IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

THE UNITED STATES OF AMERICA and COMMODITY FUTURES TRADING COMMISSION,

Plaintiffs,

v. Case No. 26-CV-749

STATE OF WISCONSIN, et al.,

Defendants.

DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

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INTRODUCTION

The CFTC's response fails to grapple with the central lessons of two important cases: *Murphy v. National Collegiate Athletic Association*, 584 U.S. 453 (2018), and *State of Illinois v. City of Chicago*, 137 F.3d 474 (7th Cir. 1998). *Murphy* explains that preemption provisions do not "involve congressional commands to the States" and instead "confer[ ] on private entities . . . a federal right to engage in certain conduct subject only to certain (federal) constraints." 584 U.S. at 478–79. States thus don't violate federal law and thereby harm the federal government by enacting allegedly preempted laws. And *State of Illinois* confirms that the "right plaintiff" here is a private party (like Kalshi) that receives different treatment under the allegedly conflicting laws, "not the author" of them. 137 F.3d at 478.

These principles explain why the CFTC still doesn't cite a single precedential case holding that allegedly preempted state laws alone—and nothing more—injure the federal government. The correct rule instead is the one embodied in cases like *United States v. Supreme Court of New Mexico*, 839 F.3d 888 (10th Cir. 2016), and *Geo Group, Inc. v. Newsom*, 50 F.4th 745 (9th Cir. 2022): to show injury-in-fact, the federal government must identify a concrete harm to its operations caused by the allegedly preempted law. The CFTC fails to do so here, and so its case should be dismissed.

ARGUMENT

I. The CFTC's supposed sovereign harm does not create standing.

The CFTC primarily doubles down on its position that the mere existence of the State's allegedly preempted law causes a sovereign harm that creates Article III standing. (Doc. 34:11–19.) But the seemingly impressive array of cases the CFTC cites withers on closer inspection. Many deal with the irrelevant context of federal law enforcement, others contain no analysis of standing whatsoever, and some just have nothing to do with preemption. Stripping all those cases away, only three out-of-circuit district court decisions hold that standing exists in a situation like this one, and none are persuasive.

A. The federal government's standing to sue for violations of federal law does not cover preemption cases like this one.

The CFTC first knocks down an argument the State never made: that the United States doesn't have standing to enforce criminal and civil laws that regulate private conduct. (Doc. 34:11–12.) Sovereigns surely have standing to enforce their own laws against law-breakers, as many of the CFTC's cited cases show. *See Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 771 (2000) (relator suit to enforce False Claims Act); *Fed. Election Comm'n v. Nat'l Conservative Pol. Action Comm.*, 470 U.S. 480, 485 (1985) (declaratory judgment claim rested on apparent violations of Presidential Election Campaign Fund Act); *Wyandotte Transp. Co. v. United States*, 389 U.S. 191, 193 (1967) (suit to enforce Rivers and Harbors Act of 1899); *United States v. Mississippi*, 380 U.S. 128, 130 (1965) (suit to enforce 42 U.S.C. § 1971(a)); *Sanitary Dist. of Chi. v. United States*, 266 U.S. 405, 423–24 (1925) (suit to enforce "the Act of March 3, 1899, c. 425, § 10, 30 Stat. 1121, 1151 (Comp. St. § 9910)"); *Consumer Fin. Prot. Bureau v. Gordon*, 819 F.3d 1179 (9th Cir. 2016) (suit to enforce Consumer Financial Protection Act); *Fla. E. Coast Ry. Co. v. United States*, 348 F.2d 682, 685 (5th Cir. 1965) (suit to enforce Railway Labor Act); *La Union del Pueblo Entero v. Abbott*, 604 F. Supp. 3d 512, 523–24 (W.D. Tex. 2022) (suit to enforce Voting Rights Act and Civil Rights Act).[1]

But that proposition (and those cases) are irrelevant here because the CFTC is not trying to "enforce[e] [a] specific statutory scheme[ ]" against the State here. (Doc. 34:12 (citation omitted).) The CFTC does not allege that the State has *violated* any particular federal law. Rather, the CFTC contends that the State has *enacted* a state law that the Commodities Exchange Act (CEA) preempts. That preemption claim differs fundamentally from law-enforcement claims for which the United States (or a state, for that matter) has standing.

