

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 Writ of Certiorari to the United States
Court of Appeals for the Third Circuit

**BRIEF OF 145 INDIAN TRIBES AND TRIBAL
ORGANIZATIONS AS AMICI CURIAE IN
SUPPORT OF PETITIONERS**

John E. Echohawk
NATIVE AMERICAN
RIGHTS FUND
250 Arapahoe Ave.
Boulder, CO 80302

Edwina Clarke
ZIMMER, CITRON &
CLARKE LLP
711 Atlantic Ave.
6th Fl.
Boston, MA 02111

Rachel G. Shalev
Counsel of Record
Eric F. Citron
ZIMMER, CITRON & CLARKE LLP
14 Ridge Square NW
Suite 328
Washington, DC 20016
rshalev@zimmercitronclarke.com
202-769-9742

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICI CURIAE	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. Kalshi Is Undermining Tribal Sovereignty And Violating IGRA.....	4
A. Indian tribes have a sovereign right to regulate gaming, codified in IGRA.....	4
B. Kalshi is infringing tribal sovereignty and violating IGRA without warrant from the Commodity Exchange Act.	7
II. The Decision Below Threatens Critical Tribal Revenue.....	10
III. The Court Should Grant The Petition Without Delay.....	15
CONCLUSION	17
APPENDIX — LIST OF AMICI	1a

TABLE OF AUTHORITIES

Cases

<i>Blue Lake Rancheria v. Kalshi, Inc.</i> , No. 25-7504, 2026 WL 2728466 (9th Cir. Sept. 16, 2026).....	8, 9, 16
<i>California v. Cabazon Band of Mission Indians</i> , 480 U.S. 202 (1987).....	2, 4, 6
<i>Chicken Ranch Rancheria of Me-Wuk Indians v. California</i> , 42 F.4th 1024 (9th Cir. 2022)	10
<i>Epic Sys. Corp. v. Lewis</i> , 584 U.S. 497 (2018).....	10
<i>Ho-Chunk Nation v. Kalshi, Inc.</i> , No. 25-cv-698, 2026 WL 1284077 (W.D. Wis. May 11, 2026).....	2, 17
<i>KalshiEX, LLC v. Assad</i> , No. 25-7516, 2026 WL 2543846 (9th Cir. Aug. 28, 2026)	3, 8, 9
<i>KalshiEX, LLC v. Hendrick</i> , 817 F. Supp. 3d 1014 (D. Nev. 2025).....	8
<i>KalshiEX, LLC v. Schuler</i> , Nos. 26-3196, 26-5235, 2026 WL 2884087 (6th Cir. Sept. 25, 2026).....	3
<i>Michigan v. Bay Mills Indian Cmty.</i> , 572 U.S. 782 (2014).....	5, 11, 12, 13

<i>Morton v. Mancari</i> , 417 U.S. 535 (1974).....	10
<i>Oklahoma v. Castro-Huerta</i> , 597 U.S. 629 (2022).....	2, 16
<i>Reeves, Inc. v. Stake</i> , 447 U.S. 429 (1980).....	15
<i>Seminole Tribe of Fla. v. Florida</i> , 517 U.S. 44 (1996).....	5
<i>South Dakota v. Wayfair, Inc.</i> , 585 U.S. 162 (2018).....	15
<i>W. Flagler Assocs., Ltd. v. Haaland</i> , 71 F.4th 1059 (D.C. Cir. 2023)	5
<i>West Virginia v. EPA</i> , 597 U.S. 697 (2022).....	9, 10
<i>Wisconsin v. Ho-Chunk Nation</i> , 784 F.3d 1076 (7th Cir. 2015).....	6
Statutes	
25 U.S.C. § 2701	2, 4, 11
25 U.S.C. § 2702	6, 10, 13
25 U.S.C. § 2710	5, 6, 12
31 U.S.C. § 5365	9
Cal. Gov’t Code § 12012.75	12

Regulations

25 C.F.R. § 502.4	5
Event Contracts, 89 Fed. Reg. 48,968 (proposed June 10, 2024)	8

Other Authorities

Am. Gaming Ass'n, <i>Gaming Regulations & Statutory Requirements: Arizona</i> (2025)	7
Caitlin Ostroff & Vicky Ge Huang, <i>CFTC Committee Discussion on Prediction Markets Gets Heated</i> , Wall St. J. (Aug. 20, 2026)	9
Cal. Nations Indian Gaming Ass'n, <i>The State of Tribal Gaming in California: An Economic and Fiscal Impact Analysis of California Tribal Gaming</i> (Oct. 2024)	12
Dave Palermo, <i>Hopi Forgo Gaming to Preserve Way of Life</i> , Indian Country Today (Aug. 19, 2004)	5
Duke Chen, <i>Tribal Casino Revenue Sharing in Other States</i> , Off. of Legis. Rsch., Conn. Gen. Assemb. (Aug. 13, 2019)	6
Kalshi Defs.' Mot. to Dismiss, <i>Mescalero Apache Tribe v. Kalshi, Inc.</i> , No. 2:26-cv-01517, ECF No. 21 (D.N.M. June 24, 2026)	17

