

No. 25-7516

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KALSHIEX, LLC,

Plaintiff-Appellant

v.

KIRK D. HENDRICK, *et al.*,

Defendants-Appellees

On Appeal from the United States District Court
for the District of Nevada
No. 2:25-cv-575 (Gordon, C.J.)

**AMICUS BRIEF BY STOP PREDATORY GAMBLING, TEXANS
AGAINST GAMBLING, AND THE ASSOCIATION OF AMERICAN
PHYSICIANS AND SURGEONS IN SUPPORT OF DEFENDANTS-
APPELLEES AND IN SUPPORT OF AFFIRMANCE**

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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9th Cir. Case Number(s) 25-7516

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Stop Predatory Gambling, Texans Against Gambling, and the Association of American Physicians and Surgeons

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Not applicable.

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☐ I have reviewed this form, FRAP 26.1, and Circuit Rule 26.1-1 and, to the best of my knowledge, have no information to disclose at this time.

Signature s/ Andrew L. Schlafly

Date January 29, 2026

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IDENTITY, INTEREST AND AUTHORITY TO FILE¹

Amicus curiae Stop Predatory Gambling is a nonprofit national organization that for decades has advocated for improving the lives of the American people by exposing the harms from state-sanctioned gambling. In 2008 it held a much-acclaimed conference at the National Harbor in Maryland which featured anti-gambling speakers including Taylor Branch, a Pulitzer Prize-winning biographer of the Rev. Martin Luther King Jr. and historian of the civil rights movement, and Bishop John R. Schol, who at the time was the head of the Baltimore/Washington United Methodist Conference. Stop Predatory Gambling led a remarkably diverse coalition, which included the Center for Popular Democracy, the Islamic Society of North America, Public Good Law Center, Public Health Advocacy Institute, United for a Fair Economy, Louisiana Baptist Convention, and the Lutheran Church – Missouri Synod, in an amicus brief filed in the landmark case of *Murphy v. NCAA*, and their amicus brief was cited favorably by the Supreme Court majority opinion. 584 U.S. 453, 460 n.16 (2018).

Amicus curiae Texans Against Gambling is a group of volunteers devoted to preventing the expansion of gambling. Founded in 1988 as Texans Who Care,

¹ All parties have consented to the filing of this amicus brief. Pursuant to FED. R. APP. P. 29(a)(4)(E), undersigned counsel certifies that: counsel for the *Amici* authored this brief in whole; no counsel for a party authored this brief in any respect; and no person or entity – other than *Amici*, their members, and their counsel – contributed monetarily to this brief’s preparation or submission.

Texans Against Gambling operates as a d/b/a of this nonprofit Texas corporation. It strives to improve lives by freeing victims of predatory gambling from the lower standard of living, exploitation, and fraud that predatory gambling causes, and Texas Against Gambling stands for the legal principle that gambling issues should be resolved politically at the state level. In part due to the efforts of volunteers associated with this group and many other groups, the State of Texas continues to prohibit sports gambling as ten other states do, despite immense political pressure to allow it. The precedent to be set by this Court concerning nationwide gambling on the platform of Plaintiff-Appellant KalshiEX LLC (“Kalshi”) could enable it to bypass Texas laws against gambling. Last year Texans Against Gambling was quoted as saying that:

Sports gambling and casinos are economically regressive, scholarly studies show, because they produce nothing of external value. They do not spur longterm economic growth. Instead they hinder it. Keep Texas, Texas.

Jasper Sherer, “Casino and sports betting companies press for a win in Texas despite Senate opposition,” *Texas Tribune* (Feb. 11, 2025).² The possibility of entirely bypassing state laws and regulations by Kalshi offering the equivalent of wagers on sporting events and even elections is contrary to the interests of Texans Against Gambling.

² <https://www.texastribune.org/2025/02/11/texas-legislature-gambling-casinos-sports-betting/> (viewed Dec. 13, 2025).

The Association of American Physicians and Surgeons (AAPS) is a national nonprofit membership organization founded in 1943, and its motto is “all for the patient.” U.S. Supreme Court Justices and U.S. Courts of Appeal have utilized amicus briefs filed by AAPS. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 704 (2008) (Breyer, Stevens, Souter, and Ginsburg, JJ., dissenting); *Springer v. Henry*, 435 F.3d 268, 271 (3d Cir. 2006). Members of AAPS have testified at many state legislative committee hearings on health and medical issues concerning the American public. AAPS physician members see firsthand the harm being caused by the growing pandemic of commercialized gambling.

Amici have a direct interest in opposing the override of many state constitutions, laws and regulations that prohibit or limit commercialized gambling, as attempted by Kalshi in this lawsuit.

SUMMARY OF ARGUMENT

Affirmance can be on any ground, and the strong public interest against expanding predatory gambling through prediction markets supports affirming the decision below. The district court correctly found that “[w]hatever one’s views are on gambling, there is no question that some segment of the population will suffer from problem gambling” *KalshiEx, LLC v. Hendrick*, No. 2:25-cv-00575-APG-BNW, 2025 U.S. Dist. LEXIS 234246, at *42 (D. Nev. Nov. 24, 2025). These substantial harms to the public require affirmance here.

In addition to harming individuals, prediction markets harm the integrity of sporting events and elections, and even national security by taking bets on outcomes related to United States military operations, as Kalshi's competitor Polymarket did in connection with the recent capture of the Venezuelan President Nicolás Maduro. *The New York Times* and other sources have widely reported by that a large last-minute wager placed anonymously through Polymarket signaled an imminent military action to remove Maduro from power. This betting activity placed the lives of American soldiers at risk while they were engaged in the covert operation to capture Maduro against armed resistance.