The U.S. Supreme Court explained the difference with preemption claims in *Murphy*, a case the CFTC ignores. In an ordinary law-enforcement

[1] The CFTC also cites *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 576–77 (1992), but the federal government was the defendant there—the case addressed private standing, not federal government standing.

case, a private actor has violated a law that regulates it—that violation is what injures the sovereign in a way that generates standing. But preemption claims don't work that way, because preemption provisions do not "operate directly on the States" or "involve congressional commands to the States." *Murphy*, 584 U.S. at 478–79. Preemption provisions instead "confer[ ] on private entities . . . a federal right to engage in certain conduct subject only to certain (federal) constraints." *Id.* That is, "every form of preemption is based on a federal law that regulates the conduct of private actors, not the States." *Id.* at 479. And as for the Supremacy Clause itself, it too is an "indirect[ ] restrict[ion]" on state action that "simply provides 'a rule of decision'" when faced with conflicting federal and state law. *Id.* at 471, 477 (citation omitted).

All this means that the States cannot "violate" preemption provisions (or the Supremacy Clause) in the same way that private actors "violate" federal laws. And without that violation, the federal government lacks the kind of injury that generates standing in law-enforcement cases. The State acknowledges that the federal government has standing to "bring criminal prosecutions where the victim is a private individual" and to "enforce fraud, antitrust, consumer-protection, insider trading, and other laws in federal court." (Doc. 34:11–12.) But that doesn't mean the CFTC also has standing to sue the State based on the "federal right to engage in certain conduct subject only to certain (federal) constraints," a right that is "confer[red] on private entities"—not the federal government. *Murphy*, 584 U.S. at 478–79; *see also United States v. California*, 2026 WL 784514, at *4 (C.D. Cal. Mar. 18, 2026) (rejecting similar standing theory based on *Murphy*).

The Seventh Circuit tracked this exact reasoning in *State of Illinois*. There, the State of Illinois sued one of its subdivisions, arguing—just like the CFTC does here—that it had standing because "any state concerned about the effect of preemption may litigate without the need to establish other injury; the fact that one's laws have been preempted is injury to a sovereign." *State of Illinois*, 137 F.3d at 477. The court rejected that argument, analogizing to a preemption dispute (much like this one) between a state and the federal government. *Id.* at 478. Instead, the court held that "the right litigant" would be a "person claiming benefits" under the supposedly preempted state law. *Id.* at 478. That is the right result under *Murphy*—preemption provisions confer benefits on private parties, and so the "right [litigant] is the person claiming a benefit under [the] law, rather than the author of a law or regulation." *State of Illinois*, 137 F.3d at 478 (citation omitted). Here, that litigant is Kalshi, for example, not the CFTC.

This explains why declining to automatically award standing to the federal government in preemption cases is not the "untenable consequence" the CFTC says it is. (Doc. 34:24.) Precisely because preemption provisions operate to protect private parties from state regulation, those parties are the ones with standing to assert preemption claims. And the CFTC proves far too much by arguing that Article III standing only limits "*private parties* from 'infring[ing] on the Executive Branch's Article II authority." (Doc. 34:25 (citing *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021).) If that were true, then the federal government would *never* have to satisfy Article III standing requirements, which isn't true, even under the CFTC's preferred authority.[2] Nor would a lack of standing here somehow "*disable* the federal government from enforcing federal law" (Doc. 34:25)—law-enforcement efforts can always proceed.