Kyle D. Dean, <i>The Economic Impact of Tribal Nations in Oklahoma: Fiscal Year 2023</i> (2025).....	13
Letter from Bryan Newland, U.S. Dep’t of the Interior, to Hon. R. James Gessner, Jr., Mohegan Tribe of Indians (Sept. 10, 2021).....	6
Levi Rickert, <i>Senate Panel Puts Tribal Gaming and Prediction Markets Under the Microscope</i> , Native News Online (Aug. 5, 2026)	7
Nat’l Indian Gaming Comm’n, <i>About Us</i> (last visited Oct. 7, 2026)	7
Nat’l Indian Gaming Comm’n, <i>NIGC Report: FY 2025 Gross Gaming Revenue</i> (2026).....	11
Petition for Writ of Certiorari, <i>N. Am. Derivatives Exch., Inc. v. Nevada</i> , No. 26-344 (U.S. Sept. 11, 2026)	15
Petition for Writ of Certiorari, <i>Robinhood Derivatives, LLC v. Dreitzer</i> , No. 26-338 (U.S. Sept. 10, 2026)	15
Shawn Johns, Indian Gaming Ass’n, <i>The Nationwide Economic Impacts of the Indian Gaming Industry in 2025</i>	13, 14
U.S. Comm’n on Civil Rights, <i>Broken Promises: Continuing Federal Funding Shortfall for Native Americans</i> (Dec. 2018)	13

INTEREST OF AMICI CURIAE¹

New Jersey understandably focuses its petition on the States' sovereign interest in regulating gaming. But there is another set of constitutionally recognized sovereigns for whom the question presented is all but existential: Indian tribes. Federal law has long recognized that it is the Tribes' sovereign right to conduct and regulate gaming on their Indian lands, including sports betting. And that law—along with decades of experience—demonstrates that gaming revenue is critical to Tribes' ability to sustain themselves, particularly given the United States' failure to meet its trust and treaty obligations to Tribes. The decision below threatens to upend all that, with devastating consequences for Tribes and their citizens.

Amici are 130 federally recognized Tribes and 15 tribal organizations that advocate for Indian country. The amici Tribes come from across the country. Some are small, and some are large. Some conduct gaming, and some do not. All are deeply invested in whether so-called prediction markets may conduct sports betting on Indian lands and in competition with Indian tribes—in violation of tribal sovereignty and the rules that apply to everyone else.

Some of the amici Tribes are also parties to related actions pending in the lower courts. *See, e.g., Ho-*

¹ No counsel for a party authored this brief in whole or in part, and no person or entity, other than amici or their counsel, has made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for all parties received timely notice of amici's intention to file this brief under Rule 37.2.

Chunk Nation v. Kalshi, Inc., No. 25-cv-698, 2026 WL 1284077, at *1 (W.D. Wis. May 11, 2026) (“The Ho-Chunk Nation ... claims that Kalshi’s sports event contracts amount to unlawful gaming being offered and advertised on the Nation’s tribal lands in violation of the Indian Gaming Regulatory Act.”). And many of the amici here have filed amicus briefs in the over 30 pending actions, including this one.

A full list of the 145 amici Tribes and tribal organizations appears in the appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT

For centuries, prospectors have encroached on Indian lands, stealing gold, minerals, and other vital resources. *See Oklahoma v. Castro-Huerta*, 597 U.S. 629, 660, 664 (2022) (Gorsuch, J., dissenting). This plunder, among other misdeeds, impoverished generations of tribal members. For many Tribes, gaming has offered a way out. In 1988, Congress enacted a framework—the Indian Gaming Regulatory Act (IGRA)—that reaffirmed tribal jurisdiction over gaming and helped harness it into an engine of economic development. 25 U.S.C. § 2701; *see California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207, 222 (1987). Tribal gaming has been remarkably successful. It has generated thousands of much-needed jobs in hundreds of communities and funded healthcare, housing, education, law enforcement, and many other critical tribal government services.

“Still, it seems old habits die slowly.” *Castro-Huerta*, 597 U.S. at 665 (Gorsuch, J., dissenting). Today’s prospectors are so-called prediction markets.

And like the prospectors of old, Kalshi and its ilk are infringing tribal sovereignty and threatening a vital tribal resource. With the backing of the Commodity Futures Trading Commission (CFTC), they offer sports betting on Indian lands, against Tribes' wishes and in violation of IGRA's comprehensive regulatory scheme. And they compete directly—and unlawfully—with tribal sports betting, siphoning away governmental revenue Tribes need to sustain themselves.