The unregulated prediction markets, accessible from anyone's cell phone, create an extraordinarily harmful financial incentive to wager in manners that risk the safety and well-being of soldiers, politicians, athletes, and celebrities.

Additional horrific scandals are just around the corner if prediction markets are allowed to continue to expand, beyond the reach of the well-developed state laws and regulations. Kalshi recently broke its own record in trading volume with an astonishing \$1.98 billion in event contracts in merely one week, ending on January 4, 2026.³

³ Dustin Gouker, "Kalshi Almost Hits \$2B Trading Volume In Record Week," *Event Horizon* (Jan. 6, 2026) <https://nexteventhorizon.substack.com/p/kalshi-almost-hits-2b-trading-volume> (viewed Jan. 27, 2026).

The personal toll from the recent sharp increase in betting on prediction markets is staggering. The rate of suicide by gamblers is an estimated 15 times the overall population. Online casino gambling, which is less dangerous than prediction markets, is “as deadly as heroin and cocaine are,” testified *Amicus* Stop Predatory Gambling national director Les Bernal in 2024 in opposing its expansion in New York.⁴ Physical harm caused by gambling includes cardiovascular disease, hypertension, peptic ulcer disease, and loss of sleep. Research further suggests a link between gambling and dementia, and also Parkinson’s disease. Psychiatric harm induced by gambling includes severe depression, anxiety and substance use disorders, and intense feelings of shame.

Financial losses inflicted by gambling have exceeded \$115 *billion* annually in the United States,⁵ harming demographics that can least afford it and regressively transferring wealth from the poor to the rich. Even Pope Leo recently spoke out strongly against the increase in gambling, despite the traditional use by the Catholic Church of bingo to raise funds: “I would like to draw attention, in

⁴ Jose Enrico, “Online Gambling Boom Over? Major States Hit Pause Amid Job Loss Fears, Addiction Warnings,” *Tech Times* (Oct. 16, 2024).

<https://www.techtimes.com/articles/307890/20241016/online-gambling-boom-over-major-states-hit-pause-amid-job-loss-fears-addiction-warnings.htm> (viewed Dec. 13, 2025).

⁵ WorldAtlas, “Countries That Gamble The Most” (2023)

<https://www.worldatlas.com/society/countries-that-gamble-the-most.html> (viewed Dec. 13, 2025).

particular, to the scourge of gambling, which ruins many families.” Mariya Manzhos, “Pope Leo says the ‘scourge of gambling’ ruins families and warns against its rise,” *DeseretNews* (Jan. 6, 2026).⁶

A police power, which only states have, is necessary to curb the predatory practices of gambling companies. Kalshi attempts an end run around that based on an imaginative – but faulty – new interpretation of an old statute. This violates major questions doctrine, which the Supreme Court has increasingly invoked to reject similar approaches in other contexts. *See, e.g., Biden v. Nebraska*, 600 U.S. 477, 502-03 (2023) (The “eviction moratorium implemented by the Centers for Disease Control and Prevention triggered analysis under the major questions doctrine.”); *West Virginia v. EPA*, 597 U.S. 697, 724 (2022) (while quoting Justice Kagan, the majority opinion emphasized that “we ‘typically greet’ assertions of ‘extravagant statutory power over the national economy’ with ‘skepticism’”) (quoting *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014)). This Court should reject Kalshi’s irresponsible attempt to nationalize unlimited gambling, and instead affirm the historic authority of states to regulate and limit predatory commercialized gambling.

⁶ <https://www.deseret.com/faith/2026/01/06/pope-leo-says-gambling-ruins-families/> (viewed Jan. 26, 2026).

ARGUMENT

The decision below was correct: Kalshi has not shown a likelihood of success on the merits, while the balance of hardships and interests of the Nevada gaming industry tilt against Kalshi. This Court should affirm with greater emphasis on the severe harm to the general public interest caused by prediction markets.

“We are, of course, entitled to affirm on any ground appearing in the record, including theories not relied upon or rejected by the district court.” *Scott v. United States*, 328 F.3d 132, 137 (4th Cir. 2003) (citing *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992)).

I. Amid a Pandemic of Commercialized Gambling and Immense Harm Caused by It, the Public Interest Is Strongly Against Kalshi.

The public interest weighs heavily against Kalshi’s request for a preliminary injunction in at least four ways: the intense harm caused by Kalshi’s product to individuals, the damage it inflicts to the integrity of sporting events, its undermining of elections, and the unacceptable risk that predictions markets pose to our national security.

A. The Enormous Harm to Individuals Caused by Unrestricted Commercialized Gambling.

The rapidly worsening public health crisis caused by commercialized gambling weighs heavily against granting a preliminary injunction to Kalshi.

Roughly 30 years ago, Associate Professor Howard Shaffer of the Division on Addictions at Harvard Medical School observed that “[g]ambling is an addictive behavior, make no mistake about it. ... Gambling has all the properties of a psychoactive substance, and ... changes the neurochemistry of the brain.” John W. Kindt, “The Failure to Regulate the Gambling Industry Effectively: Incentives for Perpetual Non-Compliance,” 27 S. Ill. U. L. J. 219, 223 (2003) (hereinafter, *Failure to Regulate*).⁷ The rate of suicide among gamblers is estimated to be 15 times the rate in the general population.⁸ Relatively few — typically less than 10% of — addicted gamblers ever seek help to overcome their habit, so there is very little way to alleviate this harm once unlimited commercialized gambling is allowed.

