

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION: \_\_\_\_\_  
CASE NO. \_\_\_\_\_**

COALITION FOR FAIR MARKETS

PLAINTIFF

v.

RUSSELL COLEMAN, in his official capacity as  
ATTORNEY GENERAL OF KENTUCKY

DEFENDANTS

*Serve:* Russell Coleman  
Attorney General of Kentucky  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
ServetheCommonwealth@ky.gov

THOMAS B. MILLER, in his official capacity as  
COMMISSIONER OF THE KENTUCKY DEPARTMENT  
OF REVENUE

*Serve:* Thomas B. Miller, Commissioner of Revenue  
c/o Attorney General of Kentucky  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
ServetheCommonwealth@ky.gov

KENTUCKY HORSE RACING AND GAMING CORPORATION

*Serve:* Jamie Eads, President & CEO  
c/o Attorney General of Kentucky  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
ServetheCommonwealth@ky.gov

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**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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Plaintiff Coalition for Fair Markets (Coalition) brings this Complaint pursuant to the Kentucky Declaratory Judgment Act, Ky. Rev. Stat. Chapter 418, and the Court’s equitable powers to enforce Kentucky’s constitutional guarantees of equal protection and the constitutional

Presiding Judge: HON. PHILLIP J. SHEPHERD (648260)

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prohibition on special legislation, as well as the Supremacy Clause, the Commerce Clause, and the First Amendment of the United States Constitution, against Defendants Russell Coleman, in his official capacity as Attorney General of Kentucky; Thomas B. Miller, in his official capacity as Commissioner of the Kentucky Department of Revenue; and the Kentucky Horse Racing and Gaming Corporation. Plaintiff seeks injunctive relief, a declaratory judgment, and states the following:

### INTRODUCTION

1. More than half a century ago, Congress amended the Commodity Exchange Act (CEA) to grant the federal government “exclusive jurisdiction” over derivatives traded on registered exchanges. Congress ensured that one body of law—and one federal regulator, the Commodity Futures Trading Commission (CFTC)—would control derivatives trading across the Nation. Congress deliberately rejected the prospect of piecemeal regulation by 50 different States, recognizing that a patchwork of state requirements would create precisely the kind of market fragmentation and regulatory chaos that are incompatible with nationwide derivatives markets.

2. This case concerns a type of derivative known as an event contract. A derivative is a financial contract that derives its value from an underlying asset, index, or event (*e.g.*, commodities, interest rates, or currency pairs). Event contracts are a form of derivative which allow market participants to place trades based on the occurrence or nonoccurrence of real-world events, such as election results, economic indicators, or corporate announcements. Prediction markets, or designated contract markets, are the CFTC-registered platforms on which customers can buy, sell, or trade event contracts. Like other derivatives traded on federally registered exchanges, event contracts traded on CFTC-registered platforms fall squarely within the CFTC’s exclusive jurisdiction.

3. Notwithstanding Congress’s express command, Kentucky recently enacted legislation that directly targets and discriminates against federally regulated prediction markets. In the Kentucky legislature’s view, prediction markets are a “threat to all gaming,” and the Commonwealth’s taxation scheme confirms its intent to privilege incumbent in-state industry.<sup>1</sup> To that end, Kentucky has enacted a 14.25% excise tax that applies only to event-contract transactions. *See* 2026 Ky. Acts 1833, 1940 § 71(2) (enacted as H.B. 757). The tax applies both to event contracts traded while a consumer is “in Kentucky,” and extraterritorially to event contracts traded by Kentucky residents outside the Commonwealth’s borders. *Id.* at 1939, § 71(1)(a). And the law simultaneously prohibits licensed gaming operators from participating in, or even contracting with, federally regulated markets that offer sports-related event contracts. *See* 2026 Ky. Acts 2390, 2421, § 22(9) (enacted as H.B. 904); 2026 Ky. Acts 2530, 2617-18, § 55(9) (enacted as H.B. 869) (collectively, the contract prohibitions).<sup>2</sup>

4. Kentucky’s excise tax and contracting prohibitions are exactly “the type[s] of state law that Congress intended” the CEA “to supersede.” *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 (1997). Congress granted the CFTC “exclusive jurisdiction ... with respect to accounts, agreements, ... and transactions involving” event contracts. 7 U.S.C. § 2(a)(1)(A). That exclusive jurisdiction displaces the States’ authority to regulate those same contracts.

5. A State cannot evade federal preemption by specifically targeting federally regulated conduct for disfavored tax treatment. As the Supreme Court has explained in a related

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<sup>1</sup> Dan Ross, *Koch Q&A on KY Fixed-Odds Bill: Predictive Markets ‘Absolutely Cannibalizing’ Other Gambling*, TDN (Mar. 10, 2026), <https://tinyurl.com/27xh3z3h> (Rep. Koch Q&A).

<sup>2</sup> Throughout the Complaint, all three laws will be referred to by their House Bill number with a citation to the relevant section.

context, a State may impose a tax “of general applicability” without running afoul of federal preemption. *De Buono*, 520 U.S. at 815. But what a State may not do is impose a tax that is targeted to apply only to matters within the exclusive jurisdiction of the federal government, such as by making the federal conduct “a critical element” of the tax or “expressly refer[ring]” to federal law as the hook for the tax to apply. *Id.* at 815 & n.15. Kentucky’s excise tax falls well short of that standard. By definition and design, Kentucky’s tax applies only to federally regulated exchanges. It defines its applicability by reference to federal law, specifically the federal definition of event contracts and federal licensure of exchanges. While not “every state” tax is “pre-empted by the federal statute,” Kentucky’s excise tax plainly is. *Id.* at 816.

6. Kentucky’s new law not only targets federally regulated conduct but also discriminates against activity subject to exclusive federal control in multiple ways. By the Commonwealth’s reasoning, federally regulated prediction markets are akin to gambling. Yet, here, Kentucky’s tax sets a higher rate on prediction markets than for the Commonwealth’s favored incumbent industry (14.25% on prediction markets but 9.75% tax on wagers at horse tracks). The tax applies beyond Kentucky’s borders. And Kentucky does not impose a similar burden on its existing in-state licensed gambling operators. Kentucky has also prohibited its state licensees from contracting with federally regulated exchanges that offer sports-related event contracts. The Commonwealth is attempting to disfavor federally regulated exchanges in an effort to prevent them from doing exactly what federal law permits them to do. Congress prevented precisely that type of discrimination when it displaced a patchwork of state law with a uniform scheme for federal regulation under the CEA.

7. Kentucky’s newly enacted laws violate other provisions of both the U.S. and Kentucky Constitutions. The excise tax and contract prohibitions violate the dormant Commerce

Clause by regulating conduct beyond Kentucky's borders and discriminating against interstate commerce. They violate the First Amendment by targeting expressive activities that occur on prediction markets. The excise tax runs afoul of the equal protection guarantees of the Kentucky Constitution by arbitrarily imposing an excise tax that falls exclusively on prediction market operators' transaction fees. And Kentucky's targeting of federally regulated exchanges runs afoul of the Kentucky Constitution's prohibition on special legislation.

8. The Coalition is an industry association dedicated to ensuring fair, open, and lawful access to nationwide markets for its members and consumers across the United States. The Coalition brings this action on behalf of its members, each of which operates a federally designated contract market (DCM) subject to the CFTC's exclusive jurisdiction. In fact, just this week the CFTC reaffirmed its exclusive regulatory role over event contracts with a jurisdiction that "supersedes State as well as Federal agencies." Prediction Markets; Public Interest Determinations, RIN 3038-AF65 (CFTC NPRM) at 11. But Kentucky's newly enacted regime places the Coalition's members in an impossible position: either cease lawful and federally authorized conduct or submit to unlawful taxation and contracting prohibitions. The threat is immediate. Forcing the Coalition's members to pay unlawful taxes would disrupt federally authorized operations, burden interstate commerce, and fracture markets that Congress specifically intended to function under a uniform national framework.

9. The harm threatened by Kentucky's legislation is precisely the harm Congress sought to prevent when it vested exclusive jurisdiction in the CFTC and foreclosed state interference with federally regulated derivatives markets. The Coalition therefore seeks declaratory and injunctive relief on behalf of its members to prevent the Commonwealth from

enforcing a discriminatory and unlawful regulatory regime that undermines federal law and denies market participants equal access to lawful, federally regulated exchanges.

### **JURISDICTION AND VENUE**

10. This is an action for declaratory and injunctive relief brought pursuant to the Kentucky Declaratory Judgment Act, Ky. Rev. Stat. Chapter 418, and the Court's equitable powers to enforce Kentucky's equal protection guarantees and its constitutional prohibition on special legislation, as well as the Supremacy Clause, the Commerce Clause, and the First Amendment of the United States Constitution. *See Beshear v. Haydon Bridge Co.*, 416 S.W.3d 280, 288-89 (Ky. 2013). This Court is a court of general jurisdiction with authority to grant declaratory and injunctive relief. *See* Ky. Rev. Stat. §§ 23A.010, 418.040, 418.045.

11. Personal jurisdiction exists because Defendants Coleman and Miller are officers of the Commonwealth of Kentucky who perform official duties within the Commonwealth, and Defendant Kentucky Horse Racing and Gaming Corporation is an independent state corporate agency and political subdivision organized, existing, and conducting its regulatory operations within the Commonwealth.

12. Venue is proper in the Franklin Circuit Court pursuant to Ky. Rev. Stat. § 452.005(2)(b) because the Coalition is a non-resident of the Commonwealth of Kentucky, and this action challenges the constitutionality of Kentucky statutes, including H.B. 757, H.B. 904, and H.B. 869.

### **PARTIES**

#### **A. Plaintiff**

13. Plaintiff Coalition for Fair Markets is an industry association incorporated under the laws of Virginia, with its principal place of business in Richmond, Virginia. The Coalition's

mission is to advance the interests of its members—CFTC-registered exchanges—by advocating for access to fair, open, and lawful markets. Specifically, the Coalition was designed to “advanc[e] the rights of participants in information and prediction markets.” Coalition Articles of Incorporation § 2. Consistent with that mission, the Coalition “advocates for the legal recognition of prediction market activity as protected expression and lawful commerce, and works to eliminate regulatory barriers that suppress participation in these markets, distort price signals, or criminalize the formation and communication of probabilistic opinion.” *Id.* Unconstitutional state laws pose a direct threat to the Coalition’s members and their rights to operate federally regulated exchanges.

14. The Coalition’s members include three federally regulated prediction markets: KalshiEX LLC; North American Derivatives Exchange, Inc. d/b/a Crypto.com; and QCX LLC d/b/a Polymarket US. Each member is directly subject to—and will suffer immediate harm from—the excise tax and contracting prohibitions imposed by H.B. 757, H.B. 904, and H.B. 859. The interests that the Coalition seeks to protect through this suit—namely, to eliminate regulatory barriers that suppress participation in federally regulated prediction markets—are central to the Coalition’s purpose. The relief that the Coalition seeks does not require the participation of individual members in this litigation. The Coalition therefore has associational standing to bring this action on behalf of its members.