According to Kalshi, with one word—"swaps"—in 2010's Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress set aside decades of federal, state, and Indian gaming law and set in motion all these ill effects. That argument is, in one word, absurd. The Sixth and Ninth Circuits were right to reject it. See *KalshiEX, LLC v. Schuler*, Nos. 26-3196, 26-5235, 2026 WL 2884087, at *6 (6th Cir. Sept. 25, 2026); *KalshiEX, LLC v. Assad*, No. 25-7516, 2026 WL 2543846, at *15 (9th Cir. Aug. 28, 2026). As the Ninth Circuit put it, "Congress did not take a wrecking ball to all sports gambling regulations built up over decades by federal, state, and tribal governments when it amended the [Commodity Exchange Act (CEA)] to add the definition of swap we are considering today." *Assad*, 2026 WL 2543846, at *15. The Third Circuit in this case nonetheless reached the opposite conclusion.

The tribal amici submit this brief to highlight the threat the Third Circuit's decision poses to Indian self-government and self-sufficiency and to underscore the importance of swiftly and definitively rejecting it. At minimum, the decision below significantly alters Tribes' settled expectations and bargained-for

arrangements in ways that will imperil Tribes' governmental functions and basic services. The Court should grant New Jersey's petition, decide the question presented this Term, and restore the balance among federal, state, and tribal gaming regulation that Congress struck and Kalshi and its imitators have upset.

ARGUMENT

I. Kalshi Is Undermining Tribal Sovereignty And Violating IGRA.

As petitioners and the amici States ably demonstrate, the decision below infringes important sovereign state interests. But the States are not the only sovereigns threatened. The sovereign rights of Indian tribes are also imperiled, and so is IGRA, the complex, cooperative scheme Congress created for Indian gaming.

A. Indian tribes have a sovereign right to regulate gaming, codified in IGRA.

This Court has “consistently recognized that Indian tribes retain attributes of sovereignty over both their members and their territory.” *Cabazon Band*, 480 U.S. at 207 (quotation marks omitted). Tribes' inherent sovereign rights include conducting and regulating gaming activities on their Indian lands. *Id.* at 218-22. In 1988, Congress reaffirmed this principle in IGRA, protecting the Tribes' “exclusive right to regulate gaming activity on Indian lands” in States where such gaming is otherwise permitted. 25 U.S.C. § 2701(5).

Some Tribes exercise their sovereign rights over gaming by banning it altogether. For example, some object to gaming on ethical, spiritual, or cultural

grounds, or have otherwise concluded that gaming does not serve the best interests of the Tribe or its citizens.² Whatever the motivation, the choice to prohibit gaming is the Tribe's to make.

Other Tribes make the different sovereign choice to conduct gaming on their Indian lands. This is where IGRA comes in. IGRA is a “carefully crafted and intricate” scheme for Indian gaming. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 73-74 (1996). As relevant, IGRA provides that Class III gaming—which includes sports betting and is the most highly regulated category—may not occur on “Indian lands” unless it is authorized by the tribal government and adheres to tribal gaming ordinances. 25 U.S.C. § 2710(d)(1)(A); 25 C.F.R. § 502.4(c) (2026). IGRA also calls for cooperation between governments: Tribes may offer Class III gaming on Indian lands only if those lands are in States that permit such gaming and the gaming is conducted in accordance with a tribal-state compact or procedures prescribed by the Secretary of the Interior. 25 U.S.C. § 2710(d)(1)(B)-(C), (d)(7)(B)(vii); *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 785 (2014). The compact negotiated between the State and the Tribe must then be approved by the Secretary of the Interior. See § 2710(d)(3)(B); *W. Flagler Assocs., Ltd. v. Haaland*, 71 F.4th 1059, 1062 (D.C. Cir. 2023) (describing the approval process).

All tribal-state compacts are based on IGRA's fundamental premise: Only Tribes may allow gaming

² Dave Palermo, *Hopi Forgo Gaming to Preserve Way of Life*, Indian Country Today (Aug. 19, 2004), <https://tinyurl.com/3znv6atz>.

on Indian lands. *See, e.g.*, 25 U.S.C. § 2710(b)(2)(A), (d)(1)(A) (Tribes “have the sole proprietary interest and responsibility for the conduct of any [Class II and Class III] gaming activity” on Indian lands). Some tribal-state compacts also afford Tribes *exclusive* rights to offer certain gaming within all or part of the State, often in exchange for paying a share of the revenue to the State.³ The predictable effect of such arrangements has been to make gaming a critical source of revenue for the Tribes and an important means of reinforcing self-governance. *See infra* Part II. After all, as both IGRA and this Court have recognized, tribal sovereignty is not just a matter of jurisdictional authority; self-determination is the overriding goal, and that requires “tribal self-sufficiency and economic development.” *Cabazon Band*, 480 U.S. at 216; *see* 25 U.S.C. §§ 2702, 2710(b)(2)(B), 2710(d)(2)(A).