Significant physical health problems result from gambling, including “hypertension, sleep deprivation, cardiovascular disease, and peptic ulcer disease.”⁹ Psychiatric harm includes exacerbation and initiation of major depressive episodes, anxiety disorders, or substance use disorders, and intense

⁷ Quoting Ford Turner, “Neurochemicals Blamed for Compulsive Gambling,” 8 *Compulsive Gambling* 1 (Winter 1995-96) (citing an article in the *Beacon-News* (Springfield, Mass.), May 10, 1995).

⁸ World Health Organization, “Gambling” (Dec. 2, 2024) <https://www.who.int/news-room/fact-sheets/detail/gambling> (viewed Dec. 13, 2025).

⁹ T.W. Fong, “The biopsychosocial consequences of pathological gambling,” 2 *Psychiatry* (Edgmont) 22-30 (2005).

shame, deceptive conduct, and rash decision-making.¹⁰ Pathological gambling has also been linked to Parkinson’s disease, frontotemporal dementia, and amyotrophic lateral sclerosis.¹¹

The *Diagnostic and Statistical Manual of Mental Disorders Fifth Edition* (“DSM-5”), the standard used by U.S. mental health professionals, began classifying gambling addiction as an addictive disorder in 2013. Gambling addiction is the first and only behavioral addiction defined in the clinical section of *DSM-5*.¹² Like most other addictions, gambling requires increased participation over time to attain the same level of satisfaction, and withdrawal discomfort typically arises in those who attempt to overcome this addiction.¹³ The ICD-10-CM, which is the International Classification of Diseases, Tenth Revision, Clinical

¹⁰ *Id.*

¹¹ E.T. Ozel-Kizil, “A case of frontotemporal dementia with amyotrophic lateral sclerosis presenting with pathological gambling,” 9 *J Clin Neurol* 133-137 (2013) <https://pmc.ncbi.nlm.nih.gov/articles/PMC3633192/> (viewed Dec. 13, 2025).

¹² *See* E. Sohn, “How gambling affects the brain and who is most vulnerable to addiction,” American Psychological Association (July 1, 2023). <https://www.apa.org/monitor/2023/07/how-gambling-affects-the-brain#:~:text=Research%20suggests%20that%20people%20who%20are%20young,Related%20to%20emotional%20learning%20and%20stress%20regulation> (viewed Dec. 13, 2025).

¹³ *See id.*

Modification, is used for medical diagnoses and includes a code Z72.6 for “gambling and betting” disorders.¹⁴

Gambling by those under age 21 (“underaged gambling”) is typically prohibited by states, *see, e.g.*, Nev. Rev. Stat. § 463.350; Md. Code Ann., Crim. Law § 10-136; Md. Code Regs. 36.10.13.44; N.J.S.A. 5:12-119 (under-21 gambling is punishable by a fine of not less than \$500 and not more than \$1,000), yet Kalshi fully allows gambling by those as young as age 18 as criticized by the district court. “Allowing Kalshi to continue offering sports-related event contracts to 18-year-olds, even though the [Commodities Future Trading Commission] CFTC issued a regulation that prohibits [designated contract markets] DCMs like Kalshi from listing gaming contracts, is not in the public interest.” *KalshiEx v. Hendrick*, 2025 U.S. Dist. LEXIS 234246, at *42. Alcohol and cigarette purchases are banned in every state by those under 21, and the ban by states of gambling by teenagers and 20-year-olds is medically justified. “In fact, there are characteristic developmental changes that almost all adolescents experience during their transition from childhood to adulthood. It is well established that the brain undergoes a ‘rewiring’ process that is not complete until approximately 25 years of

¹⁴ ICD10Data.com. “Gambling and betting.” <https://www.icd10data.com/ICD10CM/Codes/Z00-Z99/Z69-Z76/Z72-/Z72.6#:~:text=Code%20POA%20Exempt-,Z72.,a%20diagnosis%20for%20reimbursement%20purposes> (viewed Dec. 13, 2025).

age.” Mariam Arain, “Maturation of the adolescent brain,” 9 *Neuropsychiatr Dis Treat.* 449, 449 (Apr. 3, 2013).¹⁵ The lack of maturity for teenagers to smoke and drink likewise applies to gambling, as the prefrontal cortex is responsible for decision-making, planning, problem-solving, and controlling impulses and is not fully developed until age 25. “The adolescent brain is structurally and functionally vulnerable to environmental stress, risky behavior” *Id.* at 458-49.

The American Gaming Association encourages a minimum age limit of 21 years old for gambling,¹⁶ even though more profits for its members could be obtained by accepting wagers by impulsive younger patrons. Yet, contrary to this public policy, Kalshi induces teenagers to gamble, and accepts wagers by those aged 18 to 21.¹⁷

In addition to the health and social harm, the economic injuries inflicted by commercialized gambling are also severe. The leading American expert on

¹⁵ <https://pmc.ncbi.nlm.nih.gov/articles/PMC3621648/pdf/ndt-9-449.pdf> (viewed Dec. 12, 2025).

¹⁶ American Gaming Association, “New Updates to AGA Responsible Marketing Code for Sports Wagering Prohibit “Risk Free,” Enhance College-Aged Protections” (Mar. 28, 2023) <https://www.americangaming.org/new-updates-to-aga-responsible-marketing-code-for-sports-wagering-prohibit-risk-free-enhance-college-aged-protections/> (viewed Dec. 19, 2025).