15. KalshiEX LLC (Kalshi) is a Delaware limited liability company with its principal place of business in New York, New York. Kalshi is a DCM licensed by the CFTC. The CFTC granted Kalshi’s contract-market designation on November 3, 2020. Order of Designation, *In re Application of KalshiEX LLC for Designation as a Contract Market*, CFTC (Nov. 3, 2020). Kalshi offers a broad range of event contracts, including political, financial, and sports-related contracts, to users across the United States, including in Kentucky.

16. North American Derivatives Exchange, Inc. d/b/a Crypto.com Derivatives North America (Crypto.com) is a Delaware corporation with its principal place of business in Chicago, Illinois. Crypto.com is a DCM licensed by the CFTC. The CFTC granted Crypto.com's predecessor, HedgeStreet, Inc., contract-market designation on February 18, 2004; that designation was most recently amended on September 29, 2025. Amended Order of Designation, *In re Petition of North American Derivatives Exchange, Inc. to Amend Its Order of Designation*, CFTC (Sept. 29, 2025). Crypto.com offers a broad range of event contracts, including political, financial, and sports-related contracts, to users across the United States, including in Kentucky.

17. QCX LLC d/b/a Polymarket US (Polymarket US) is a Delaware limited liability company with its principal place of business in New York, New York. Polymarket US is a DCM licensed by the CFTC. The CFTC granted Polymarket US's contract-market designation on July 9, 2025. Order of Designation, *In re Application of QCX LLC for Designation as a Contract Market*, CFTC (July 9, 2025). Polymarket US offers a broad range of event contracts, including political, financial, and sports-related contracts, to users across the United States, including in Kentucky.

**B. Defendants**

18. Defendant Russell Coleman is the Attorney General of Kentucky. The Attorney General is charged with enforcing Kentucky law, including the statutes challenged herein. *See* Ky. Rev. Stat. § 15.020. This suit is brought against Attorney General Coleman in his official capacity.

19. Defendant Thomas B. Miller is the Commissioner of the Kentucky Department of Revenue. The Commissioner is charged with administering and enforcing Kentucky tax laws,

including the excise tax imposed by H.B. 757. *See* Ky. Rev. Stat. § 131.030. This suit is brought against Commissioner Miller in his official capacity.

20. Defendant Kentucky Horse Racing and Gaming Corporation is an independent corporate agency of the Commonwealth of Kentucky charged with regulating horse racing, sports wagering, and fantasy contests under Ky. Rev. Stat. § 230. The Corporation is tasked with overseeing licensees and enforcing the contracting prohibitions enacted under H.B. 904 and H.B. 869. *See* H.B. 904, § 22(9); H.B. 869, § 55(9).

### BACKGROUND

**A. Event contracts are derivative instruments that allow participants to hedge against risk and generate accurate predictions about real-world events.**

21. This case is about derivatives, *i.e.*, financial instruments that derive their value from an underlying asset or event. Derivatives can take many forms. One common type is a futures contract, which is a standardized agreement to buy or sell a specific asset at a predetermined future price on a specific date in the future (*e.g.*, a contract to buy 100 barrels of oil at the prevailing market price on the first of the month). An option contract is similar to a futures contract, but the buyer has the right (not the obligation) to buy or sell the asset at the set price by or before a set expiration date in the future (*e.g.*, an option to buy 100 barrels of oil at \$100/barrel any time before the first of the month). The Supreme Court has long recognized that derivatives “are of the utmost importance to the business world.” *Bd. of Trade of Chi. v. Christie Grain & Stock Co.*, 198 U.S. 236, 249 (1905).

22. Another common type of derivative is a “swap.” Swaps are contracts where two parties agree to exchange cash flows with each other based on a specified reference—say, an election, the price of crude oil, interest rates, or weather conditions. This case concerns swaps based on real-world events, commonly known as event contracts. An event contract turns on a

specified event or occurrence—such as the outcome of a political election, release of a macroeconomic indicator, or a corporate earnings announcement.<sup>3</sup>

23. Event contracts are usually binary: one party takes the position that a particular event will occur (the “yes” position), and the other takes the position that it will not (the “no” position). The terms of the contract specify its payout and expiration date. At expiration, the party that correctly predicted the outcome is paid out by the party that did not. Critically, the price of an event contract is not static; rather, the contract price at any given moment reflects the market’s view, in real time, about the probability of the outcome. The contract price is thus set by the trading activity of millions of participants, rather than fixed odds set by a house.

24. For example, an event contract may ask whether the Federal Reserve will cut interest rates before the end of 2026. If rates are cut, the contract settles accordingly: the party who purchased the position representing the occurrence (*i.e.*, “rates cut”) receives the contract’s payout, and the party representing the non-occurrence (*i.e.*, “rates are not cut”) receives nothing. The event contract will always settle with one side receiving \$1 and the other \$0.

25. Because parties can exit their positions before the contract expires, an event contract’s price will fluctuate as parties trade positions based on, among other things, new information. These price-discovery dynamics generate valuable predictive data about local, national, and world events. Take the interest-rate example. If the “rates cut” position is trading at 60 cents, that means market participants predict there is a 60% chance that the defined occurrence (rate cut) will take place, and a corresponding 40% chance of non-occurrence (no rate cut). The contract price may go down if new data shows a strong labor market, reducing pressure to ease

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<sup>3</sup> See U.S. Commodity Futures Trading Comm’n, *Understanding Prediction Markets and Event Contracts*, <https://tinyurl.com/mr2682m4> (last visited June 9, 2026).

monetary policy; conversely, the price may go up if inflation cools significantly or economic growth slows. The contract price thus reflects the market's real-time view of the probability that the Federal Reserve will cut interest rates.

26. Event contracts serve important economic functions. They allow businesses and individuals to hedge event-driven financial risks. “In addition to their information aggregation, price discovery, and price dissemination functions, prediction markets allow market participants to hedge exposure to a wide array of events for which no traditional financial instrument otherwise exists, ranging from events concerning macroeconomics, politics, weather, and climate conditions, to cultural trends and [s]porting events.” Prediction Markets; Public Interest Determinations, RIN 3038-AF65 (“CFTC NPRM”) at 8. For instance, a Frankfort hardware store might purchase a contract predicting a dry year to hedge against lower demand for rain gutters; a Bardstown bourbon distillery might purchase a contract predicting retaliatory foreign tariffs to hedge against increased export costs; and a central Kentucky farm might purchase a contract predicting continued conflict in the Middle East to hedge against increased fertilizer prices caused by ongoing shipping delays.

27. Event-contract trading volume exceeds billions of dollars annually.<sup>4</sup> Those contracts generate public information about the most consequential real-world events—elections, legislation, economic policy, and more. Because traders must put capital at stake, federally regulated exchanges incentivize accurate predictions. And because federally regulated exchanges enable real-time trading on a nationwide basis, they aggregate diverse perspectives and rapidly incorporate new information. As a result, federally regulated exchanges regularly outperform pundits and polls.

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<sup>4</sup> Shivam Shorewala, *The Rise of Prediction Markets in the USA*, Forbes (May 5, 2026), <https://tinyurl.com/mnx8n7pe>.

28. When it comes to “sports forecasting,” for example, empirical studies show that federally regulated exchanges “significantly outperform” expert forecasters.<sup>5</sup> That outperformance reflects the market’s ability to efficiently aggregate asymmetrically dispersed information from millions of sources (*i.e.*, individual customers) and reflect that aggregated data through market prices.<sup>6</sup>

29. Event contracts, like other derivatives, provide significant financial and informational value to users and the market. Event contracts supply investment opportunities for traders willing to put time and effort into forecasting the likelihood of occurrences in the real world. And, through the collective wisdom of these efficient, transparent markets, event contracts provide precise, real-time information about events that matter to the public at large. As the CFTC recognized in a recent Notice of Proposed Rulemaking, prediction markets serve “both as a financial asset class and as a source of reliable information for news media, sports leagues, financial institutions, and everyday Americans.” CFTC NPRM at 6.

30. But when a trader buys or sells an event contract, she is not merely making a financial decision. She is expressing her opinion on matters of public significance by making a statement about the likelihood of a real-world event, putting capital behind her convictions, and contributing that judgment to a marketplace of ideas. Federally regulated exchanges thus function simultaneously as financial instruments and as aggregators of public opinion on the events that shape society.

31. The range of event contracts listed on federally regulated exchanges illustrates their fundamentally expressive character. Contracts listed on the Coalition’s members’ exchanges

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<sup>5</sup> See, e.g., Martin Spann & Bernd Skiera, *Sports Forecasting: A Comparison of the Forecast Accuracy of Prediction Markets, Betting Odds and Tipsters*, 28 J. Forecasting 55, 65 (2009).

<sup>6</sup> *Id.* at 56-57.

cover, among many other subjects, who will win the next presidential or congressional election; whether the Senate will confirm a particular nominee; how the Supreme Court will rule in particular cases; whether Congress will pass identified legislation; whether a foreign government will take a specified action; whether a public health emergency will be declared; and whether the Federal Reserve will raise or lower interest rates.

**B. Congress granted exclusive jurisdiction over exchange-traded derivatives—including event contracts—to the CFTC.**

32. For nearly as long as derivatives trading has existed in the United States, individual States have attempted to regulate or prohibit such trading as unlawful gambling. “[T]he long history of federal regulation” in this area, *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 393 (1982), is a direct result of those “coarse attempts” to manage our increasingly “complex society,” *Christie Grain*, 198 U.S. at 247-48.

33. The federal government began regulating derivatives in 1922, requiring futures transactions for grain to be “consummated on an exchange designated as a ‘contract market’ by the Secretary of Agriculture.” *Merrill Lynch*, 456 U.S. at 360-61. Congress expanded this federal scheme in 1936 by enacting the CEA, imposing federal regulation on the nation’s emerging derivatives markets. But the 1936 version of the CEA contained a savings clause that expressly allowed for parallel state regulation. Pub. L. No. 74-675, § 5, 49 Stat. 1491, 1494 (1936) (CEA would not “impair any State law applicable to any transaction”). States were therefore free to “supplement[] or bolster[] the federal scheme.” *Rice v. Bd. of Trade Chi.*, 331 U.S. 247, 255 (1947).

34. Four decades later, however, Congress changed course. Concerned that States were “step[ping] in to regulate the futures market themselves” and subjecting exchanges to “conflicting regulatory demands,” *Am. Agric. Movement, Inc. v. Bd. of Trade of Chi.*, 977 F.2d 1147, 1156 (7th

Cir. 1992), Congress created the CFTC and enacted “a comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex,” *Merrill Lynch*, 456 U.S. at 356 (citation omitted).

35. This time, Congress sought to “assure that Federal preemption [would be] complete.” 120 Cong. Rec. 30464 (1974) (statement of Sen. Curtis). Congress eliminated the CEA’s original state-law savings clause and instead granted the CFTC “*exclusive jurisdiction*” over transactions involving derivative instruments that are listed and traded on federally registered exchanges. 7 U.S.C. § 2(a)(1)(A) (emphasis added). And the 1974 amendments provided that the CFTC would regulate “all” commodity futures. Pub. L. No. 93-463, § 201, 88 Stat. 1389, 1395 (1974). The statutory definition of “commodity” is broad and includes practically all goods, articles, services, rights and interests.<sup>7</sup> 17 C.F.R. § 1.3. “The idea that the C.F.T.C. should regulate the area was firmly expressed.” *Kelly v. Carr*, 691 F.2d 800, 803 (6th Cir. 1980).