Given their significance, it is no surprise that tribal-state compacts are complex and that Tribes spend years and millions of dollars to obtain and maintain them. *See Wisconsin v. Ho-Chunk Nation*, 784 F.3d 1076, 1079 (7th Cir. 2015) (“These compacts sometimes involve extensive negotiation and litigation.”). Indeed, some Tribes spend millions of dollars *each year* to comply with IGRA and their

³ Letter from Bryan Newland, U.S. Dep’t of the Interior, to Hon. R. James Gessner, Jr., Mohegan Tribe of Indians (Sept. 10, 2021) (approving compact between the Mohegan Tribe and Connecticut that protects statewide exclusivity for certain types of gaming); *see also* Duke Chen, *Tribal Casino Revenue Sharing in Other States*, Off. of Legis. Rsch., Conn. Gen. Assemb. (Aug. 13, 2019), <https://tinyurl.com/mucmxc9c> (noting that, as of 2015, 63% of compacts, federal procedures, or amendments contained revenue-sharing provisions).

compact obligations (and that is not even counting revenue sharing with state and local governments).

Tribes also invest heavily in regulating gaming, protecting both consumers and the integrity of wagering. Among other things, tribal sports-betting regulations (sometimes together with applicable state rules) often impose age minimums (e.g., 21 years), prohibit visibly intoxicated people from gaming, and restrict advertising.⁴ Collectively, tribal governments spend more than \$450 million each year on gaming regulation and employ more than 6,000 gaming regulators to enforce responsible gaming standards.⁵ Tribal gaming is also subject to federal regulation, including by the National Indian Gaming Commission, which was created by IGRA to regulate and monitor certain aspects of Indian gaming.⁶

**B. Kalshi is infringing tribal sovereignty
and violating IGRA without warrant
from the Commodity Exchange Act.**

Kalshi, with the backing of the CFTC and the approval of the Third Circuit, is infringing tribal sovereignty and violating IGRA’s comprehensive scheme.

Kalshi’s sports-betting contracts “are sports wagers and everyone who sees them knows it.” *KalshiEX, LLC v. Hendrick*, 817 F. Supp. 3d 1014,

⁴ See, e.g., Am. Gaming Ass’n, *Gaming Regulations & Statutory Requirements: Arizona* (2025), <https://tinyurl.com/b73unw3k>.

⁵ Levi Rickert, *Senate Panel Puts Tribal Gaming and Prediction Markets Under the Microscope*, Native News Online (Aug. 5, 2026), <https://tinyurl.com/bdde6ju5>.

⁶ Nat’l Indian Gaming Comm’n, *About Us*, <https://tinyurl.com/vebz9xvk> (last visited Oct. 7, 2026).

1029 (D. Nev. 2025), *aff'd in part and remanded sub nom. Assad*, 2026 WL 2543846. In other words, “[i]ts sports event contracts are class III gaming” under IGRA. *Blue Lake Rancheria v. Kalshi, Inc.*, No. 25-7504, 2026 WL 2728466, at *9 (9th Cir. Sept. 16, 2026). And through its online and nationwide gaming platform, Kalshi offers its sports betting on Indian lands, *id.*, even on the Indian lands of Tribes that have exercised their sovereign right to ban gaming. And for the Tribes that have allowed gaming, Kalshi directly competes with them, infringing their sovereign right to exclusively offer gaming on Indian lands—precisely what IGRA forbids. *See id.* at *3 (“At the core of California’s compacts with Indian tribes lies the exclusive right to conduct Las Vegas-style class III gaming, free from non-tribal competition.” (citation modified)).

Kalshi is doing so without tribal authorization, without state cooperation, and with almost no regulatory safeguards—and certainly nothing like what tribal, state, or federal law requires. Indeed, Kalshi is subject to barely any oversight. It operates under a self-certification regime administered by the CFTC, an agency that is now claiming authority over sports betting, “an area that has long been regulated by the States and Tribes.” *Assad*, 2026 WL 2543846, at *14. As the CFTC has previously admitted, it “is not a gaming regulator” and has neither “the statutory mandate”—under IGRA or any other statute—“nor specialized experience appropriate to oversee [gambling].” Event Contracts, 89 Fed. Reg. 48,968, 48,982-83 (proposed June 10, 2024). This inadequate oversight has raised serious concerns about the

integrity of prediction markets, even from members of the CFTC’s own advisory committee.⁷

This state of affairs is unacceptable. It is an affront to tribal sovereignty, an end-run around Congress and the States, and a violation of basic notions of fair play and sound regulation.

This Court can and should intervene to restore order. Congress plainly did not, with one word in 2010’s Dodd-Frank Act, undercut tribal authority over Indian gaming and upend IGRA and longstanding state regulation of sports betting. *See Assad*, 2026 WL 2543846, at *15; *Blue Lake Rancheria*, 2026 WL 2728466, at *14.