¹⁷ “Kalshi has become a revamped platform in 2025 that allows individuals aged 18 and above to place real-money predictions on just about any category that piques the public’s interest within the United States.” David Huber, “Kalshi Review – How does it work and is it any good?” *Props*, <https://props.com/sportsbook/kalshi/review/> (viewed Dec. 19, 2025).

gambling, Professor (now-emeritus) John W. Kindt, explains how regressively harmful gambling is:

Gambling also has a tendency to attract those who can least afford it; it is well-established that legalized gambling activities act as a type of regressive tax on the poor and on minority groups. People living at the poverty level, often lacking an education which would enable them to understand the odds against winning, gamble with the hope of changing their lives. The statistics of lost paychecks, financial ruin, crime, incarceration, spousal abuse, child abuse and neglect, suicide, and other problems which have been documented by social-welfare agencies and charities should quickly dispel the notion that legalized gambling constitutes a painless tax. The reality is that legalized gambling fuels enormous social problems

John W. Kindt, “Legalized Gambling Activities as Subsidized by Taxpayers,” 48 Ark. L. Rev. 889, 896-97 (1995) (footnotes omitted).

“Studies show that a state’s legalization of online sports betting is associated with increased bankruptcies and reduced savings, especially for low-income households. Emerging evidence points to rising rates of problem gambling, particularly among young men.” Jonathan D. Cohen, “Where are all the anti-gambling Christians?” *ARC Religion, Politics, Etc.* (May 15, 2025).¹⁸

See also John W. Kindt, “U.S. National Security and the Strategic Economic Base: The Business/Economic Impacts of the Legalization of Gambling Activities,” 39 St. Louis L.J. 567, 579 (1995) (“In the social-welfare context, legalized gambling is widely-accepted as constituting a regressive tax on the poor.”) (citing Charles T.

¹⁸ <https://arcmag.org/where-are-all-the-anti-gambling-christians/> (viewed Dec. 19, 2025).

Clotfelter & Philip J. Cook, *Selling Hope* (Nat'l Bur. Econ. Research, Harvard Univ. Press 1989)).

In 2023, \$49 billion (not merely million) was spent on table games and slot machines alone.¹⁹ An estimated 26% of Americans gamble at a bricks-and-mortar casino, while 20% gamble on sporting events. Historically, the severe social costs of prior gambling waves have led to outright bans. “The United States has periodically experimented with legalized gambling activities. In each historical ‘wave,’ the social costs related to gambling became both apparent and overwhelming, consistently leading to the criminalization of all gambling activities.” *Failure to Regulate*, *supra*, 27 S. Ill. U. L. J. at 221.

The linkage of commercialized gambling to sports, as Kalshi offers in the form of “event contracts,” is particularly harmful. Nicholas Ruthmann, M.D., a cardiologist for the Cleveland Clinic, explained that during the annual Super Bowl “the emotional stress of watching the game can trigger surges of adrenaline. In turn, this can elevate blood pressure, increase your heart rate and even provoke dangerous heart rhythms—particularly in those with an underlying cardiovascular

¹⁹ D. Boland, “Sports betting demographics in the U.S.,” *Birches Health* (Feb. 28, 2024) <https://bircheshealth.com/resources/sports-betting-demographics-in-the-u-s> (viewed Dec. 19, 2025).

disease.”²⁰ He added that there is extensive documentation that major sporting events can increase the risk of heart attacks.²¹ Absenteeism the day after the Super Bowl in February 2025 increased by 40%, to an estimated record 22.6 million employed Americans who failed to show up for work.²² The added stress of gambling on the outcome surely worsens these harms to public health, and the high emotional attachment by fans of professional sports renders sports gambling on prediction markets a toxic combination.

B. The Harm Caused by Commercialized Gambling to the Integrity of Sporting Events.

In addition to the immense individual harm resulting from unrestricted commercialized gambling, it also severely damages the integrity of sporting events.

Major League Baseball had diligently prevented gambling from corrupting its game for more than a century after the devastating scandal of the 1919 World Series, in which several Chicago White Sox players rigged their performances for a

²⁰ Cleveland Clinic, “How Super Bowl stress can affect your heart,” *Newsroom* (Feb. 5, 2025).

<https://newsroom.clevelandclinic.org/2025/02/05/how-super-bowl-stress-can-affect-your-heart> (viewed Dec. 19, 2025).

²¹ *Id.*

²² C. Morris, “Super Bowl Monday will soar 40% over last year as more people than ever call out of work to recover,” *Fortune* (Feb. 10, 2025) <https://fortune.com/2025/02/10/office-absences-super-bowl-monday/> (viewed Dec. 19, 2025).

jackpot payout to gamblers by enabling the 5-1 underdog Cincinnati Reds to prevail in an enormous upset. *See, e.g.*, “Baseball’s Original Sin: The Story of the Chicago Black Sox Scandal,” *WTTW*.²³ As a result of the new permissiveness towards sports gambling that Kalshi seeks to vastly expand on prediction markets, in late 2025 two pitchers on the Cleveland Guardians were arrested and charged in federal court with fixing pitches for gamblers who had placed so-called “prop” bets. “According to prosecutors, the two accepted thousands of dollars in bribes to help two unnamed gamblers in their native Dominican Republic win at least \$460,000 on bets placed on the speed and outcome of their pitches.” Associated Press, “Cleveland Guardians pitchers Emmanuel Clase and Luis Ortiz face May trial date in gambling case,” *NBC News* (Dec. 2, 2025).²⁴ These accusations are a tragedy for the players and for every fan of America’s Pastime, and apparently result from the sharp increase in sports gambling which would worsen further on prediction markets.

College basketball, in which many players are financially struggling and thus at a heightened vulnerability to influence by gamblers, has suffered from

²³ <https://www.wttw.com/chicago-stories/black-sox-scandal/baseballs-original-sin-the-story-of-the-chicago-black-sox-scandal#:~:text=The%201919%20World%20Series%20was%20the%20site,gambling%20world%20that%20the%20fix%20was%20in.> (viewed Dec. 12, 2025).