36. By bringing “all futures trading . . . under a single regulatory umbrella,” Congress sought to avoid the “total chaos” of subjecting derivatives trading to “different State laws,” and to ensure instead that “all exchanges” would operate “under the same set of rules and regulations.” H.R. Rep. No. 93-975, at 45, 79 (1974); Commodity Futures Trading Commission Act: Hearings on S. 2485, S. 2578, S. 2837, and H.R. 13113 Before the S. Comm. on Agric. & Forestry, 93d Cong. 685 (1974) (statement of Sen. Clark). Courts immediately recognized the effect of the 1974 amendments, explaining that Section 2(a)(1) “preempts the application of state law.” *Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980); *accord United States v. Brien*, 617 F.2d 299, 310 (1st

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<sup>7</sup> A limited number of goods and services are excluded from the definition for specific historical reasons, including onions (history of market manipulation) and movie box-office receipts (Hollywood lobbying). See 17 C.F.R. § 1.3 (excluding onions and movie receipts from definition); see also CFTC Chairman Michael S. Selig, *States Encroach on Prediction Markets*, Wall Street J. (Feb. 16, 2026), <https://tinyurl.com/58zmspn5>(explaining basis for exclusions).

Cir. 1980); *Jones v. B.C. Christopher & Co.*, 466 F. Supp. 213, 220 (D. Kan. 1979); *Westlake v. Abrams*, 504 F. Supp. 337, 343-44 (N.D. Ga. 1980); *Hofmayer v. Dean Witter & Co.*, 459 F. Supp. 733, 737 (N.D. Cal. 1978).

37. State officials, too, recognized—and protested—this change. By giving “exclusive jurisdiction over commodities regulation to the Commodity Futures Trading Commission,” one Texas commissioner complained, Congress had “dismantled an effective regulatory system within the states.” *Extend Commodity Exchange Act: Hearings on H.R. 10285 Before the Subcomm. on Conservation & Credit of the H. Comm. on Agric.*, 95th Cong. 363-64 (1978). The Massachusetts Secretary of State demanded that Congress “abolish the exclusive jurisdiction of the CFTC and the consequent preemption of state action against commodity-related fraud.” *Id.* at 379. And a Minnesota securities commissioner declared that, because the CFTC had “the authority to regulate” commodity markets “exclusively,” courts had “precluded the application of state securities laws to any transactions involving commodities.” *Id.* at 383.

38. But in the more than half a century since Congress granted the CFTC “exclusive jurisdiction” over exchange-traded derivatives, Congress has only continued to expand the CFTC’s sphere of exclusive authority.

39. As particularly relevant here, following the 2008 financial crisis, Congress enacted the Dodd-Frank Act of 2010, which expressly expanded the CFTC’s authority to include event contracts listed on DCMs.

40. *First*, the Act added exchange-traded swaps to the types of derivatives that fall within the CFTC’s exclusive jurisdiction. As a result, the CFTC now exercises “exclusive jurisdiction . . . with respect to . . . transactions involving swaps . . . traded or executed on a contract market designated” by the CFTC. 7 U.S.C. § 2(a)(1)(A).

41. As the CFTC has consistently recognized, event contracts are “swaps” and are therefore subject to the CFTC’s exclusive jurisdiction. *See, e.g.*, Compl. ¶¶ 35, 82, *United States v. New York*, No. 26-cv-03404 (S.D.N.Y. Apr. 24, 2026), ECF No. 1. That is because event contracts are binary “contract[s]” that pay out depending on the “occurrence [or] nonoccurrence” of a future “event or contingency” that carries potential economic consequences. 7 U.S.C. § 1a(47)(A)(ii). Many courts around the country—including the only federal court of appeals to have addressed this question—have agreed. *See KalshiEX, LLC v. Flaherty*, 172 F.4th 220, 228 (3d Cir. 2026) (event contracts are “‘swaps’ subject to the CFTC’s jurisdiction”).<sup>8</sup>

42. *Second*, the Act introduced what is known as the “Special [R]ule,” which supplies the CFTC with the discretion—but not the obligation—to prohibit the trading of “[e]vent contracts” involving subjects including “terrorism,” “assassination,” “war,” and “gaming,” if it determines that they are “contrary to the public interest.” 7 U.S.C. § 7a-2(c)(5)(C). The Special Rule is thus predicated on the premise that event contracts are swaps within the CFTC’s remit.

**C. Federal law establishes a comprehensive regulatory framework for exchange-traded derivatives, including event contracts.**

43. In general, derivatives trading in the United States—including event-contract transactions—must take place on a board of trade that the CFTC has designated as a contract market. 7 U.S.C. §§ 2(e), 6(a)(1), 7(a); *see also* CFTC NPRM at 15-16. That designation reflects

<sup>8</sup> *See also, e.g., KalshiEX, LLC v. Johnson*, --- F.3d ---, 2026 WL 1223373, at \*3 (D. Ariz. May 5, 2026) (“Event contracts are [s]waps.”); *KalshiEX, LLC v. Orgel*, 2026 WL 474869, at \*7 (M.D. Tenn. Feb. 19, 2026) (same); *Blue Lake Rancheria v. Kalshi Inc.*, 2025 WL 3141202, at \*7 (N.D. Cal. Nov. 10, 2025) (same); *KalshiEX, LLC v. Flaherty*, 2025 WL 1218313, at \*6 (D.N.J. Apr. 28, 2025), *aff’d*, 172 F.4th 220 (3d Cir. 2026) (same). *But see, QCX, LLC v. Nessel*, 2026 WL 1166362, at \*3 (W.D. Mich. Mar. 10, 2026) (event contracts not “swaps”); *KalshiEX, LLC v. Schuler*, 2026 WL 657004, at \*6 (S.D. Ohio Mar. 9, 2026) (same); *KalshiEX, LLC v. Hendrick*, 817 F. Supp. 3d 1014, 1023 (D. Nev. 2025) (same).

a rigorous federal determination that the contract market satisfies extensive requirements governing market integrity, transparency, financial safeguards, and customer protection.

44. The CFTC-designation process is a demanding one because contract markets are charged with a broad array of regulatory and compliance functions. To obtain approval to operate a DCM, an entity must demonstrate to the CFTC that it complies with the CEA's 23 "core principles." 17 C.F.R. § 38.3(a)(2); *see* 7 U.S.C. §§ 7(d), 8(a). Core Principle 1 requires the contract market to comply with *all* CFTC regulations. *See* 17 C.F.R. § 38.100(a)(2). And Core Principle 2 requires that the entity be "transparent" in its criteria for accessing the market, *id.* § 38.151(b)(1); prohibit abusive, "manipulative[,] or disruptive trading practices," *id.* § 38.152; "maintain an automated trade surveillance system capable of detecting and investigating potential trade practice violations" based on "specific trade execution patterns and trade anomalies," *id.* § 38.156; and "conduct real-time market monitoring of all trading activity on its electronic trading platform(s) to identify disorderly trading and any market or system anomalies," *id.* § 38.157.

45. The remaining Core Principles provide further protection against contract manipulation, ensure that risk controls are in place to limit market disruptions, and require daily publication of the price and volume of actively traded contracts. *See* 17 C.F.R. §§ 38.200-38.301; 7 U.S.C. § 7(d)(8). For example, a DCM must "establish, monitor, and enforce compliance with the rules of the contract market," including "access requirements," "the terms and conditions of any contracts to be traded on the contract market," and "rules prohibiting abusive trade practices on the contract market." 7 U.S.C. § 7(d)(2)(A). And those rules must provide "impartial access to its markets and services" using "[a]ccess criteria that are impartial, transparent, and applied in a non-discriminatory manner." 17 C.F.R. § 38.151(b). In short, to obtain designation as a contract market,

applicants must show that they can be trusted to establish, monitor, and enforce rules for the markets they operate.

46. DCMs may not list new kinds of event contracts on their exchanges without first submitting the contract for CFTC approval or certifying that the contract complies with federal law and the CFTC's requirements. 7 U.S.C. § 7a-2(c)(1). Before listing a new contract, the DCM must supply the CFTC with a "certification . . . that the product to be listed complies with the [CEA]" and CFTC regulations, as well as "[a] concise explanation and analysis"—with accompanying documentation—"with respect to the product's terms and conditions" and "the product's compliance with applicable provisions of the Act, including core principles, and the Commission's regulations," among other things. 17 C.F.R. § 40.2(a); *see* 7 U.S.C. § 7a-2(c)(1). The CFTC retains authority to investigate, stay, or amend the contract even after it has been listed. 17 C.F.R. § 40.2(c).

47. The CFTC wields considerable tools for enforcing the CEA and its regulations. For example, the CEA empowers the agency to subpoena testimony and documents, 7 U.S.C. § 9(5); bring administrative enforcement actions, *id.* § 9(4), 13b; and sue in federal court for injunctive relief, monetary penalties, the appointment of receivers, disgorgement, restitution, the rescission of contracts, and the imposition of trading and registration bans, *id.* § 13a-1.

**D. Each of the Coalition's members is licensed as a DCM and therefore subject to federal law and the CFTC's exclusive jurisdiction.**

48. Each of the Coalition's members is a CFTC-registered DCM that operates in compliance with federal law. The prediction markets they operate are used by tens of millions of Americans for informational and hedging purposes. None of these DCMs is required to obtain a state license as a condition of offering federally authorized event contracts to residents of any State.

49. The CFTC designated Kalshi as a contract market on November 3, 2020.<sup>9</sup> Kalshi offers event contracts across a broad range of subject matters. The Federal Reserve has published research using Kalshi's markets as data sources,<sup>10</sup> and Kalshi's partnerships with Tradeweb, CNBC, and CNN demonstrate its integration into mainstream financial markets.<sup>11</sup>

50. Crypto.com operates a DCM that traces its lineage to HedgeStreet, the first marketplace authorized by the CFTC to offer event-driven binary contracts.<sup>12</sup> Crypto.com, through its predecessor, has been designated by the CFTC as a contract market since February 18, 2004.<sup>13</sup>

51. Polymarket US was designated by the CFTC as a contract market on July 9, 2025.<sup>14</sup> Polymarket US has partnered with mainstream financial and media outlets, like the Dow Jones and the Wall Street Journal, to provide consumers market insights derived from trading activity on Polymarket US's prediction market.<sup>15</sup>

52. The CFTC has actively defended the right of DCMs to operate free from state interference, explaining that state efforts to regulate CFTC-supervised DCMs "present a

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<sup>9</sup> *In re Application of KalshiEX LLC for Designation as a Contract Market*, Order of Designation (Commodity Futures Trading Comm'n Nov. 3, 2020).

<sup>10</sup> See generally Anthony M. Diercks, Jared Dean Katz & Jonathan H. Wright, *Kalshi and the Rise of Macro Markets*, Finance and Economics Discussion Series 2026-010, Board of Governors of the Federal Reserve System (Feb. 12, 2026), <https://perma.cc/VEX4-EV63>.

<sup>11</sup> See, e.g., Tradeweb and Kalshi Announce Strategic Partnership, *Traders Magazine* (Feb. 19, 2026), <https://perma.cc/CL2U-ZC7Q> Michael Calderone, CNBC Strikes Deal With Kalshi for Real-Time Prediction Data, *TheWrap* (Dec. 4, 2025, 10:04 AM), <https://perma.cc/96DQ-PMRY>; Kalshi to become CNN's official prediction market partner, *Kalshi News* (Dec. 2, 2025), <https://perma.cc/F7Q2-UD8X>.