At minimum, the implications of Kalshi’s argument for tribal sovereignty make this a major question—one that is both worthy of this Court’s review and one that cannot be answered by the “modest words, vague terms, or subtle devices” of the Commodity Exchange Act. *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (citation modified). As IGRA shows, Congress takes great care where tribal sovereignty and Indian gaming are concerned. *See also* Unlawful Internet Gambling Enforcement Act, 31 U.S.C. § 5365(b)(3) (disavowing any intent to “alter[], supersed[e], or otherwise affect[] the application of [IGRA]” in any civil “[p]roceedings” related to “Indian lands”). Congress does not

⁷ *See* Caitlin Ostroff & Vicky Ge Huang, *CFTC Committee Discussion on Prediction Markets Gets Heated*, Wall St. J. (Aug. 20, 2026), <https://tinyurl.com/2zhwyf7f> (reporting that a member of the committee and head of the Chicago Mercantile Exchange said of the fast self-certification process, “That is not good for our industry. That’s horrible for our industry.... We’re not a bunch of carnival barkers at a circus”).

reallocate traditional authority in the highly “oblique” manner Kalshi asserts. *West Virginia*, 597 U.S. at 723. Nor does Congress “repeal[] by implication ... pre-existing law,” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018)—and certainly not when those pre-existing legal regimes are as important to Indian self-government as IGRA. See *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) (rejecting implied repeal argument because “we simply cannot conclude that Congress consciously abandoned its policy of furthering Indian self-government”).

II. The Decision Below Threatens Critical Tribal Revenue.

Were there any doubt that the question presented is a major one, the enormous economic significance of Indian gaming confirms it.

For Tribes, gaming is critical to their ability to sustain themselves as strong, independent sovereigns that can provide for the welfare of their citizens. As Congress recognized in IGRA, Indian gaming “promot[es] tribal economic development, self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2702(1). And indeed, “Class III gaming”—including sports wagering—“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) (citation modified). Every dollar illegally diverted to gaming on prediction markets is a dollar that no longer goes to jobs, housing, healthcare, education, public safety, and other critical government services for tribal citizens and their surrounding communities.

And it is a lot of dollars. Nearly 250 tribal governments operate gaming facilities on Indian lands across 29 States.⁸ Following decades of investment, these facilities collectively generated over \$46 billion in gross gaming revenue in a recent year.⁹

That does not count revenue from gaming operations that some Tribes conduct outside IGRA, pursuant to state licensing and regulatory rules. *See Bay Mills*, 572 U.S. at 794 (IGRA “left fully intact” States’ “capacious” regulatory power outside Indian country). When Tribes obtain state licenses to offer gaming off Indian lands, they follow the same state-law rules that the Third Circuit said Kalshi can skirt.

Both IGRA-governed and non-IGRA gaming operations generate substantial revenue for Tribes. But tribal gaming operations are not “mere profit-making ventures.” *Bay Mills*, 572 U.S. at 810 (Sotomayor, J., concurring). They are directly tied to Tribes’ “core governmental functions.” *Id.*; 25 U.S.C. § 2701(1) (“numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue”). In fact, under IGRA, revenue from Class III gaming activities on Indian lands may be used *only* for certain governmental purposes, including “to fund tribal government operations or

⁸ Nat’l Indian Gaming Comm’n, *NIGC Report: FY 2025 Gross Gaming Revenue* 3 (2026), <https://tinyurl.com/3ermdzss>.

⁹ *Id.* at 3. This number reflects gaming revenue before prediction markets took off. The aggregate number also obscures that a majority of tribal gaming facilities collectively account for only about 5% of total gaming revenue. *Id.* at 7. These small and mid-size operators are particularly vulnerable to new competitors with an unearned upper hand.

programs” and “to provide for the general welfare of the Indian tribe and its members.” § 2710(d)(1)(A)(ii), (b)(2)(B). And in practice, revenue from gaming funds health, education, housing, public safety, infrastructure, cultural preservation, and many other valuable governmental services for tribal citizens.

Even Tribes that do not game (or don’t do much gaming) benefit from Tribes that do, through revenue-sharing arrangements and charitable contributions. In California, revenue sharing is even codified in state law. *See* Cal. Gov’t Code § 12012.75. In that one State and in just one year, gaming Tribes shared over \$80 million with economically disadvantaged Tribes, and they contributed an additional \$77 million in charitable donations to bolster other Tribes and their local communities.¹⁰

Importantly, the United States and the States bear responsibility for the centrality of gaming to many Tribes’ economic well-being. Tribes rely so heavily on gaming revenue because of “the insuperable (and often state-imposed) barriers Tribes face in raising revenue through more traditional means.” *Bay Mills*, 572 U.S. at 810 (Sotomayor, J., concurring); *id.* at 810-11 (explaining how federally authorized state taxation of certain activities on Indian lands effectively prevents Tribes from taxing those activities). The United States has also consistently underfunded its trust and treaty obligations, leaving a major funding

¹⁰ Cal. Nations Indian Gaming Ass’n, *The State of Tribal Gaming in California: An Economic and Fiscal Impact Analysis of California Tribal Gaming* 6 (Oct. 2024), <https://tinyurl.com/5a3s9fw5>.

gap.¹¹ Gaming revenue helps fill that gap (at least in part) and is critical to advancing a “key goal of the Federal Government[:] to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions.” *Bay Mills*, 572 U.S. at 810 (Sotomayor, J., concurring) (citing 25 U.S.C. § 2702).