B. *In re Debs* may provide the federal government with a cause of action—not standing—and it doesn't apply here anyway.

The CFTC also relies on *In re Debs*, 158 U.S. 564 (1895) (Doc. 34:13), one in an "obscure line of cases" that has "seldom been invoked" involving whether the federal government has a "cause of action" to "vindicate its sovereign interests even when not authorized by statute." *In re Nat'l Sec. Agency Telecommunications Recs. Litig.*, 633 F. Supp. 2d 892, 899 (N.D. Cal. 2007). That case does not support the CFTC's standing argument, either.

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[2] *TransUnion* addressed the specific problem of allowing "*unharmed* plaintiffs to sue defendants who violate federal law." 594 U.S. at 429. In that specific situation, Article III standing served to prevent "infringe[ment] on the Executive Branch's Article II authority." *Id.* That reasoning has no broader implications for the federal government's obligation to satisfy standing requirements.

First, as even the CFTC recognizes, *In re Debs* addresses when the federal government can "bring a lawsuit even without an express cause of action." (Doc. 34:13.) But a cause of action isn't the same thing as Article III standing. *See TransUnion LLC*, 594 U.S. at 426–27 ("[F]or standing purposes . . . an important difference exists between (i) a plaintiff's statutory cause of action to sue a defendant over the defendant's violation of federal law, and (ii) a plaintiff's suffering concrete harm because of the defendant's violation of federal law."). Even if *In re Debs* grants the CFTC a cause of action, that leaves it with the obligation to show a concrete injury-in-fact that supports standing.

And assuming *In re Debs* could be read as a standing case, it still doesn't automatically award standing for preemption claims like the CFTC's here. The case involved an obstruction to the federal mail system, and the Court observed that "the United States [has] a property in the mails" and thus could sue to protect that interest. *In re Debs*, 158 U.S. at 583. The CFTC does not assert any property interest in the sports-related event contracts at issue here.

To be sure, *In re Debs* didn't rest on "this ground alone," as the CFTC observes. (Doc. 34:13 (citing *In re Debs*, 158 U.S. at 584).) But the alternative reasoning there was not as broad as the CFTC suggests: any "injury to the general welfare" whatsoever. (Doc. 34:13 (citing *In re Debs*, 158 U.S. at 584).) Such a broad rule would remove practically any injury-in-fact requirement for the federal government, which could presumably always argue that its claim involves the "general welfare." Indeed, if correct, the (much more recent) preemption cases the State cited (like *Geo Group*, 50 F.4th 745) would not have bothered to search for concrete harms to the federal government that created an injury-in-fact. (Doc. 27:6–8.)[3] Rather than go through all that work, those courts could have simply stopped at the preemption claim itself. That they didn't do so indicates that the CFTC overreads *In re Debs*.

Reviewing the rest of *In re Debs* confirms as much. Reading past the CFTC's snippet shows that the case stands for a narrower proposition: that "public nuisance[s] [have] always been held subject to abatement at the instance of the government." *In re Debs*, 158 U.S. at 587; *see also id.* at 587–593 (developing public nuisance analogy). Here, the alleged preemption "do[es] not implicate the Federal Government's property interests, nor [does it] constitute [a] public nuisance[]," and so *In re Debs* doesn't apply. *United States v. Texas*, 97 F.4th 268, 309 (5th Cir. 2024) (Oldham, J., dissenting).[4]

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[3] The CFTC argues that it's "fallacious" to infer from these cases that its standing requires some concrete harm to federal operations (Doc. 34:22–23), but that rule is consistent with *Murphy* and basic standing principles that require a "concrete and particularized" injury. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016).

[4] The majority in *United States v. Texas* didn't address standing because the State of Texas didn't dispute the United States' standing. 97 F.4th at 274–75. The case is thus "not binding authority for the proposition that jurisdiction exist[ed]." *In re Navy Chaplaincy*, 534 F.3d 756, 764 (D.C. Cir. 2008) (citation omitted).