²⁴ <https://www.nbcnews.com/sports/baseball/cleveland-guardians-pitchers-emmanuel-clase-luis-ortiz-face-may-trial-rcna247036> (viewed Dec. 12, 2025).

multiple recent gambling scandals. One player candidly admitted on national television, *Good Morning America*, that he shaved points for gamblers because he had a newborn child and needed the cash. David Purdum, “Ex-college basketball player admits to role in point-shaving scheme,” *ESPN* (Nov. 17, 2025) (“Former University of New Orleans men’s basketball player Dae Dae Hunter acknowledged his role in a point-shaving scheme last season”).²⁵ Alleged fixing of college basketball games in the NCAA has recently implicated many programs. “In September, the NCAA announced it was investigating 13 college basketball players from six named schools.” Dana O’Neil and Kevin Dotson, “NCAA finds 6 players from 3 schools involved in fixing games,” *CNN* (Nov. 7, 2025).²⁶ Since then the NCAA has banned multiple players for life, due to separate infractions. *Id.* See also Ryan Young, “Multiple college basketball programs linked to federal investigation amid NBA gambling ring probe,” *Yahoo Sports* (Feb. 3, 2025) (“The federal investigation into [this] gambling ring ... has been linked to unusual betting activity with at least three men’s college basketball programs.”).²⁷

²⁵ https://www.espn.com/mens-college-basketball/story/_/id/46999646/ex-college-basketball-player-admits-role-point-shaving-scheme (viewed Dec. 12, 2025).

²⁶ <https://www.cnn.com/2025/11/07/sport/basketball-ncaa-bans-6-athletes-gambling-investigation> (viewed Dec. 12, 2025).

²⁷ <https://sports.yahoo.com/multiple-college-basketball-programs-linked-to-federal-investigation-amid-nba-gambling-ring-probe-204332209.html> (viewed Dec. 19, 2025).

The NBA has been rocked by multiple federal prosecutions of players and coaches in connection with allegations of illegal gambling. “The NBA’s opening week was engulfed by news of a pair of federal investigations related to illegal sports betting and rigged poker games.” *See* “NBA gambling investigation: Latest statements, updates,” *ESPN* (Nov. 25, 2025).²⁸ *See also* “Sports gambling scandal timeline: from Jontay Porter to Terry Rozier,” *ESPN* (Jan. 31, 2025).²⁹

Yet under Kalshi’s requested injunction, Kalshi could offer bets by Nevada residents on even high school sporting events, setting the stage for tragedies of high school players being bribed and resulting suicides.³⁰ In Texas, where sports gambling continues to be prohibited, high school football games are as big in many communities as professional sports, as featured in the acclaimed movie “Friday Night Lights” (2004). The movie depicts the obsession of residents of Odessa, Texas, with their high school football team as it strove to win the state championship. Renowned film critic Roger Ebert wrote that this “movie demonstrates the power of sports to involve us; we don’t live in Odessa and are

²⁸ https://www.espn.com/nba/story/_/id/46710738/nba-gambling-investigation-live-updates-latest-arrests-statements-more (viewed Dec. 14, 2025).

²⁹ https://www.espn.com/espn/betting/story/_/id/39908218/a-line-sports-gambling-scandals-2018 (viewed Dec. 12, 2025).

³⁰ “One in five people with a gambling disorder attempt or complete suicide” Kellie Schmitt, “As Online Betting Surges, So Does Risk of Addiction,” *Hopkins Bloomberg Public Health* (Dec. 19, 2025), <https://tinyurl.com/5n84veuc> (viewed Jan. 28, 2026).

watching a game played 16 years ago, and we get all wound up.” Roger Ebert, “More than a game” (Oct. 8, 2004).³¹

Even youth sports is vulnerable to exploitation by commercialized gambling, including prediction markets. “Nine youth football coaches or associates in South Florida are facing felony charges in connection with a system of rampant, elaborate and high-dollar gambling on *little league football*.” Paula Lavigne, “Youth coaches face gambling charges,” *ESPN* (Oct. 29, 2012) (emphasis added).³² A state investigation found that:

Though the games featured little boys, the gamblers made big bets, said Det. Solomon Barnes, whose confidential informant, along with undercover deputies, placed bets on youth football during the police investigation. Barnes said \$20,000 was bet in a rivalry game between the Northwest Broward Raiders and the Fort Lauderdale Hurricanes a few weeks ago. And up to \$100,000 would be bet on the youth leagues’ championship games of the season, he said. ... Sheriff Al Lamberti said deputies discovered a floor safe in the barbershop [used for placing these bets] that had \$37,000 in cash in it.

Id. Kalshi and other national providers of “event contracts” cannot screen for this harmful conduct at a local level.

States can and do prohibit gambling on high school sports, but Kalshi and other prediction market companies could bypass these bans. The former college

³¹ <https://www.rogerebert.com/reviews/friday-night-lights-2004> (viewed Dec. 14, 2025).

³² https://www.espn.com/espn/otl/story/_/id/8568724/nine-south-florida-youth-football-coaches-face-gambling-charges (viewed Dec. 19, 2025).

and NBA basketball star Bill Bradley, who became a U.S. Senator, declared in 2018:

I think the game will be corrupted. Do you really want to go to your son's high school basketball or football game and see people in the crowd who are betting, who are not rooting for your child to win or lose, but are betting on a spread? It'll be pervasive.

“NFHS ‘concerned’ about Supreme Court decision on sports betting” (May 17, 2018).³³ State laws are the last safeguard keeping this travesty from occurring.