Indian gaming also provides enormous benefits to surrounding communities—entire regions, even—and Kalshi’s unlawful conduct undercuts these benefits, too. Tribal gaming facilities employ numerous tribal citizens and thousands of non-Indians in surrounding communities.¹² This is to say nothing of the hundreds of thousands of jobs and billions of dollars in wages that are indirectly created by Indian gaming.¹³ Many of these jobs are in rural areas, where other employment may be scarce. And like any major industry, Indian gaming operations bolster local, state, and national markets by purchasing goods and services, and otherwise contributing to the economy. For instance, Tribes in Oklahoma are responsible for nearly 140,000 in-state jobs, \$7.8 billion in wages and benefits to Oklahoma workers, and \$23.4 billion in the production of goods and services in Oklahoma, much of which is directly attributable to gaming.¹⁴

¹¹ See generally U.S. Comm’n on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (Dec. 2018), <https://tinyurl.com/wmkbauxr>.

¹² Shawn Johns, Indian Gaming Ass’n, *The Nationwide Economic Impacts of the Indian Gaming Industry in 2025*, at 3 (on file with counsel for amici) [hereinafter *IGA Report*].

¹³ *Id.*

¹⁴ Kyle D. Dean, *The Economic Impact of Tribal Nations in Oklahoma: Fiscal Year 2023*, at 4 (2025), <https://tinyurl.com/yt5b3uhm>.

Federal, state, and local governments directly benefit from Indian gaming operations as well. The Indian gaming industry generates over \$7 billion for the federal government and \$5 billion for States and counties each year through revenue sharing and taxation of certain activities attributable to gaming.¹⁵

When national prediction-market platforms directly and unlawfully compete with tribal gaming, they siphon much-needed revenue from Tribes, States, the federal government, and local governments and communities. And platforms like Kalshi do so in significant part precisely because they do not follow the rules that everyone else does. They do not have to undergo the arduous compacting process that Tribes do under IGRA; they do not obtain state licenses that commercial operators (including some Tribes) must; they do not participate in revenue sharing; they do not pay the same taxes state-licensed tribal and commercial sportsbooks pay; and they do not follow the tribal and state regulations that protect consumers and the integrity of gaming. Kalshi's (illegal) effort to run what is obviously a gambling business under a light-touch regulatory regime is not only imperiling consumers; it is giving Kalshi an unfair advantage against those who follow the law.

Of course, not all Tribes conduct gaming or rely heavily on gaming. And changes in law and technology are leading many Tribes that do to diversify their economies and innovate in the face of new competition. But that competition should be fair. At an absolute minimum, that means that a *sovereign* should not be subjected to a *more* onerous set of

¹⁵ *IGA Report* at 11.

regulations than private companies. *Cf. Reeves, Inc. v. Stake*, 447 U.S. 429, 439 (1980) (“[C]onsiderations of state sovereignty” and “[e]venhandedness suggest[] that” States should be subject to the same “restrictions imposed on private market participants ... when acting as proprietors”). “Court[s]” should not “create[]” “artificial competitive advantages.” *South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 179 (2018). In practical terms, however, the Third Circuit’s holding takes one of the few economic benefits that Tribes have successfully derived from their sovereignty—and that Congress saw fit to enshrine in IGRA—and turns the entire regime upside down.

III. The Court Should Grant The Petition Without Delay.

Given the great stakes of the unsettled question presented for States, Tribes, and the prediction markets themselves,¹⁶ there can be no doubting the need for this Court’s review. It is critical that the Court grant the petition and decide the question presented this Term, if possible. That is true even though no Tribe or tribal organization is a party to the case.

To be sure, issues with this great an impact on Indian country ought to be decided in cases where Tribes themselves are parties. After all, the “defense of tribal interests” is best made by Tribes themselves,

¹⁶ See Petition for Writ of Certiorari at 2, *Robinhood Derivatives, LLC v. Dreitzer*, No. 26-338 (U.S. Sept. 10, 2026) (Robinhood stating that “[t]his case presents a question of national importance that has divided two courts of appeals to date”); Petition for Writ of Certiorari at 6, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 26-344 (U.S. Sept. 11, 2026) (Crypto.com stating that “[t]he question presented is critically important”).

where they may have “voice as parties in these proceedings,” rather than being “relegated to the filing of *amicus* briefs.” *Castro-Huerta*, 597 U.S. at 666-67 (Gorsuch, J., dissenting).