<sup>12</sup> See *In re Application of HedgeStreet, Inc. for Designation as a Contract Market*, Order of Designation (Commodity Futures Trading Comm'n Feb. 18, 2004); see also *In the Matter of the Petition of North American Derivatives Exchange, Inc.*, Amended Order of Designation (Commodity Futures Trading Comm'n Sept. 29, 2025).

<sup>13</sup> *Id.*

<sup>14</sup> *In re Application of QCX LLC for Designation as a Contract Market*, Order of Designation (Commodity Futures Trading Comm'n July 9, 2025).

<sup>15</sup> Dow Jones signs deal with Polymarket US, *Yahoo Finance* (Jan. 7, 2026), <https://tinyurl.com/42z666uk>.

fundamental threat to Congress’s statutory design.” Brief for the U.S. Commodity Futures Trading Comm’n as Amicus Curiae at 2, *N. Am. Derivatives Exch., Inc. v. Nevada*, No. 25-7187 (9th Cir. Feb. 17, 2026). To vindicate its exclusive federal authority, the Commission has affirmatively brought suit in federal courts across multiple jurisdictions—including Arizona, Connecticut, Illinois, New York, Rhode Island, Minnesota, and Wisconsin—to halt unconstitutional state enforcement actions and total bans targeting event contract platforms.<sup>16</sup>

**E. Kentucky’s H.B. 757, H.B. 904, and H.B. 869 impose an excise tax and contracting prohibitions on federally regulated prediction markets.**

53. In April 2026, the Kentucky General Assembly enacted three bills in quick succession: H.B. 757, H.B. 904, and H.B. 869. The legislature first passed H.B. 757 and H.B. 904 together, establishing a parallel framework of punitive taxation (the excise tax) and the contracting prohibitions targeting prediction markets. Days later, the legislature enacted H.B. 869 to revise those contracting prohibitions and refine the statutory mechanism. This rapid, multi-bill rollout reflects a concerted effort to restrict the operations of federally regulated exchanges in Kentucky. Indeed, the General Assembly explained that it sought to tax what it viewed as unlawful prediction market operations. H.B. 757, § 71(7) (“It is the purpose and intent of the General Assembly to levy taxes on persons engaged in the operations of . . . prediction market[s]. It is not the intent of the General Assembly to legalize these activities.”).

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<sup>16</sup> See CFTC Staff Advisory, LTR No. 26-08, 2026 WL 734345 (Mar. 12, 2026), <https://perma.cc/U8BP-7U67>; Prediction Markets, 91 Fed. Reg. 12,516 (Mar. 16, 2026) (advance notice of proposed rulemaking); CFTC Press Release, LTR No. 9206-26, CFTC Sues Trio of States to Reaffirm its Exclusive Jurisdiction Over Prediction Markets (Apr. 2, 2026), <https://perma.cc/AMA4-NUGJ>; CFTC Press Release, LTR No. 9218-26, “CFTC Sues New York Over Prediction Markets Amid Ongoing Efforts to Preserve Jurisdiction” (Apr. 24, 2026), <https://perma.cc/9M5Y-KT78>; CFTC Press Release, LTR No. 9220-26, “CFTC Sues Wisconsin to Reaffirm its Exclusive Jurisdiction Over Prediction Markets” (Apr. 28, 2026), <https://perma.cc/G7Y3-GPW5>; CFTC Press Release, LTR No. 9238-26, CFTC Sues to Block State Enforcement in Rhode Island Amid Ongoing Efforts to Preserve Jurisdiction (May 28, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9238-26>.

54. H.B. 757 imposes a 14.25% “excise tax” on “the prediction market operator’s transaction fees.” H.B. 757, § 71(2). That is, H.B. 757’s tax is designed to impose a tax on a “certain” industry. *See* Excise Tax, Merriam-Webster’s Unabridged Dictionary, <https://tinyurl.com/47ubfakt>.

55. The law broadly defines “prediction market” to include “[a]ny physical or electronic platform through which a consumer may buy, sell, or exchange event contracts, whether the market is located in or out of the state,” and expressly provides that such a market “[m]ay be a board of trade designated as a contract market by the Commodity Futures Trading Commission.” *Id.* § 71(1)(e). A “[p]rediction market operator” is therefore any federally regulated exchange that offers event contracts, including the Coalition’s members. *Id.* § 71(1)(f).

56. H.B. 757 defines an “[e]vent contract” as “an agreement, contract, transaction, or swap in an excluded commodity based on the occurrence, extent of an occurrence, or contingency.” *Id.* § 71(1)(c). H.B. 757 thus defines the subject of the excise tax by reference to the very types of instruments subject to the CFTC’s exclusive jurisdiction.

57. A “[t]ransaction fee” is “[t]he fee charged by the prediction market operator to complete a sale, purchase, or trade of an event contract to a consumer.” H.B. 757, § 71(1)(h). The term “[c]onsumer” is defined to include both a “Kentucky resident who purchases an event contract through a prediction market” with no geographic limitation, and a person who purchases an event contract “while in Kentucky.” *Id.*, § 71(1)(a). And the first category is particularly sweeping: it taxes transaction fees regardless of where the Kentucky resident is physically located at the time of purchase, whether in Ohio, California, or abroad. The extraterritorial reach of the tax is thus not merely implied, but explicit on the face of the statute—Kentucky has affirmatively defined its

taxing jurisdiction to extend beyond its own borders to transactions occurring entirely in other States.

58. H.B. 904, enacted concurrently with H.B. 757, prohibits Kentucky sports-wagering, horse-racing, and fantasy contest licensees from “participat[ing] in or contract[ing] with platforms that offer events contracts through a prediction market in the Commonwealth of Kentucky.” H.B. 904, § 22(9)(b). H.B. 904 uses the same definitions of “[p]rediction market” and “[e]vent contract” as H.B. 757. *Id.*, § 1(10), (30).

59. Shortly thereafter, the General Assembly purported to narrow the contracting prohibitions against prediction markets, revising the prohibitions to apply to “an entity offering *sports* event contracts or a *sports* prediction market in Kentucky.” H.B. 869, § 55(9)(d) (emphases added). But because all of the Coalition’s members offer sports-related event contracts, the prohibition still bars contracting with any of the Coalition’s members. And in an attempt to sweep its animus against prediction markets under the rug, H.B. 869 deleted § 71(7) from H.B. 757, the provision that had expressly stated the General Assembly’s intent to levy taxes on prediction market operators rather than “legalize” their activities. *Id.*, § 58(7).

60. Together, these three bills impose a coordinated regime targeting prediction markets. H.B. 757 imposes a 14.25% excise tax on all transaction fees charged to Kentucky consumers, regardless of where that trade occurs. H.B. 757, § 71(2). H.B. 904 and H.B. 869 compound the burden by barring Kentucky gaming licensees from entering into any contractual relationship with prediction market operators. H.B. 904, § 22(9); H.B. 869, § 55(9).

61. Kentucky’s H.B. 757 is set to take effect on January 1, 2027, while H.B. 904, as amended by H.B. 869, takes effect on July 15, 2026. H.B. 757, § 71(2); H.B. 904, § 22(9); *see*

also Ky. Const. § 55 (non-emergency bills become law 90 days after the adjournment of the legislative session).

**F. Looming enforcement of Kentucky’s legislation irreparably harms the Coalition’s members.**

62. Imminent application of Kentucky’s excise tax and contracting prohibitions creates immediate, noncompensable harm to the Coalition’s members. Enforcement—or even the credible threat of it—puts Coalition members to an impossible trilemma: (a) expend significant resources paying the tax and reengineering contracts and platforms to satisfy Kentucky-specific requirements; (b) continue operating under the looming specter of state enforcement; or (c) cease offering platforms to Kentucky residents and within Kentucky altogether—which may not even prove feasible. Each path would cause irreparable injuries, including likely unrecoverable substantial monetary losses, reputational damage, loss of hard-earned customer goodwill, and burdens on First Amendment interests.

63. Paying the Commonwealth’s tax and/or reconfiguring internal systems to be state-law compliant would cause significant monetary harm to the Coalition’s members. Compliance would require immediate, substantial expenditures to redesign contract specifications, fee schedules, onboarding controls, and technology stacks solely for Kentucky—nonrecoverable sunk costs that independently support irreparable harm. For example, the Coalition’s members would need to ensure they tracked the fees associated with Kentucky residents’ trading, even when those residents are not physically in Kentucky. And even if the excise tax is ultimately held unlawful and Kentucky were to provide refunds for the unlawful collection of taxes, the significant compliance costs imposed in the interim would likely be unrecoverable because of sovereign immunity. See *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 39 (2021) (“Generally, States are

immune from suit under the terms of the Eleventh Amendment and the doctrine of sovereign immunity.”); *see also LIUNA v. Neff*, 29 F.4th 325, 330 (6th Cir. 2022) (same).

64. The enforcement of Kentucky’s enactments will likewise irreparably harm the goodwill and reputation that the Coalition’s members have worked hard to develop. The “loss of customer goodwill . . . constitutes irreparable harm.” *Hall v. Edgewood Partners Ins. Ctr., Inc.*, 878 F.3d 524, 530 (6th Cir. 2017) (citing *Basicomputer Corp. v. Scott*, 973 F.2d 507, 512 (6th Cir. 1992)); *see Collins Inkjet Corp. v. Eastman Kodak Co.*, 781 F.3d 264, 279 (6th Cir. 2015) (goodwill losses are not quantifiable). And “interference with customer relationships and damage to reputation are precisely the sorts of injuries” which are difficult to quantify monetarily, and thus constitute irreparable harm. *ACT, Inc. v. Worldwide Interactive Network, Inc.*, 46 F.4th 489, 503-04 (6th Cir. 2022). If the State were to bring enforcement actions for the Coalition’s noncompliance with its unlawful tax or contract prohibitions, this would activate notification and termination clauses in key commercial agreements, jeopardize indispensable banking and payments relationships, and deter prospective partners—reputational and relational injuries that cannot be adequately compensated. If federally regulated prediction markets terminate agreements with Kentucky licensees or change their contract terms to comport with Kentucky’s regulations, this interference with their relationships with other businesses and customers would irreparably harm their reputation and cause a loss of customer goodwill.

65. Kentucky’s regime causes further irreparable harm by burdening First Amendment-protected expression. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The irreparable injury from even “minimal infringement upon First Amendment values . . . stems from the intangible nature or the benefits flowing from the exercise of those rights; and the fear that, if

these rights are not jealously safeguarded, persons will be deterred, even if imperceptibly, from exercising those rights in the future.” *United Food & Com. Workers Union, Loc. 1099 v. Sw. Ohio Reg’l Transit Auth.*, 163 F.3d 341, 363 (6th Cir. 1998) (internal citations omitted). Event contract trading allows market participants to communicate their assessments and protected opinions of real-world probabilities on a huge variety of topics. Kentucky’s tax will burden trading volumes and impose a higher cost on the expression of associated speech—injuries not remediable by damages and undeniably irreparable.

