Betting on sporting events, such as I was able to do through the Kalshi app, is not legal on the Cabazon Indian Reservation.

I declare under penalty of perjury under the laws of the United States and the State of California, that the foregoing is true and correct.

Executed this 24th day of September, 2026, on the Cabazon Indian Reservation, Riverside County, California.

/s/ Jonathan Rosser
Jonathan Rosser

A-3
APPENDIX B

DECLARATION OF JOSE ESCOBAR RIVERA

I, Jose Escobar Rivera, declare as follows:

1. I am the Executive Director of the Cabazon Tribal Gaming Commission. I have held that position since October 2025.

2. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently to the matters contained herein.

3. The Cabazon Tribal Gaming Commission is the entity of the Cabazon Band of Cahuilla Indians charged with regulating gaming activities on the Cabazon Indian Reservation.

4. In my position as Executive Director of the Tribal Gaming Commission, I am familiar with the Cabazon Band's Tribal Gaming Ordinance, the Tribe's Gaming Compact with the State of California and with the Indian Gaming Regulatory Act.

5. I recently initiated an investigation into the extent of illegal sports betting taking place on the Cabazon Reservation.

6. As part of that investigation I have been advised by Jonathan Rosser, the Tribe's Director of Legal Affairs, that while located on the Reservation, he was recently able to place a bet on the outcome of the Minnesota Vikings vs Tampa Bay Buccaneers

football game using an app and platform offered by Kalshi.

7. Sports betting, that is, placing a wager on the outcome of a sporting event, is not authorized on the Cabazon Reservation and is therefore unlawful under the Cabazon Band's Tribal Gaming Ordinance, the Tribe's Gaming Compact with the State of California and the Indian Gaming Regulatory Act.

I declare under penalty of perjury under the laws of the United States and the State of California, that the foregoing is true and correct.

Executed this 24th day of September, 2026, on the Cabazon Indian Reservation, Riverside County, California.

/s/ Jose Escobar Rivera