But the outpouring of tribal support for this petition is proof of the urgency of this Court’s review. And that is not just because the CFTC has allowed Kalshi to compete unfairly and unlawfully with Tribes. The uncertainty itself works an injury. Every day that passes while this question remains open, Tribes must make difficult decisions about their future, including how much they should invest in and rely on the gaming industry. And each day prediction-market platforms direct their gaming apps into Indian lands, Tribes suffer an infringement of their sovereignty as well.

This Court will resolve the uncertainty and stop the insult if it rules in New Jersey’s favor. A holding that Kalshi’s sports-event contracts are not swaps within the meaning of the CEA or that the CEA does not displace state regulatory authority over Kalshi’s offerings would address many of the Tribes’ concerns. And it would directly bear on pending litigation between Tribes and the event-contract platforms, as Tribes across the country have sued to enforce IGRA and their tribal-state compacts, with Kalshi defending itself based on some of the same arguments it urges here.¹⁷ If sports-event contracts are not swaps under the CEA, then the CEA cannot oust state law *or* IGRA.

¹⁷ *E.g.*, *Blue Lake Rancheria*, 2026 WL 2728466, at *13 (“Kalshi’s argument that we lack jurisdiction over the Tribes’ IGRA claim fails at the outset” given the Ninth Circuit’s holding that sports event contracts are likely not swaps under the CEA); *Ho-Chunk*

To the extent the Court is concerned that this case does not have a tribal party, the solution lies in careful consideration of merits-stage amicus briefing by Tribes and tribal organizations, which will flesh out the arguments and interests that are unique to Indian tribes, and (possibly) through other tools the Court uses to hear from important voices. The solution is not to leave these important issues unresolved while prediction markets continue to use their unearned and illegal advantages to plunder Indian resources in a modern-day gold rush.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

Nation v. Kalshi, Inc., No. 25-cv-698, 2026 WL 1284077, at *9 (W.D. Wis. May 11, 2026) (noting defendant’s argument that “CEA preempts the application of [the Nation’s] Gaming Ordinance, as well as IGRA as a whole when it comes to those contracts”); Kalshi Defs.’ Mot. to Dismiss, *Mescalero Apache Tribe v. Kalshi, Inc.*, No. 2:26-cv-01517, ECF No. 21, at 2 (D.N.M. June 24, 2026) (“Congress, through the [CEA], gave the [CFTC] exclusive jurisdiction over event contracts traded on Kalshi’s exchange. That federal command preempts the very tribal laws that Plaintiffs claim they can enforce.”).

John E. Echohawk
NATIVE AMERICAN
RIGHTS FUND
250 Arapahoe Ave.
Boulder, CO 80302

Edwina Clarke
ZIMMER, CITRON &
CLARKE LLP
711 Atlantic Ave.
6th Fl.
Boston, MA 02111

Rachel G. Shalev
Counsel of Record
Eric F. Citron
ZIMMER, CITRON & CLARKE LLP
14 Ridge Square NW
Suite 328
Washington, DC 20016
rshalev@zimmercitronclarke.com
202-769-9742

Counsel for Amici Curiae

October 8, 2026

APPENDIX TABLE OF CONTENTS

	Page
List of Amici.....	1a

LIST OF AMICI

Indian Tribes

Agua Caliente Band of Cahuilla Indians

Ak-Chin Indian Community

Alabama-Coushatta Tribe of Texas

Assiniboine Tribe of the Fort Belknap Indian
Community

Bad River Band of the Lake Superior Tribe of
Chippewa Indians

Barona Group of the Capitan Grande Band of
Mission Indians

Bay Mills Indian Community

Bear River Band of the Rohnerville Rancheria

Berry Creek Rancheria of Maidu Indians of
California

Big Valley Band of Pomo Indians

Cahto Tribe of the Laytonville Rancheria

Cher-Ae Heights Indian Community of the Trinidad
Rancheria

Citizen Potawatomi Nation

Cloverdale Rancheria of Pomo Indians of California

Cocopah Indian Tribe

The Colorado River Indian Tribes of the Colorado
River Indian Reservation, Arizona and California