66. If the Coalition’s members stopped offering their platforms in Kentucky because of the excise tax, thus ending customer access in Kentucky and unwinding positions within the Commonwealth, that would be equally harmful and would conflict with impartial access obligations required by CFTC regulations. Excluding an entire State’s residents would erect discriminatory barriers, undermine fair and nondiscriminatory participation, and produce uneven execution quality across the market. Not only would such actions violate federal law, but unwinding positions mid-stream would confuse customers, fracture liquidity, and permanently impair predictive value. These cascading effects—a thinner order book, wider spreads, reduced trade frequency, and diminished information aggregation—would harm customers nationwide, not just in Kentucky. *See, e.g.*, CFTC NPRM at 100 (warning that restricting event contracts “may divert trading to offshore or otherwise less transparent and less supervised markets”).

67. All told, “the prospect of” operating under an unlawful state regime irreparably harms the Coalition’s members by forcing a choice between continued operations “and expos[ing] themselves] to potentially huge liability,” or “suffer[ing] the injury of obeying the [preempted] law.” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992). The specific injuries identified—nonrecoverable compliance costs, tax payments, and lost revenue, loss of reputation

and goodwill, and burdens on First Amendment interests—are not remediable by money damages after the fact.

## COUNT I

### (Supremacy Clause - U.S. Const. art. VI, cl. 2)

68. The Coalition repeats and realleges each and every allegation above as if fully set forth herein.

69. The Supremacy Clause of the United States Constitution makes the “Laws of the United States” the “supreme Law of the Land,” the “Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. By virtue of the Supremacy Clause, the Constitution requires “any state law, however clearly within a State’s acknowledged power” to “yield” if it “interferes with or is contrary to federal law.” *Gade v. Nat’l Solid Waste Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (citation omitted).

70. “There are three ways state law can be preempted by the Supremacy Clause: (1) where federal law expressly preempts state law (express preemption); (2) where federal law has occupied the entire field (field preemption); or (3) where there is a conflict between federal law and state law (conflict preemption).” *Ledford v. UofL Health-Louisville, Inc.*, 720 S.W.3d 594, 600 (Ky. Ct. App. 2025).

71. Kentucky has enacted legislation that targets CFTC-registered exchanges that offer access to event contracts, through both its excise tax and contracting prohibitions. Viewed through any lens, federal law preempts the Commonwealth’s new laws.

#### A. The CEA expressly preempts Kentucky’s new laws.

72. “Congress may expressly declare its intention to displace state law.” *Directv, Inc. v. Treesh*, 290 S.W.3d 638, 641 (Ky. 2009). Congress’s “intent . . . primarily is discerned from

the language of the preemption statute and the statutory framework surrounding it.” *Id.* (citation omitted). The court’s task is to discern how “Congress intended the statute and its surrounding regulatory scheme” to work. *Id.* at 641-42 (citation omitted). When a statute “contains an express pre-emption clause,” courts “begi[n] and en[d]” with the “plain text.” *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016); see *MGG Inv. Grp. LP v. Bemak N.V., Ltd.*, 671 S.W.3d 76, 83 (Ky. 2023) (similar).

73. Here, Congress expressly preempted state laws that attempt to regulate the trading of event contracts on CFTC-registered exchanges. The CEA provides that the CFTC “shall have exclusive jurisdiction . . . with respect to,” among other things, “accounts, agreements, . . . and transactions involving swaps . . . traded or executed on a [designated] contract market.” 7 U.S.C. § 2(a)(1)(A) (emphases added). Congress defined a “swap” to include “any agreement, contract, or transaction” that “provides for any purchase, sale, payment, or delivery . . . that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.” 7 U.S.C. § 1a(47)(A)(ii). Because event contracts are binary instruments that pay out depending on the “occurrence [or] nonoccurrence” of a future “event or contingency,” and because the underlying event is “associated with a potential financial, economic, or commercial consequence,” *id.*, the CFTC’s exclusive jurisdiction encompasses event contracts traded on DCMs, such as the Coalition’s members’ exchanges. *KalshiEX LLC v. Johnson*, --- F.3d ---, 2026 WL 1223373 at \*4 (D. Ariz. May 5, 2026); CFTC Amicus Br. 5-8, 17-25, *KalshiEX, LLC v. Schuler*, No. 26-3196 (6th Cir. May 12, 2026), ECF 31.

74. The CEA’s grant of “exclusive jurisdiction” to the CFTC is categorical, barring a wide swath of potential state regulatory actions. The term “exclusive jurisdiction” carries with it

old soil: a long history of use to describe the complete displacement of states' authority to exercise any "regulatory or adjudicatory power." Jurisdiction, *Black's Law Dictionary* (12th ed.). As the Supreme Court has recognized for decades, where Congress makes federal jurisdiction "exclusive," it "necessarily denie[s]" jurisdiction to others. *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992).

75. For example, in *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947), the Supreme Court addressed amendments to the United States Warehouse Act. Prior to those amendments, federal licensees needed to comply with both federal and state law warehouse requirements. But Congress subsequently amended the Act to provide that "the power, jurisdiction, and authority" of the Secretary of Agriculture "shall be exclusive with respect to all persons' licensed under the Act." *Id.* at 232-33. This "exclusive" jurisdiction provision was "special wording," the Court explained, that meant "in plain terms that a licensee under the federal Act can do business 'without regard to State acts'" and "that the matters regulated by the Federal Act cannot be regulated by the States." *Id.* at 233-34. "That is to say," the Court concluded, "Congress did more than make the Federal Act paramount over state law in the event of conflict." *Id.* Instead, Congress ensured that licensees "could not be required by a State to do more or additional things or conform to added regulations, even though they in no way conflicted with what was demanded of [it] under the Federal Act." *Id.* at 236. Congress thus "eliminat[ed] dual regulation" in favor of "regulation by one agency" in order "to achieve fair and uniform business practices." *Id.*

76. The Supreme Court likewise uses the term "exclusive jurisdiction" to describe areas where state law may not tread. For example, the Court has explained that when federal authority "exercise[s] exclusive jurisdiction over" particular land, that exclusive authority "bars state regulation." *United States v. State Tax Comm'n of Miss.*, 412 U.S. 363, 370 (1973). Absent

congressional authorization, a state may not invoke “regulatory authority” over such land at all. *Id.* at 373. Likewise, the Court has explained that when “Congress has wished to allow a State to exercise jurisdiction”—including by “levy[ing] certain taxes”—targeted at an area subject to the “exclusive jurisdiction” of the federal government, it “has specifically so stated.” *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369, 374 (1964).

77. That Congress granted the CFTC exclusive jurisdiction “with respect to accounts, agreements, . . . and transactions involving” derivatives traded on DCMs further underscores Congress’s intent to circumscribe State authority. The Supreme Court has long interpreted the term “with respect to” to mean “‘referring to,’ ‘concerning,’ or ‘regarding.’” *Montgomery v. Caribe Transp. II, LLC*, 146 S. Ct. 1199, 1204 (2026); accord *Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013). “Putting the pieces together,” States may not permissibly legislate “concerning” or “regarding” accounts, agreements or transactions involving derivatives (here, event contracts). *Caribe Transp. II, LLC*, 146 S. Ct. at 1205. That, instead, is the CFTC’s “exclusive jurisdiction.” 7 U.S.C. § 2(a)(1)(A).

78. Congress’s broad grant of exclusive jurisdiction to the CFTC was no accident; it came after decades of experimentation with a system of dual state-federal regulation over derivatives. Like the earlier version of the Warehouse Act that the Supreme Court considered in *Rice v. Santa Fe Elevator Corp.*, the 1936 version of the CEA contained a savings clause that expressly permitted parallel state regulation. Act of June 15, 1936, ch. 545, 49 Stat. 1491, 1494 (1936) (CEA would not “impair any State law applicable to any transaction”). But, as with the Warehouse Act, Congress ultimately rejected a system of dual regulation over derivatives, granting the CFTC “exclusive jurisdiction” and removing the CEA’s savings clause. 7 U.S.C. § 2(a)(1)(A).

Instead, after the 1974 amendments to the CEA, state regulatory authorities may exercise jurisdiction only in areas falling outside the CFTC's exclusive jurisdiction. *Id.*

79. Congress thus replaced a dual system of state-federal regulation with a single federal agency as the sole entity responsible for “a comprehensive regulatory structure to oversee the volatile and esoteric futures trading complex.” *Merrill Lynch*, 456 U.S. at 356. Congress deliberately designed the 1974 amendments to stop the States from “step[ping] in to regulate the futures market themselves” and subjecting exchanges to “conflicting regulatory demands.” *Am. Agric. Movement, Inc.*, 977 F.2d at 1156. By bringing “all futures trading...under a single regulatory umbrella,” Congress sought to avoid the “total chaos” of subjecting derivatives trading to “different State laws,” and to ensure instead that “all exchanges” would operate “under the same set of rules and regulations.” H.R. Rep. No. 93-975, at 45, 79 (1974); 93d Cong., 2d Sess. 685 (1974) (statement of Sen. Clark).

80. The Commonwealth's recent legislation is expressly preempted by Congress's grant of “exclusive jurisdiction” to the CFTC. Kentucky's attempt to impose a 14.25% excise tax whenever any Kentucky resident purchases an event contract anywhere in the country, and whenever any resident from any State purchases an event contract while physically present in Kentucky, plainly “concerns” or “regards” exchange-traded derivatives falling within the CFTC's exclusive jurisdiction. And the tax is specifically targeted at discouraging conduct subject to the CFTC's regulatory oversight. Similarly, Kentucky's ban on licensees participating in or contracting with the prediction markets that offer access to such event contracts likewise “concerns” event-contract transactions. Congress's grant of “exclusive jurisdiction” to the CFTC “excludes all state regulation, no matter how complementary, of those subjects touched by the federal regulatory scheme.” *Rice*, 331 U.S. at 254 n.6.

81. What the CEA makes clear on its face, overwhelming consensus on the ground confirms. No State currently levies a State-specific excise tax of *any* kind on derivatives transactions that take place on a federally designated exchange, let alone the sort of specifically targeted and discriminatory tax that Kentucky has imposed here. Instead, any fees on CFTC-regulated trades are imposed nationally and uniformly. For example, the CFTC has designated the National Futures Association as the sole industrywide, self-regulatory organization for the United States derivatives industry. *About NFA*, National Futures Association, <https://perma.cc/RC58-CFYH>. Pursuant to the authority granted it by the CFTC, the NFA charges fees on certain trades. DCMs “shall pay to NFA an assessment calculated on the basis of \$.005 for each round-turn transaction in a commodity futures contract,” *i.e.*, a contract where there has been both a purchase and a sale on the DCM.<sup>17</sup>

82. That States do not generally tax derivative transactions eliminates any doubt about why the Commonwealth is taxing federally regulated prediction markets here: the Commonwealth disagrees that DCMs may lawfully offer access to event contracts under the CEA, and it views federally regulated prediction markets as a “threat” to gaming interests in the Commonwealth.<sup>18</sup> Kentucky cannot circumvent the CFTC’s exclusive regulatory jurisdiction merely by cloaking its regulatory efforts in the garb of a specifically targeted and discriminatory tax.

83. Notwithstanding preemption, the Supreme Court has explained that a State may still impose a tax “of general applicability.” *De Buono*, 520 U.S. at 815. By contrast, a State cannot specifically target federally protected activity for disfavored or discriminatory taxation consistent with the Supremacy Clause. The Supreme Court’s decision in *De Buono* is instructive.