C. The Harm Caused by Unrestricted Gambling to Elections.

Kalshi welcomes wagers on elections, which most states prohibit, so the trend of corruption will soon undermine the integrity of our political process if Kalshi's virtually unlimited commercialized gambling is allowed. Candidates will be able to throw their elections for payouts from gamblers, or disgruntled betters could attempt to harm candidates at public events, in the desperate quest for wagering payoffs.

Allowing gambling on elections – as Kalshi does – invites a corruption of political campaigns. For centuries the nearly unanimous view has been that wagers on elections violate public policy, extending far back to English common law decisions:

³³ <https://www.highschoolot.com/story/nfhs-concerned-about-supreme-court-decision-on-sports-betting/17561561/> (viewed Dec. 19, 2025).

Although common law judges differed on whether wagering contracts contravened public policy, all agreed that *election* wagers violated democratic norms. In 1785, the full King's Bench held that a wager between two voters over the election of a member of Parliament was void. Whether the winner of the bet is entitled to recover, said Lord Mansfield,

turns on the species and nature of the contract; and if that be in the eye of the law corrupt, and against the fundamental principles of the constitution, it cannot be supported by any Court of Justice. One of the principal foundations of this constitution depends on the proper exercise of this franchise, that the election of members of Parliament should be free, and particularly that every voter should be free from pecuniary influence in giving his vote.

The wager was therefore void because it placed the two voters under a pecuniary influence.

Jeffrey Steven Gordon, “Silence for Sale,” 71 Ala. L. Rev. 1109, 1160-61 (2020)

(footnotes omitted, quoting *Allen v. Hearn*, 99 Eng. Rep. 969, 971, 1 T.R. 56, 59-60 (1785)). *See also* Md. Code Ann., Elec. Law § 16-902 (prohibit wagers on elections).

In the United States, the seminal decision on election gambling was by the Massachusetts Supreme Judicial Court, explaining that allowing wagering on elections would have the detrimental effect that:

all idea of social duty and personal responsibility [would be] overwhelmed in mere blind partisan feeling and desire of triumph, which lose sight of the object for which the right of suffrage is conferred. An election so influenced could not be regarded as the expressed will of an intelligent constituency; ***it would violate the whole theory, on which the right of suffrage is founded***, and destroy the confidence of all judicious persons in that particular power of the people, which has been regarded as the principal security for permanent, regulated, constitutional liberty. If it be true that wagers on elections would have any tendency to create such a pecuniary interest in their result, as we have no doubt they have, we can have no hesitation in saying, that ***all such wagers are illegal and utterly void***.

Ball v. Gilbert, 53 Mass. 397, 401-02 (1847) (emphasis added).

Kalshi’s promotion of and welcoming of gambling on elections could result in candidates being harmed by disgruntled gamblers as an election approaches, or candidates themselves could be bought off just as athletes have been. This is a compelling reason to affirm the dissolution below of the preliminary injunction that was previously entered for Kalshi.

D. Gambling on Prediction Markets on the Ouster of Venezuelan President Maduro Put American Soldiers and National Security at Risk.

The public harm from unrestrained gambling on almost any event imaginable has already materialized in 2026 in connection with the last-minute wagering on a top-secret American military operation, thereby endangering the lives of American soldiers.

The surprise capture and removal of President Maduro from Venezuela in early January 2026 was a topic of wagering on prediction markets through Polymarket, which is similar to Kalshi. The term “whale” in gambling means someone who makes an exceptionally large wager, typically in a savvy manner. A “whale” gambled accurately with a large wager shortly prior to Maduro’s surprise capture by U.S. Armed Forces:

Less than an hour before Mr. Trump ordered Mr. Maduro’s capture, an anonymous Polymarket trader placed the last in a series of bets on what was at that time an 8 percent chance that Mr. Maduro would be out by Jan. 31. The trader made over \$400,000 on \$34,000 worth of wagers.

Kyla Scanlon, “Prediction Markets Can Quickly Damage Democracy,” *The New York Times*, Guest Essay (Jan. 25, 2026). Three days after the above story published in the Sunday edition of *The New York Times*, the newspaper ran another article about this problem in its International Edition, which explained:

This month, a mysterious account made more than \$400,000 by correctly timing the ouster of Venezuela's president, Nicolás Maduro. [A prediction markets expert] pegs the likelihood that the Maduro whale was an insider at “85-90 percent,”

Benjamin Wallace, “Betting on Prediction Markets Is Their Job. They Make Millions,” *The New York Times* (Int’l Ed.: Jan. 28, 2026).

The individual or individuals behind this perfectly timed wager apparently knew when Maduro would be captured by American soldiers, because the bettors waited until merely a few hours before his arrest to gamble suddenly on his removal from power. The “popular on-chain tracking platform Lookonchain ... described the development as a ‘clear case’ of insider trading.”³⁴

This wager placed the lives of American soldiers at risk. If the security forces protecting Maduro had been monitoring Polymarket, then his guards would have seen this spike in the odds of his capture, and would have immediately armed

³⁴ Aniket Verma, “Polymarket Trader Who Bagged Massive Profit From US-Venezuela Bets Could Be Geopolitical Insider: Sonar Pro,” *Yahoo! Finance* (Jan. 6, 2026), <https://finance.yahoo.com/news/polymarket-trader-bagged-massive-profit-033105716.html> (viewed January 11, 2026).

up Maduro's defenses to the detriment of the American soldiers on the mission to capture him. This early warning effect by the prediction market put the lives of Americans directly at risk. Ironically, there are reports that Polymarket is refusing to pay the wagerers, not because they apparently traded on inside information in a way that put lives at risk, but because of semantics of the event contract.³⁵ But whether Polymarket pays out on these particular bets is beside the point: the wagering gave advance notice to the enemy of a U.S. military operation.