Confederated Salish and Kootenai Tribes

Confederated Tribes and Bands of the Yakama
Nation

Confederated Tribes of the Coos, Lower Umpqua and
Siuslaw Indians

The Confederated Tribes of Grand Ronde

The Confederated Tribes of the Umatilla Indian
Reservation

The Confederated Tribes of the Warm Springs
Reservation of Oregon

Delaware Nation

Eastern Band of Cherokee Indians

Eastern Shawnee Tribe of Oklahoma

Elk Valley Rancheria

Enterprise Rancheria

Ewiiapaayp Band of Kumeyaay Indians

Fond du Lac Band

Forest County Potawatomi Community of Wisconsin

Fort McDowell Yavapai Nation

Grand Portage Band

Grand Traverse Band of Ottawa and Chippewa
Indians

The Great Seminole Nation of Oklahoma

Gros Ventre Tribe of the Fort Belknap Indian
Community

Guidiville Indian Rancheria

Habematolel Pomo of Upper Lake

Hannahville Indian Community

Havasupai Tribe

Ho-Chunk Nation

Hopland Band of Pomo Indians

Houlton Band of Maliseet Indians

Iowa Tribe of Oklahoma

Jamestown S'Klallam Tribe

The Jamul Indian Village of California

Jena Band of Choctaw Indians

Kalispel Tribe of Indians

Karuk Tribe

Keweenaw Bay Indian Community

Lac Courte Oreilles Band of Lake Superior Chippewa
Indians of Wisconsin

Leech Lake Band of Ojibwe

Little River Band of Ottawa Indians

Little Traverse Bay Bands of Odawa Indians

Lower Sioux Indian Community in the State of
Minnesota

Lytton Rancheria

The Makah Tribe

Mashantucket Pequot Tribal Nation

Match-E-Be-Nash-She-Wish Band of Pottawatomi

Mescalero Apache Tribe

Miami Tribe of Oklahoma

Middletown Rancheria

Mi'kmaq Nation

Mille Lacs Band of Ojibwe
Mississippi Band of Choctaw Indians
Mohegan Tribe of Indians of Connecticut
Mooretown Rancheria
Morongo Band of Mission Indians
Muckleshoot Indian Tribe
Muscogee (Creek) Nation
Nez Perce Tribe
Nisqually Indian Tribe
Nooksack Indian Tribe
Nottawaseppi Huron Band of the Potawatomi
Oglala Sioux Tribe
Oneida Nation
Pascua Yaqui Tribe
The Paskenta Band of Nomlaki Indians
Passamaquoddy Tribe
Pechanga Band of Indians
Penobscot Nation
Pokagon Band of Potawatomi
Port Gamble S'Klallam Tribe
Prairie Island Indian Community
Pueblo of Acoma
Pueblo of Isleta
Pueblo of Laguna
Pueblo of Pojoaque

Puyallup Tribe of Indians

Quapaw Nation

Quechan Tribe of the Ft. Yuma Indian Reservation,
California & Arizona

Quileute Tribe

Red Lake Band of Chippewa Indians

Rincon Band of Luiseño Indians

Saginaw Chippewa Indian Tribe of Michigan

Saint Regis Mohawk Tribe

Salt River Pima-Maricopa Indian Community

San Carlos Apache Tribe

San Juan Southern Paiute Tribe

Santa Rosa Rancheria Tachi Yokut Tribe

Santa Ynez Band of Chumash Indians

Sauk-Suiattle Indian Tribe

Sault Ste. Marie Tribe of Chippewa Indians

Seminole Tribe of Florida

Seneca-Cayuga Nation

Shakopee Mdewakanton Sioux Community

The Shingle Springs Band of Miwok Indians

Shoalwater Bay Indian Tribe

Soboba Band of Luiseno Indians

Spirit Lake Tribe

Spokane Tribe of Indians

Squaxin Island Tribe

Stockbridge-Munsee Community

Suquamish Indian Tribe of the Port Madison
Reservation

Sycuan Band of the Kumeyaay Nation

Table Mountain Rancheria

Tejon Indian Tribe

Thlopthlocco Tribal Town

Tonkawa Tribe of Indians of Oklahoma

Tonto Apache Tribe of Arizona

Tulalip Tribes of Washington

Tuolumne Band of Me-Wuk Indians of the Tuolumne
Rancheria of California

Viejas Band of Kumeyaay Indians

White Earth Nation of Minnesota

White Mountain Apache Tribe

Wilton Rancheria, California

Wyandotte Nation

Yavapai-Apache Nation

Ysleta del Sur Pueblo

Yuhaaviatam of San Manuel Nation

Zuni Tribe

Tribal Associations

Affiliated Tribes of Northwest Indians

Arizona Indian Gaming Association

California Nations Indian Gaming Association

7a

Indian Gaming Association

Minnesota Indian Gaming Association

National Congress of American Indians

National Indian Child Welfare Association

National Tribal Gaming Commissioners &
Regulators

Oklahoma Indian Gaming Association

Tribal Alliance of Sovereign Indian Nations

The United South and Eastern Tribes Sovereignty
Protection Fund

Washington Indian Gaming Association

Indian Corporations

Laguna Development Corporation

Thunderbird Enterprises, Inc., an Absentee Shawnee
Tribe corporation

Indian Governmental Instrumentality

San Manuel Gaming and Hospitality Authority