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<sup>17</sup> NFA Bylaws, Ch. 13(a), <https://tinyurl.com/95nvjnmf>.

<sup>18</sup> Rep. Koch Q&A.

There, the Supreme Court considered whether ERISA’s express preemption of state laws that “may now or hereafter relate to any employee benefit plan” preempted New York’s “gross-receipts” tax on hospitals. The Court upheld the tax, but only because it found that the tax was one “of general applicability” that applied to all hospitals. *Id.* “Most hospitals are not owned or operated by ERISA funds.” *Id.* at 816.

84. New York’s gross-receipts tax passed muster because it did not specifically target the areas federal law governed. In other words, it was not “the type of state law that Congress intended ERISA to supersede.” *De Buono*, 520 U.S. at 814. It did not, for instance, make the “existence of a pension plan” an element of the cause of action, and it did not “contain provisions that expressly refer to ERISA or ERISA plans.” *Id.* at 815. Consequently, “the operation of the [tax]” did not “convince” the Court that Congress intended ERISA to preempt it. *Id.* at 814.

85. The Commonwealth’s excise tax, by contrast, is exactly the kind of tax the CEA “supersede[s].” *De Buono*, 520 U.S. at 814.

86. *First*, unlike New York’s tax, which applied to all hospitals, the Kentucky excise is not generally applicable. It applies *only* to “prediction market operators,” defined as exchanges that offer event contracts. H.B. 757, § 71(1)(f); *see De Buono*, 520 U.S. at 816 (“The [challenged law] is a tax on hospitals. Most hospitals are not owned or operated by ERISA funds.”). So it is *not* a law of “general applicability.” *De Buono*, 520 U.S. at 815.

87. *Second*, the excise tax applies *only* to federally regulated activity. The text of the statute confirms as much. It “contains provisions that expressly refer to” the CEA and to CFTC-designated contract markets to identify the targets of the tax. *De Buono*, 520 U.S. at 815. The legislation defines “event contract” by reference to 7 U.S.C. § 19(a)(i), and “prediction market”

by reference to a “board of trade designated as a contract market by the Commodity Futures Trading Commission.” H.B. 757, § 71(1)(e).

88. *Third*, Kentucky’s tax is discriminatory—subjecting an area within the exclusive jurisdiction of federal government for disfavored treatment as compared with what the Commonwealth views as its non-federally-regulated equivalent. That is the oldest Supremacy Clause violation in the book. *See McCulloch v. Maryland*, 17 U.S. (4. Wheat.) 316, 436-37 (1819); *cf. Dawson v. Steager*, 586 U.S. 171, 173-74 (2019). Kentucky’s law would impose a higher tax rate than the tax rate the Commonwealth imposes on its favored in-state industry (which by Kentucky’s lights is akin to prediction markets): federally regulated prediction markets are subject to a 14.25% tax, whereas wagers offered by licensed gambling operators at horse tracks are taxed at 9.75%. Kentucky’s excise tax on federally regulated prediction markets also applies extraterritorially—to any trading by a Kentucky resident anywhere. But Kentucky does not impose a similar burden on its licensed gambling operators to pay taxes for wagers placed by Kentucky residents out of state, even if they likewise conduct operations online. And if its discriminatory intentions were not already plain, Kentucky has also prohibited its state licensees from contracting with federally regulated exchanges that offer sports-related event contracts. The “critical element” for application of these discriminatory burdens is trading on a federally regulated prediction market. *De Buono*, 520 U.S. at 815.

89. By specifically targeting the very event contracts and markets that are subject to the CFTC’s exclusive jurisdiction and discriminating against them, Kentucky has enacted a law that the CEA was “intend[ed] to supplant.” *De Buono*, 520 U.S. at 814. Kentucky cannot impose a tax that subjects those markets and their conduct to disfavored treatment. That sort of

discrimination is inconsistent with the CEA and Congress's intent to enact uniform regulation of the Nation's trading of derivatives.

90. The Commonwealth's attempt to prevent any sports-wagering or horse-racing licensee from contracting with DCMs is likewise preempted; these prohibitions, too, are an attempt to usurp the CFTC's exclusive jurisdiction over how federally regulated exchanges operate—and with *whom* they contract. The Commonwealth may not shrink DCM operations by curtailing potential partnerships. *See, e.g., Hodel v. Va. Surface Min. & Reclamation Ass'n*, 452 U.S. 264, 290 (1981) (“A wealth of precedent attests to congressional authority to displace or pre-empt state laws regulating private activity[.]”) (collecting cases). The grant of exclusive jurisdiction to the CFTC means that the Coalition's members “electing to come under the Federal Act need serve but one master, and that one the federal agency.” *Santa Fe Elevator Corp.*, 331 U.S. at 234. It would impair the uniform federal operation of DCMs if the Commonwealth—or any of the other fifty States—could determine who may contract with federally registered exchanges, and thus how the exchanges operate their businesses. In the CEA, Congress ensured that there would be no regulation “except its own,” *id.* at 236; Kentucky's laws would flip Congress's design on its head.

**B. Kentucky's attempts to regulate CFTC-regulated exchanges are field preempted.**

91. The CEA also reflects Congress's intent to “preempt[] state law” by occupying the “field” with respect to derivatives, including event contracts, traded on DCMs. *KalshiEX, LLC*, 172 F.4th at 229 (collecting cases).

92. In the 1974 amendments to the CEA, Congress's “purpose” was “to establish a Commission with broad regulatory and enforcement powers.” *Bd. of Trade Chi. v. Commodity Futures Trading Comm'n*, 605 F.2d 1016, 1025 (7th Cir. 1979). The legislators who enacted the

CEA “were concerned that the states . . . might step in to regulate the futures markets themselves.” *Am. Agric. Movement, Inc.*, 977 F.2d at 1156. To avoid “conflicting regulatory demands” from states in the area of “national futures trading,” Congress enacted the CEA to place “all exchanges and all persons in the industry under the same set of rules and regulations for the protection of all concerned.” *Id.* (citations omitted). Thus, Congress established “a comprehensive regulatory structure,” and granted the CFTC “broad powers to administer and enforce the CEA.” *Id.* at 1155. And those 1974 amendments “preempt[ed] the field insofar as futures regulation is concerned.” H.R. Rep. No. 93-1383, at 35-36 (1974).

93. That comprehensive regulatory scheme leaves no room for Kentucky’s attempts to regulate prediction markets, either through a 14.25% excise tax on “the prediction market operator’s transaction fees,” H.B. 757, § 71(4), or by prohibiting federally regulated exchanges from partnering with other entities in the Commonwealth. H.B. 869, § 55(9). Both elements of the Commonwealth’s scheme are impermissible because they seek to specifically regulate and disfavor conduct within the CFTC’s sphere of exclusive authority.

94. When Congress amended the CEA to put an end to the existing patchwork of state-by-state regulation, it did so specifically to “encourage” nationwide, uniform derivatives markets, and to ensure that residents of different States would all be on equal footing in accessing critical financial markets. Those markets would be neither nationwide nor uniform if each State could specifically target transactions on those exchanges and subject them to discriminatory taxation. And the Commonwealth’s attempt to impose that sort of obligation on the Coalition’s members is exactly the kind of law that directly intrudes on the CFTC’s exclusive authority to oversee trading on CFTC-regulated exchanges.

95. The Commonwealth’s contracting prohibition similarly intrudes in the exclusive field governed by the CFTC. By preempting the field of event contracts, Congress “has left no room for supplementary state legislation.” *Flaherty*, 172 F.4th at 228. But the Commonwealth’s contracting prohibitions purport to impose restrictions in addition to those the CFTC has promulgated in regulating DCMs like the Coalition’s members. If a DCM offers sports-related event contracts on its exchange, then it must comply with the CFTC’s regulatory oversight *and* now additionally limit its contractual counterparties because of Kentucky’s prohibitions. Rather than leave “all exchanges and all persons in the industry under the same set of rules and regulations”—those imposed by the CEA and the CFTC—Kentucky’s prohibition thus adds a different set of rules applicable only to contracts with Kentucky licensees. *Am. Agric. Movement*, 977 F.2d at 1156. The CEA does not give the Commonwealth the option to “regulate futures trading” in this way. *Flaherty*, 172 F.4th at 229.

**C. Kentucky’s attempts to regulate CFTC-regulated prediction markets are conflict preempted.**

96. Conflict preemption also bars Kentucky’s attempts to impose a specifically targeted and discriminatory tax on CFTC-regulated exchanges and to restrict those exchanges contracting practices. “Under the principle of conflict preemption, federal law preempts state law if the two ‘directly conflict.’” *Churchill Downs Tech. Initiatives Co. v. Michigan Gaming Control Bd.*, 162 F.4th 631, 638 (6th Cir. 2025) (quoting *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 617 (2011)). “That occurs when compliance with both is impossible, or when . . . state law ‘stand[s] as an obstacle to

the accomplishment’ of Congress’s objectives.” *Id.* (quoting *Kansas v. Garcia*, 589 U.S. 191, 210-11 (2020)).

97. *First*, the Commonwealth’s tax regime runs headlong into federal law. The CFTC’s core principles require exchanges to offer “impartial access to” their “markets and services.” 17 C.F.R. § 38.151(b). If federally regulated exchanges were to pass on the cost of the Commonwealth’s excise tax to customers, these exchanges would be violating federal law by charging users in one State more to access a prediction market than users in other states. The law therefore forces federally regulated entities to the choice of either violating the “impartial access” requirement or fully absorbing the costs of an unlawful state tax. Thus, it is impossible to comply with both the federal impartial-access requirement without fundamentally changing the operation of federally regulated prediction markets. *Mut. Pharm. Co., Inc. v. Bartlett*, 570 U.S. 472, 486 (2013).

98. This conflict between state and federal law is apparent in the Commonwealth’s contracting prohibition, too. “Impartial access” to “markets and services” will necessarily be curtailed if one State can ban its licensees from contracting with DCMs that offer sports-related event contracts. It makes no difference that DCMs could choose not to offer sports-related event contracts at all to maintain “impartial access.” *See Bartlett*, 570 U.S. at 488. It is “irrelevant to [the] analysis” that a “regulated actor could avoid liability under both state and federal law by simply leaving the market.” *Id.* at 489-90.

99. *Second*, both the excise tax and contracting prohibitions are obstacles to the “accomplishment and execution of the full purposes and objectives of Congress” in amending the CEA. *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 373 (2000). The practical “effect” of the Commonwealth’s tax is to significantly raise prices for prediction markets to operate within

Kentucky, undermining the CFTC's authority to decide how prediction markets should operate. *Maryland v. Louisiana*, 451 U.S. 725, 749 (1981). Under the CEA, prediction markets are required to use "non-discretionary automated trade matching and execution algorithm[s]" on their national platforms. 7 U.S.C. § 1a(51)(A). But if a certain contract has a much higher effective price in one State than in another, the effective value of the contract would be different based purely on geography. That would likely sap the liquidity necessary for certain trades and provide opportunities for geographic arbitrage that would distort the market. And, despite the CFTC's role as the sole regulator of nationwide derivatives markets, the CFTC would be unable to remedy the disparity, given that each individual state legislature would set its own taxes.