Viewed in this light, *In re Debs* is little more than an extension of the law-enforcement cases discussed above. The federal government has standing to pursue not just violations of federal statutes, but also conduct that amounts to a public nuisance. But preemption claims still don't fit into this law-enforcement paradigm, again for the reasons *Murphy* explained: preemption involves rights "confer[red] on private entities," not "congressional commands to the States" that the States can violate. 584 U.S. at 478–79.

C. The CFTC cites no precedential cases finding standing in a preemption case like this one.

When the CFTC finally turns to preemption, it still cites no precedential authority holding that the federal government always has standing to assert preemption claims. (Doc. 34:14–17.)

The CFTC first cites *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982) (Doc. 34:14–15), which didn't address preemption or even the federal government—rather, it analyzes when the *States* might have *parens patriae* standing. If *Snapp* so clearly led to automatic federal-government standing in preemption cases, presumably the CFTC would cite a precedential case extending *Snapp* as such, but it doesn't.[5]

[5] The CFTC's effort to generate federal-government standing out of cases regarding the *States'* standing has the same problem. (Doc. 34:14 n.2.) Cases like *State of Tennessee v. Department of Education*, 104 F.4th 577, 591–93 (6th Cir. 2024), rest on "important background principles about states' ability to protect their

Instead, the CFTC relies on several "drive-by jurisdictional rulings" that "have no precedential effect," *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998): *Arizona v. United States*, 567 U.S. 387, 398 (2012) (no mention of standing); *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (no mention of standing)[6]; *United States v. Nebraska*, No. 8:26CV172, 2026 WL 1584862, at *20 (D. Neb. June 3, 2026) (analyzing whether standing existed in "friendly" lawsuit between agreeing parties; no discussion of whether preemption claim alone supports standing); *United States v. Alaska*, 608 F. Supp. 3d 802, 809 (D. Alaska 2022) (no mention of standing and no citations or analysis to support one-sentence irreparable harm holding).

That leaves only three out-of-circuit district courts that found standing in a preemption case based solely on the existence of an allegedly preempted statute: *KalshiEX LLC v. Johnson*, No. 26-CV-1715, 2026 WL 1223373 (D. Ariz. May 5, 2026); *Cruise Lines International Association, Inc. v. Suganuma*, No. 25-CV-367, 2025 WL 3903968 (D. Haw. Dec. 23, 2025); and

sovereign interests" that don't neatly map onto the "few and defined" powers of the federal government. Moreover, preemption effectively (if not formally) disables a State from legislating in a particular area, whereas an allegedly preempted state law leaves Congress free to legislate however it wants. That asymmetry supports distinguishing a State's standing from the federal government's in preemption cases.

[6] The CFTC is correct that *Alabama* involved irreparable injury, which has a higher bar than standing (Doc. 34:15 n.3), but the State's point remains: standing wasn't disputed and the case contains only a conclusory, one-sentence statement with no analysis or citations. As for *United States v. California*, 173 F.4th 1060, 1069 (9th Cir. 2026), that case did not even involve preemption and will be addressed below.

United States v. Idaho, 623 F. Supp. 3d 1096 (D. Idaho 2022).[7] Leaving aside how standing was apparently not disputed in two of the three cases (*Johnson* and *Idaho*), all make the same basic errors as the CFTC here. *Johnson*'s analysis amounts to a single sentence that cites *Wyandotte* (an inapposite law-enforcement case), *United States v. Sup. Ct. of N.M.*, 839 F.3d 888, 906 n.9 (10th Cir. 2016) (an inapposite harm-to-federal-operations case), and *Arizona* (an inapposite drive-by-jurisdictional-holding case). The same is basically true for the other two, both of which relied on the inapt authority discussed above. *Cruise Lines*, 2025 WL 3903968, at *10 (citing drive-by jurisdictional cases); *Idaho*, 623 F. Supp. 3d at 1107 (citing law-enforcement and drive-by jurisdictional cases and *In re Debs*).