Anyone who leaks classified military information like this should, of course, be prosecuted. But it appears impossible to trace who engaged in this profiteering to the detriment of American national security. And while the leaking of secret military information is surely a crime, the wagering on it is a crime only under state laws against it, which Kalshi insists do not apply to prediction markets.

Prediction markets, by allowing wagering on nearly anything, constitute an enormous financial incentive for people to leak top-secret information. These prediction markets are similar in effect to an illegal posting of bribes to people who possess such information, which would be contrary to the public interest and surely taken down by law enforcement.

³⁵ Joe Wilkins, "War Profiteers Furious After Polymarket Refuses to Pay Out on Venezuelan Invasion Bets," *Yahoo! News* (Jan. 11, 2026).
<https://www.yahoo.com/news/articles/war-profiteers-furious-polymarket-refuses-150000898.html> (viewed Jan. 28, 2026).

Polymarket’s founder and CEO, Shayne Coplan, has responded to likelihood of insider trading by saying there is an “‘inevitability’ of people seeking an edge in the market.”³⁶ He is right about that. It is also inevitable that there will be future covert and surprise military operations conducted by the U.S. Armed Forces, under the command of a President. The public interest is severely harmed by allowing prediction markets to entice people to profit anonymously, in an untraceable manner, from betting on insider information about American military actions.

Kalshi explains in its brief that there is a “Special Rule” under the Dodd-Frank Act of 2010 which grants authority to the CFTC authority to review and prohibit six specific categories of contracts if the CFTC concludes that they are contrary to the public interest:

- (I) activity that is unlawful under any Federal or State law;
- (II) terrorism;
- (III) assassination;
- (IV) war;
- (V) gaming; or
- (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

7 U.S.C. § 7a-2(c)(5)(C)(i). But in the absence of an actual determination by the CFTC, Kalshi and others may list event contracts on any of the above objectionable topics.

³⁶ *Id.*

The foregoing category of “war” is not as broad as “national security.” The last time the United States formally declared war was on June 5, 1942, which was early during World War II, against the countries of Bulgaria, Hungary, and Romania. *See* H.R.J. Res. 321, 77th Congress, 2d Sess., 56 Stat. 307 (1942). So even an enforcement of a ban by the CFTC on event contracts on war would have little effect on protecting national security against wagers that send a signal of something afoot other than an actual war.

In a similar vein, there was apparently advance trading on insider information about the surprise recent award of the Nobel Peace Prize to Venezuelan opposition leader María Corina Machado:

Roughly 11 hours before the closely watched award was given to Venezuelan resistance leader Maria Corina Machado this morning, the odds of her victory surged from near-zero to over 70% on Polymarket.

Sander Lutz, “Nobel Peace Prize Organizers Probing Potential Polymarket Insider Trades,” *Yahoo! Finance* (Oct. 10, 2025).³⁷ Harvard Economics Professor Jason Furman, who was the chair of President Obama’s Council of Economic Advisers and a member of his Cabinet, posted on X that this pre-award spike appeared to be

³⁷ <https://finance.yahoo.com/news/nobel-peace-prize-organizers-probing-172429753.html> (viewed Jan. 28, 2026).

the result of insider trading. “The other day a student asked me about the prevalence of insider trading in prediction markets. I now have an answer.”³⁸

Prediction markets harm the public interest through all of the above, and in the case of national security could result in physical harm to U.S. Armed Forces.

II. *Murphy v. NCAA* Confirmed State Authority Over Gambling, Which Kalshi Fails to Mention or Distinguish.

The U.S. Supreme Court confirmed, in *Murphy v. NCAA*, the primary authority held by states to regulate gambling. Although this Supreme Court teaching on this topic is the elephant in the room, Kalshi does not mention or distinguish it anywhere in its opening brief, not even once.

The Supreme Court grounded its *Murphy v. NCAA* decision in favor of state authority over gambling in multiple federal statutes:

[Multiple federal] provisions implement a coherent federal policy: ***They respect the policy choices of the people of each State on the controversial issue of gambling.*** By contrast, if § 3702(2) is severed from § 3702(1), it implements a perverse policy that ***undermines whatever policy is favored by the people of a State.***

Murphy v. NCAA, 584 U.S. at 484 (citing 18 U.S.C. §§ 1084, 1952, 1953, and 1955, emphasis added).

The Supreme Court explained further that its ruling in favor of state authority over gambling was based on a long line of precedents preserving “a

³⁸ <https://x.com/jasonfurman/status/1976608398079610900?s=20> (viewed Jan. 26, 2026).

healthy balance of power between the States and the Federal Government [to reduce] the risk of tyranny and abuse from either front.” *Murphy v. NCAA*, 584 U.S. at 473 (cleaned up, quoting *New York v. United States*, 505 U.S. 144, 181-82 (1992), which quoted *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991)). This can be traced back to *Federalist No. 51*, which is often quoted for its colorful insight that “[i]f men were angels, no government would be necessary” and which further expounded on state power as a necessary check against federal overreach:

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people.

The Federalist No. 51 (J. Madison).³⁹

With very different traditions, two states – Hawaii and Utah – completely prohibit virtually all forms of gambling, and yet Kalshi’s approach would bypass entirely those bans such that the customs and cultures in those states would be severely undermined. *See, e.g.*, Utah Code Ann. § 76-10-1102(1) (Unlawful gambling occurs when a person “(a) participates in gambling or fringe gambling, including any Internet or online gambling; (b) knowingly permits gambling or fringe gambling to be played, conducted, or dealt upon or in any real or personal property owned, rented, or under the control of the actor”) The gambling bans

³⁹ https://avalon.law.yale.edu/18th_century/fed51.asp (viewed Dec. 19, 2025).

in these states are rooted in diverse cultures of the sort that federalism protects, by allowing states to enact their own laws that comport with their own local concerns.