100. The same is true for the contracting prohibitions. "The Supreme Court has disapproved of states tailoring regulation to target federal schemes." *Churchill Downs Tech. Initiatives*, 162 F.4th at 639. These contracting prohibitions present an obstacle because these "statutes don't just regulate primary conduct"; "[t]hey seem to regulate the federal government as well." *Id.* Here, the Commonwealth is plainly targeting the federal scheme "by bolting on" an additional consequence if DCMs decide to offer sports-related contracts: DCMs will lose the ability to contract with Kentucky licensees. *Id.* That "imposes extra burdens" on DCMs, *id.* at 642, sets up a state-specific "obstacle" to the trading of federally-regulated event contracts, and is an evident effort to resurrect the "patchwork" of state regulations that "Congress replaced wholecloth by creating the CFTC." *Flaherty*, 172 F.4th at 230.

## COUNT II

### (Dormant Commerce Clause - U.S. Const. art. I, § 8, cl. 3)

#### A. The excise tax and contract prohibitions are impermissibly extraterritorial.

101. The Commonwealth's 14.25% excise tax on prediction market operators' transaction fees and contracting prohibitions are impermissibly extraterritorial. The dormant Commerce Clause prohibits state laws that "directly control[] commerce occurring wholly outside the boundaries of a State." *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336 (1989). A sovereign's authority is "co-extensive with its territory," *United States v. Bevans*, 16 U.S. (3 Wheat.) 336, 387 (1818), and a State may legislate only "with reference to its own jurisdiction," *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881). A law that "directly regulate[s] out-of-state transactions" bearing "no connection to the State" is therefore unconstitutional. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 n.1 (2023).

102. The excise tax law defines "consumer" to include a "Kentucky resident who purchases an event contract through a prediction market" with no geographic limitation whatsoever. H.B. 757, § 71(1)(a)(1). The excise tax therefore applies to transaction fees even when a Kentucky resident purchases an event contract while physically located outside the Commonwealth. The tax is thus imposed on transactions occurring entirely outside Kentucky, with no connection to the State other than the citizenship of the consumer.

103. By taxing prediction market operators' transaction fees for trades by Kentucky residents regardless of where those trades occur, Kentucky's excise tax impermissibly projects Kentucky's taxing authority beyond its borders and into every other State in which a Kentucky resident might trade.

104. And it does so without even attempting to establish a connection to the State. *See South Dakota v. Wayfair*, 585 U.S. 162, 188 (2018). The fact that a State resident is involved in a particular transaction is wholly insufficient to permit extraterritorial reach of a state law. *Cf. N.C. Dep’t of Revenue v. The Kimberley Rice Kaestner 1992 Fam. Tr.*, 588 U.S. 262, 273 (2019) (holding that state may not impose tax on trust in another state solely because beneficiary of trust lived in state). Imagine, for example, if Ohio imposes a sales tax on gas that an Ohio resident pumped in Kentucky. Such a tax would plainly be impermissible; that an Ohio resident was the one pumping the gas does not change that the conduct occurred in Kentucky and therefore is properly taxed only by Kentucky.

105. Kentucky’s new contracting prohibitions—which bar licensed Kentucky gaming operators from participating in, or even contracting with, federally regulated markets that offer sports event contracts, *see* H.B. 904, § 22(9); H.B. 869, § 55(9)—also run afoul of the dormant Commerce Clause. Kentucky may not reach outside the “boundaries of the State” to regulate interstate contractual relationships that have “no connection to the State” in violation of the dormant Commerce Clause. *Healy*, 491 U.S. at 336; *Nat’l Pork Producers Council*, 598 U.S. at 376 n.1.

**B. The excise tax impermissibly discriminates against interstate commerce.**

106. The Coalition repeats and realleges each and every allegation above as if fully set forth herein.

107. Article I, Section 8 of the United States Constitution vests Congress with the power “[t]o regulate Commerce . . . among the several States.” U.S. Const. art. I, § 8, cl. 3. The Commerce Clause “has long been understood to have a ‘negative’ aspect that denies the States the

power unjustifiably to discriminate against or burden the interstate flow of articles of commerce.” *Oregon Waste Sys., Inc. v. Dep’t of Env’t Quality of Oregon*, 511 U.S. 93, 98 (1994).

108. This “negative” or “dormant” Commerce Clause “prohibits economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269, 273-74 (1988); see *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 581 (1997).

109. When a State imposes a tax “discriminating against interstate commerce,” it is “virtually *per se* invalid,” unless the State can prove that the tax “has a substantial nexus with the state” and “is fairly related to the services provided by the State.” *Fulton Corp. v. Faulkner*, 516 U.S. 325, 331, 334 (1996). A tax discriminates against interstate commerce when, for instance, it taxes “a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State.” *Id.* at 331 (citation omitted).

110. Kentucky’s 14.25% excise tax violates the dormant Commerce Clause because the “practical effect” of the tax is to single out national-platform prediction markets, and only national-platform prediction markets, for substantial taxation. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 278 (1977). Specifically, the new excise tax applies only to interstate activity—never to intrastate activity. A look at federal law confirms why. The CFTC requires that prediction markets provide “impartial access to” their platforms—*i.e.*, prediction markets must offer their platforms to users throughout the United States. 17 C.F.R. § 38.151(b). Thus, under federal law, it is impossible to offer a purely *intrastate* prediction market because prediction markets must be available nationwide. The upshot is that even though Kentucky purports to tax *all* prediction markets, H.B. 757, § 71, by definition, CFTC-designated exchanges *must* operate as interstate platforms. Kentucky’s tax thus only ever applies to interstate commerce.

111. Kentucky's new tax stifles prediction markets and benefits in-state interests. In the Kentucky legislature's view, prediction markets are a "threat to all gaming," and the Commonwealth's taxation scheme confirms its intent to privilege in-person wagering at licensed racetracks.<sup>19</sup> When Kentucky residents choose to wager at in-state racetracks, in-state sports wagering licensees face only a 9.75% tax, rather than the 14.25% excise tax Kentucky has now imposed on prediction markets. Ky. Rev. Stat. § 138.552. So if a Kentucky resident makes a wager at a licensed racetrack, the sports wagering licensee will pay 9.75% on that wager. But if that same Kentucky resident enters into an event contract on a prediction market, the prediction market must pay a 14.25% tax on that transaction.<sup>20</sup>

112. Kentucky's taxation regime is no less discriminatory because Kentucky also taxes "website or mobile" wagering of state gaming licensees at 14.25%. Ky. Rev. Stat. § 138.552. Those Kentucky gaming licensees are licensed only to conduct "sports wagering within the Commonwealth of Kentucky," Ky. Rev. Stat. § 230.811, and thus they are only taxed on those in-state wagers. But DCMs must pay 14.25% even on wagers made *out-of-state*, so long as a Kentucky resident is involved.

113. In other words, the Commonwealth is engaging in economic protectionism. To protect Kentucky sports wagering licensees' acceptance of in-person wagers, the Commonwealth imposes a nearly 50% higher tax on CFTC-regulated trades on DCMs. To protect sports wagering by in-state licensees, the Commonwealth imposes taxes on Kentucky residents who engage in prediction market transactions even when the Kentucky residents are located out-of-state. Because the Commonwealth's favored licensees at in-state tracks operate "without the burden" imposed on

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<sup>19</sup> Rep. Koch Q&A.

<sup>20</sup> The Coalition's members do not offer gaming. But the Kentucky legislature's view that prediction markets are equivalent to gaming lays bare its intent to privilege in-state economic interests.

DCMs, and the “principal application”—indeed the only application—of Kentucky’s new tax is to disincentivize the operation of prediction markets in the Commonwealth, the tax is discriminatory. *Maryland*, 451 U.S. at 728. “[B]y design,” the statutes “disproportionately” disadvantage “out-of-staters” and have a “pernicious effect on interstate commerce.” *Camps Newfound*, 520 U.S. at 579.

114. The Commonwealth has offered no reason why the 14.25% excise tax is connected to any service it provides or any activity within the State. And it cannot justify its tax simply because one of its residents may be involved in the transaction. *Cf. The Kimberley Rice Kaestner 1992 Family Tr.*, 588 U.S. at 266.

### COUNT III

#### (First Amendment - U.S. Const. amend. I)

115. The Coalition repeats and realleges each and every allegation above as if fully set forth herein.

116. A defining feature of prediction markets is that they serve as vehicles for the expression of opinion on matters of public significance. When a trader buys or sells an event contract, she is not merely engaging in a financial transaction—she is making a statement about the likelihood of a real-world event, putting capital behind her convictions, and contributing that judgment to a marketplace of ideas. Prediction markets thus function simultaneously as financial instruments and as aggregators of public opinion on the events that shape society.

117. The range of events listed on prediction markets illustrates their fundamentally expressive character. Contracts on the Coalition’s members’ exchanges cover, among many other subjects, who will win the next presidential or congressional election; whether the Senate will confirm a particular nominee; whether the Supreme Court will rule in a particular way; whether

Congress will pass identified legislation; whether a public health emergency will be declared; and whether the Federal Reserve will raise or lower interest rates; and whether a particular geopolitical conflict will escalate or resolve.

118. Kentucky’s unprecedented tax on prediction markets threatens the free flow of information and marketplace of ideas. Kentucky’s clear purpose in imposing its punitive tax is to discourage prediction markets from operating within the state. And it accomplishes that goal by imposing a high financial cost on those prediction markets.

119. The First Amendment bars that kind of impermissible targeting of expressive activity. It prevents regulations, including taxes, that “single out” the expression of ideas for adverse treatment. *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575 (1983). For example, the Supreme Court held unconstitutional a use tax on ink paper because it “singled out the press for special treatment.” *Id.* at 582. While States can impose taxes of “general applicability” on the press, a tax that singles out protected First Amendment activity faces a “heavier burden of justification.” *Id.* at 583. “Absent a compelling justification, the government may not exercise its taxing power” to specifically burden First Amendment-protected activities. *Leathers v. Medlock*, 499 U.S. 439, 447 (1991); *see also Grosjean v. American Press Co.*, 297 U.S. 233, 240-41, 251 (1936).

120. Courts are especially wary when the tax is content-based. *See Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. 221, 227-31, 234 (1987); *accord Vidal v. Elster*, 602 U.S. 286, 295 (2024) (“[A] content-based regulation of speech is presumptively unconstitutional as a general matter.”). To that end, the Supreme Court held unconstitutional, an Arkansas tax scheme that taxed general-interest magazines but exempted newspapers and religious, professional, trade, and sports journals. *Arkansas Writers’ Project*, 481 U.S. at 234. The Arkansas tax scheme was

“disturbing” to the liberty protected by the First Amendment because “the basis on which Arkansas differentiates between magazines [was] particularly repugnant to First Amendment principles: a magazine’s tax status depends entirely on its content.” *Id.* at 229.

121. As in *Arkansas Writers’ Project*, Kentucky’s law is not generally applicable; it applies only to federally regulated prediction markets. Kentucky’s excise tax likewise “singles out” the protected expression that prediction markets provide. 481 U.S. at 234. The tax applies only to “prediction market operators”—*i.e.*, exchanges that offer access to event contracts, which are themselves defined by content: agreements whose payout is based on “based on the occurrence, extent of an occurrence, or contingency.” H.B. 757, § 71(1)(c). Kentucky’s excise tax is thus not generally applicable by any stretch; it does not apply to any other type of exchange that permits trading under the auspices of the CFTC.