Against these three cases are two that rejected the CFTC's proposition: *United States v. Hawaii*, 2026 WL 1021227 (D. Haw. Apr. 15, 2026), and *California*, 2026 WL 784514. The CFTC notes how, in *Hawaii*¸ the court's no-standing holding also rested on the speculative nature of the United States' claims. (Doc. 34:21.) True enough, but the court separately concluded that

[7] Although *La Union del Pueblo Entero v. Abbott*, 604 F. Supp. 3d 512 (W.D. Tex. 2022), might seem to fall into this category, the primary basis for the court's standing holding was the proposition (uncontested here) that "the United States suffers a concrete harm to its sovereignty when its laws are violated." *Id.* at 526. Again, that case involved alleged violations of the Voting Rights Act and the Civil Rights Act, *id.* at 517, and so it falls into the law-enforcement bucket of cases addressed above. Moreover, standing was not contested. *Id.* at 526 n.9.

"conclusory" assertions of injury to a sovereign interest (just like the CFTC's here) do not support standing either. *Hawaii*, 2026 WL 1021227, at *6. As for *California*, the CFTC's retort just illustrates that an abstract harm isn't enough—the State's enforcement efforts must also "imped[e] the operations or functions of the federal government" in a concrete way. (Doc. 34:22 (citing *California*, 2026 WL 784514, at *3).)[8]

And a third case (decided the day before the State filed its motion) reached the same result as these other two. In *United States v. City of Boston*, 25-CV-12456, 2026 WL 1493706 (D. Mass. May 28, 2026), the court also found that the United States lacked Article III to assert a preemption claim, this time against the City of Boston. Just like here, the United States purported to identify an injury-in-fact in the form of a "'sovereign harm' from the *existence* of an allegedly preempted local ordinance," but the court rejected that "sweeping" view of standing. *Id.* at *9.

D. The CFTC's other cited cases involve concrete harms to federal operations.

The CFTC's other cited cases—some involving preemption, some not—also do not support its categorical standing position because they all involved concrete impacts to federal operations. The CFTC primarily overreads *United*

[8] At minimum, the two Ninth Circuit orders from similar prediction market cases bolster the State's position, even if they did not directly address the CFTC's Article III standing, as the CFTC notes. (Doc. 34:23–24.)

States v. Missouri, 114 F.4th 980 (8th Cir. 2024), by tearing a single line out of context. (Doc. 34:16.) The case held that ""[i]nterference with the federal government's interest in enforcing federal law [was] sufficient to establish that the Act's implementation injured the United States" due to "uncontroverted evidence" that "state officials withdrew resources and manpower that further the enforcement of federal law." *Missouri*, 114 F.4th at 984.

Other of the CFTC's cited cases also fall into this harm-to-operations category. *See United States v. California*, 173 F.4th 1060, 1063 (9th Cir. 2026) (state law directly regulated federal law enforcement officers in violation of "doctrine of intergovernmental immunity," not preemption); *United States v. Ekblad*, 732 F.2d 562, 563 (7th Cir. 1984) (liens harassed IRS officials); *United States v. Iowa*, 126 F.4th 1334, 1342 (8th Cir. 2025), *vacated as moot* 2025 WL 1140834 (8th Cir. Apr. 15, 2025) (state law might have "forc[ed] federal officials to expend limited resources to locate" aliens and "hinder[ed] enforcement of federal immigration law); *United States v. Arlington Cnty., Com. of Va.*, 326 F.2d 929, 930 (4th Cir. 1964) (local government sought to impose property tax on U.S. naval officer).

* * *

The mere existence of an allegedly preempted state law does not give the CFTC standing to sue the State. The CFTC must also identify some concrete harm that the allegedly preempted law causes, which it fails to do, as explained next.