Kalshi is only partly correct in arguing here that “‘a fundamental principle of the Constitution’ [is] that ‘Congress has the power to preempt state law.’” (Kalshi Br. 26, quoting *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000), and citing U.S. CONST., art. VI, cl. 2). Kalshi’s statement is true only while respecting state autonomy over its police power for marriage, alcohol, and similar issues, including gambling. Wagering has been the subject of more than a hundred ballot initiatives dating back to 1889 in dozens of states,⁴⁰ and yet Kalshi seeks to bypass all that. The CFTC does not properly override “all other would-be regulators at every level of government” concerning gambling. Philip F. Johnson, *The Commodity Futures Trading Commission Act: Preemption as Public Policy*, 29 Vand. L. Rev. 1, 2 (1976). This comprehensive article about the CFTC illustrates this point: it never mentions gambling once, because Congress never intended for the CFTC to acquire jurisdiction over gambling. *Id.*⁴¹

⁴⁰ “Gambling policy ballot measures” https://ballotpedia.org/Gambling_policy_ballot_measures (viewed Dec. 19, 2025).

⁴¹ <https://scholarship.law.vanderbilt.edu/vlr/vol29/iss1/1/> (viewed Dec. 19, 2025).

III. Kalshi’s Argument Seeks an Unjustified Override of State Regulation of Gambling, Without the Required Clear Authority from Congress.

“It is well recognized that regulating gambling is at the core of the state’s residual powers as a sovereign in our constitutional scheme.” *WV Ass’n of Club Owners & Fraternal Servs. v. Musgrave*, 553 F.3d 292, 302 (4th Cir. 2009).

“States have traditionally occupied” the field of gambling regulation, and thus courts should “start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). There is no “clear and manifest purpose of Congress” to give Kalshi *carte blanche* to sell the equivalent of gambling products without first complying with state regulations.

More than a century of regulatory success at the state level should not be disturbed here. “[A] page of history is worth a volume of logic.” *N.Y. Tr. Co. v. Eisner*, 256 U.S. 345, 349 (1921) (Holmes, J.) Nevada and every state have “pages” of history and experience in reducing or eliminating the harm caused by predatory gambling, which has recently become a pandemic fueled by technology. As discussed above, two states on opposite sides of the political spectrum, Hawaii and Utah, completely ban all gambling within their borders. Most states prohibit gambling by those under age 21, similar to how alcohol and cigarette purchases are

prohibited below that age. The two most populous states, Texas and California, prohibit gambling on sports, as do a total of nearly a dozen states. Many states prohibit wagers by those having a conflict of interest, such as college athletes betting on their own games.

According to research conducted by the gaming industry itself, gambling supports a total economic impact including “\$329 billion of output (business sales)” and “\$53 billion of federal, state and local taxes, including \$13.5 billion of gaming taxes.” American Gaming Association, “National Economic Impact of the U.S. Gaming Industry 2023” (Oct. 9, 2023) (describing its research as “the first comprehensive report on the gaming industry’s national economic impact since 2018”).⁴² Gambling thereby occupies a significant portion of the American economy, such that transferring regulatory authority over it from the states and territories to the CFTC is something that only Congress could do explicitly after holding extensive public hearings and while comporting with fundamental principles of federalism.

Many state constitutions sharply limit gambling within their jurisdictions, including New York, New Jersey, Georgia, Alabama, Texas, Ohio, Idaho, and Florida. *See, e.g., Idaho v. Coeur D’Alene Tribe*, 794 F.3d 1039, 1043 (9th Cir.

⁴² <https://www.americangaming.org/resources/national-economic-impact-of-the-u-s-gaming-industry/> (viewed Dec. 14, 2025).

2015) (The Idaho Constitution provides that ‘[g]ambling is contrary to public policy and is strictly prohibited. ...’”) (quoting IDAHO CONST. Art. III, § 20); *Hest Techs., Inc. v. State ex rel. Perdue*, 366 N.C. 289, 290, 749 S.E.2d 429, 431 (2012) (“State legislatures have weighed the social costs of gambling against the economic benefits and chosen different paths according to each legislature's conclusions.”). No contorted reading of any Act of Congress overrides self-governance by states, through their own constitutions, as to gambling.

The U.S. Supreme Court has repeatedly rejected attempts to transfer or delegate vast powers to a federal agency based on the sort of imaginative new interpretations of a federal statute that Kalshi seeks here. *See, e.g., MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 231 (1994) (“[I]t is highly unlikely that Congress would leave the determination of whether an industry will be entirely, or even substantially, rate-regulated to agency discretion – and even more unlikely that it would achieve that through such a subtle device as permission to ‘modify’ rate-filing requirements.”); *Hest Techs.*, 366 N.C. at 290, 749 S.E.2d at 431 (“Since the founding of this nation, states have exercised the police power to regulate gambling.”).

In denying an assertion of plenary authority by the FDA over cigarettes, the Supreme Court explained further:

As in *MCI*, we are confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion.

FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 160-61 (2000)

(O'Connor, J., writing for the majority). Justice O'Connor concluded that "it is plain that Congress has not given the FDA the authority that it seeks to exercise here." *Id.* at 161. Likewise, Congress has never transferred vast regulatory authority over gambling from Nevada and other states to the CFTC.

CONCLUSION

The decision below should be affirmed.

Dated: January 29, 2026

Respectfully Submitted,

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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