122. Moreover, the applicability of Kentucky’s tax turns on the content of the trades at issue—that is, it is content-based even as to the type of swap. *See Arkansas Writers’ Project*, 481 U.S. at 229. In other words, to determine whether the tax applies, one must assess content of the speech at issue. *See id.* If an exchange deals in certain swaps—for example, interest rates swaps—the tax does not apply. But if the exchange offers event contracts relating to individuals’ predictions for the 2026 elections or any other future event, the tax applies. *Cf. Presidio Enterprises, Inc. v. Warner Bros. Distrib. Corp.*, 784 F.2d 674, 680 (5th Cir. 1986) (“A prediction, or statement about the future, is essentially an expression of opinion.”). The applicability of the tax thus depends on whether the Coalition’s members permit individuals to express predictions about the future or not. That sort of content-based “examin[ation]” of the “message that is conveyed” before the tax applies is “repugnant” to the First Amendment. *Arkansas Writers’ Project*, 481 U.S. at 229-30.

123. That the trading of event contracts has an undeniable economic purpose or that event contracts may be treated as a “mere commodity” does not detract from the protection offered them by the First Amendment. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 571 (2011). The government could not, consistent with the First Amendment, impose a tax every time an individual expressed an opinion. That a polling firm collects and aggregates those opinions would not make it any more constitutional. So too here. The fact that the Coalition’s members earn fees as part of facilitating both economic and expressive conduct does not give the Commonwealth license to single them out for a punitive tax.

#### COUNT IV

##### **(Arbitrary Exercise of Power, Violation of Equal Protection - Ky. Const. §§ 2, 3)**

124. The Coalition repeats and realleges each and every allegation above as if fully set forth herein.

125. Section 2 of the Kentucky Constitution provides in relevant part that “[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.” Ky. Const. § 2.

126. Section 3 of the Kentucky Constitution provides in relevant part that “no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services.” Ky. Const. § 3.

127. Section 2 is “a curb on the legislature as well as on any other public body or public officer in the assertion or attempted exercise of political power.” *Kentucky Milk Mktg. & Antimonopoly Comm’n v. Kroger Co.*, 691 S.W.2d 893, 899 (Ky. 1985). Likewise, “[w]hatever is essentially unjust and unequal or exceeds the reasonable and legitimate interests of the people is arbitrary.” *Bluegrass Trust for Historic Pres. v. Lexington Fayette Urban Cnty. Gov’t Planning*

*Comm'n*, 701 S.W.3d 196, 210 (Ky. 2024). “If the action taken rests upon reasons so unsubstantial or the consequences are so unjust as to work a hardship,” it is unconstitutional under Section 2. *Kentucky Milk Mktg.*, 691 S.W.2d at 899.

128. Section 2 is “broad enough to encompass traditional notions of due process.” *Bluegrass Trust*, 701 S.W.3d at 210. “Unequal enforcement of the law, if it rises to the level of a conscious violation of the principle of uniformity, is prohibited by this section.” *Commonwealth Nat. Resources & Env't. Prot. Cabinet v. Kentec Co., Inc.*, 177 S.W.3d 718, 726 (Ky. 2005). “[R]easonableness is one of degree and must be based on the facts of a particular case.” *Kentucky Milk Mktg.*, 691 S.W.2d at 899.

129. Section 3’s prohibition of any “grant of exclusive, separate public emoluments or privileges” was intended to “place all citizens similarly situated on a plane of equality under the law.” *City of Corbin v. Louisville & N.R. Co.*, 26 S.W.2d 539, 540 (Ky. 1930). Under this provision, “[t]he same burden should be imposed upon all under the like circumstances.” *Louisville Safety-Vault & Trust Co. v. Louisville & N.R. Co.*, 17 S.W. 567, 569 (Ky. 1891). Thus, the legislature “cannot select a particular individual from a class or a locality, and subject him to special burdens or peculiar rules different from those imposed upon others of the same class or locality.” *Id.*

130. Under Section 3, laws that affect social or economic policy must be supported by a rational basis. *See Zuckerman v. Bevin*, 565 S.W.3d 580, 596 (Ky. 2018). However, such laws cannot “classify arbitrarily and without any reasonable basis inherent in the objects of the classification.” *Id.*

131. H.B. 757 imposes an excise tax exclusively on transaction fees received by prediction market operators, including the Coalitions’ members, defined by reference to CFTC-

designated contract markets. The excise tax therefore singles out the Coalitions' members for disfavored treatment based on the regulatory label attached to their lawful business model, not on any natural, reasonable, or constitutionally relevant distinction.

132. The excise tax does not apply to all financial transaction platforms. And Kentucky's incumbent industries do not bear an equivalent burden.

133. No legitimate, revenue, regulatory, consumer-protection, or market-integrity purpose justifies imposing a punitive 14.25% excise tax only on prediction market operators' transaction fees. Revenue raising alone cannot justify the challenged classification because the excise tax does not generally apply to transaction-fee revenue, financial-platform revenue, marketplace-facilitation revenue, or exchange-based transaction revenue. It applies only to the disfavored class of prediction market operators.

134. The excise tax thus functions as an exclusive burden on one category of lawful market operator, rather than as a generally applicable tax on financial platforms or transaction-fee revenue. It is unjust and unequal because it imposes a severe, targeted burden on Coalition members' property while leaving materially similar financial and wagering-related businesses outside the tax's reach. And the tax is not supported by any distinctive and natural reason that would justify imposing an exclusive burden on prediction market operators while sparing other operators that earn transaction-based fees or facilitate comparable consumer activity.

135. The excise tax is therefore an exercise of arbitrary power over the Coalitions' members' property in violation of Section 2 and an unequal, exclusive burden in violation of Section 3.

**COUNT V****(Violation of Prohibition on Special Legislation – Ky. Const. §§ 59, 60, 181)**

136. The Coalition repeats and realleges each and every allegation above as if fully set forth herein.

137. Section 59 of the Kentucky Constitution prohibits the General Assembly from passing “local or special acts” with the purpose to *inter alia*, “authorize or to regulate the levy, the assessment or the collection of taxes.” Ky. Const. § 59.

138. Section 60 of the Kentucky Constitution prohibits the General Assembly from “indirectly enact[ing] any special or local act by the repeal in part of a general act, or by exempting from the operation of a general act any city, town, district, or county.” *Id.* § 60.

139. Section 181 of the Kentucky Constitution provides that “[t]he General Assembly may, by general laws only, provide for . . . a special or excise tax.” *Id.* § 181.

140. The purpose of Sections 59 and 60 is to “prevent special privileges, favoritism, and discrimination, and to ensure equality under the law . . . and to prevent the enactment of laws that do not operate alike on all individuals and corporations.” *Zuckerman*, 565 S.W.3d at 599 (citation modified).

141. “Special legislation is defined as arbitrary and irrational legislation that favors the economic self-interest of the one or the few over that of the many.” *Zuckerman*, 565 S.W.3d at 599. Such legislation “applies exclusively to . . . special and particular persons, and is distinguished from a statute intended to be general in its operation, and that relates to classes of persons or subjects.” *Id.* By contrast, a law is “general legislation in its constitutional sense” if it has: “(1) equal application to all in a class, and (2) distinctive and natural reasons inducing and supporting the classification.” *Id.* at 600.

142. A legislative classification that has a “natural, distinctive, and reasonable relationship between a statutorily drawn class and the problem the legislation seeks to address . . . will not be found to violate Sections 59 and 60.” *Coleman v. Jefferson County Bd. of Educ.*, --- S.W.3d---, 2025 WL 3768584, at \*5 (Ky. Dec. 19, 2024).

143. H.B. 757 is special legislation because it singles out federally regulated prediction market operators for a unique and punitive 14.25% excise tax on transaction fees that is not imposed on any other market participant, financial exchange operator, or comparable industry in Kentucky.

144. No other financial exchange or marketplace operating in Kentucky—including securities exchanges, commodities brokers, or other derivatives platforms—is subject to a comparable targeted excise tax on transaction fees. The 14.25% rate is imposed solely on federally regulated prediction market operators. This is precisely the type of “discrimination” that Section 59 condemns. *University of Cumberlands v. Pennybacker*, 308 S.W.3d 668, 685 (Ky. 2010); *see also Hager v. Walker*, 107 S.W. 254, 257 (Ky. Ct. App. 1908) (sustaining challenge to license tax under Section 181 and explaining that a tax that applies to “any number of persons less than all, who follow a designated trade, occupation, or profession,” is “not . . . general, but special or local, and forbidden by sections 59 and 60 of the Constitution.”).

145. There is no “reasonably articulable natural and distinctive basis” for imposing a 14.25% excise tax on prediction market operators’ transaction fees while exempting other financial exchange operators, commodities brokers, traditional sports-wagering operators, horse-racing operators, and others from any comparable levy. *Coleman*, 2025 WL 3768584, at \*1. A statute that discriminatorily taxes prediction market operators simply because they are prediction market

operators is not rational—it “imposes . . . disparate treatment without explanation” as to why such treatment “is well-suited *only* to” that particular class. *Id.* at \*6, 8.

146. The express legislative purpose of H.B. 757 is “to levy taxes on persons engaged in the operations of a prediction market.” But that stated purpose simply restates the classification itself; it identifies *whom* the General Assembly chose to tax without explaining *why* prediction market operators should be singled out for a 14.25% excise tax while other entities operating in the Commonwealth are exempt from any comparable levy.

147. If the General Assembly’s purpose was to generate revenue from derivatives transactions in Kentucky, it could have enacted a general law applicable to all operators facilitating such transactions. Instead, H.B. 757 targets prediction market operators alone, confirming that the classification is not a natural and distinctive means of achieving any broader legislative end, but rather the very kind of arbitrary, targeted legislation that Sections 59 and 60 forbid. If the General Assembly desired to impose an excise tax on such transactions, it could have done so through a law of general applicability encompassing all operators facilitating similar financial transactions. Instead, H.B. 757 carves out prediction markets for uniquely punitive treatment.

148. H.B. 757’s 14.25% excise tax on prediction market operators’ transaction fees therefore constitutes unconstitutional special legislation in violation of Sections 59, 60, and 181 of the Kentucky Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks judgment in its favor and against Defendants:

- A. A declaration that Kentucky's excise tax (H.B. 757, § 71) and contracting prohibitions (H.B. 904, § 22(9), H.B. 869, § 55(9)) are preempted by the Commodities Exchange Act.
- B. A declaration that Kentucky's excise tax and contracting prohibitions violate the dormant Commerce Clause.
- C. A declaration that Kentucky's excise tax and contracting prohibitions violate the First Amendment.
- D. A declaration that Kentucky's excise tax violates Kentucky's prohibition against special legislation.
- E. A declaration that Kentucky's excise tax violates the equal protection guarantee of Sections 2 and 3 of the Kentucky Constitution.
- F. A preliminary and permanent injunction prohibiting Defendants from enforcing Kentucky's excise tax and contracting prohibitions.
- G. Such other and further relief as the Court deems just and proper.

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Respectfully submitted,

/s/ Cory J. Skolnick

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