II. The CFTC still identifies no concrete harm to its operations that creates an injury-in-fact.

Without a sovereign injury that supports Article III standing, the CFTC turns to the supposed "direct harm to [its] day-to-day operations" caused by the State's enforcement efforts against Kalshi and the like. (Doc. 34:19.) But these so-called "harms" are just as indistinct as when the CFTC cited them in its preliminary injunction brief. (Doc. 6:18.)

First, the CFTC again says that it has "devoted resources" to responding to "requests for guidance" from businesses like Kalshi, and that these efforts have "diverted" staff from "core supervision and oversight functions." (Doc. 34:19 (citing Doc. 6-1:4).) But the CFTC offers no "concrete details" whatsoever about the time its staff have spent doing their jobs in this way, *Nowlin v. Pritzker*, 34 F.4th 629, 633 (7th Cir. 2022), and "vague and conclusory" allegations about "wasted time" are "insufficient to confer standing." *Branham v. TrueAccord Corp.*, No. 22-CV-00531, 2023 WL 2664010, at *5 (N.D. Ill. Mar. 28, 2023); *see also Ervins v. Sun Prairie Area Sch. Dist.*, 609 F. Supp. 3d 709, 720 (W.D. Wis. 2022) (finding that "vague and conclusory assertions" did not establish standing). Perhaps "forcing federal officials to expend limited resources" might sometimes create standing. (Doc. 34:19 (citing

Iowa, 126 F.4th at 1342).) But answering a couple calls (which the State isn't "forcing" the CFTC to do—Kalshi has its own lawyers, after all) hardly shows that the CFTC's "limited resources" have been taxed. Nor has the CFTC identified any "compliance costs" whatsoever, which is unsurprising given that it's a federal regulator (not a regulated party). (Doc. 34:19 (citation omitted.)

Second, the CFTC turns to supposed "threat[s]" to its "uniform regulatory framework." (Doc. 34:19–20.) This is even less concrete than the last supposed harm. At most, the CFTC points to potential harms to regulated parties like Kalshi, without explaining why Article III might allow the CFTC to piggy-back on injuries suffered by private prediction market operators. And, yes, a plaintiff need not prove the merits to establish standing (Doc. 34:20 n.13 (citing *Warth v. Seldin*, 422 U.S. 490, 500 (1975)), but that doesn't help the CFTC evade 17 C.F.R. § 40.11(a), which plainly provides that sports-related event contracts are already illegal under federal law.[9] For standing purposes, the Court need only assume that the CFTC's preemption claim would succeed.

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[9] This result is exactly why the CFTC is proposing to amend 17 C.F.R. § 40.11(a) to remove the provision's categorical ban on gaming-related event contracts. The CFTC's own notice of proposed rulemaking acknowledges that the provision covers sports-related event contracts like Kalshi's. *See* Notice of Proposed Rulemaking: Prediction Markets; Public Interest Determinations at 75 (June 10, 2026), https://www.cftc.gov/media/14151/NPRM_PredictionMarkets060926/download (noting that the term "gaming" covers "sports games"). The CFTC seems to misunderstand the State's point, which is that Kalshi and the like are offering "event contracts whose *underlying activity involves* gaming" (Doc. 34:20 n.5)—i.e. sports events—which is exactly what § 40.11(a) bars.

That doesn't require assuming anything about the reach of 17 C.F.R. § 40.11(a), since the provision doesn't underlie the CFTC's preemption theory. The State's point therefore remains: the CFTC cannot casually assert harms to its "uniform regulatory framework" when that framework is consistent with the State's enforcement efforts.

CONCLUSION

The CFTC lacks Article III standing and so its case should be dismissed for lack of subject-matter jurisdiction.

Dated this 25th day of June 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed the above Defendants' Reply Brief in Support of Motion to Dismiss for Lack of Subject-Matter Jurisdiction with the clerk of court using the Eastern District of Wisconsin Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 25th day of June 2026.

s/ Colin T. Roth
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