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

THE UNITED STATES OF AMERICA; and COMMODITY FUTURES TRADING COMMISSION, *Plaintiffs*, v. STATE OF WISCONSIN; and JOSHUA L. KAUL, in his official capacity as Attorney General of Wisconsin, *Defendants*, v. AMERICAN GAMING ASSOCIATION, *Proposed Intervenor-Defendant*.	Case No. 2:26-cv-749

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE BY AMERICAN GAMING ASSOCIATION

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INTRODUCTION

The United States of America and the Commodity Futures Trading Commission ("CFTC") (together "Plaintiffs" or the "Federal Government") ask this Court to grant the CFTC sweeping and novel authority that Congress never authorized: the right to serve as the Nation's sports betting regulator. For the American Gaming Association ("AGA") and its members—which include commercial and tribal casino operators, suppliers, and sports betting operators across the country—that issue is not an abstract question of regulatory jurisdiction. It directly threatens their core economic interests.

This litigation implicates far more than a disagreement about the scope of the Commodity Exchange Act ("CEA"). The Federal Government seeks a ruling that would permit prediction markets to offer sports wagers while avoiding the extensive state and tribal regulatory obligations that govern every other participant in the legal gaming industry. If accepted, that theory would adversely affect AGA members, who have invested billions of dollars, entered long-term commercial arrangements, and structured their businesses around the settled understanding that sports wagering is regulated by states and tribes, not the CFTC.

AGA members thus have a direct stake in the outcome of this litigation. They compete in gaming markets that are heavily regulated and capital intensive. To participate in those markets, AGA members obtain licenses, comply with comprehensive regulatory obligations, submit to ongoing government oversight, and pay substantial taxes and fees. In Wisconsin, those investments include a casino partnership with a federally recognized Indian tribe that has required years of planning, regulatory approvals, and substantial financial commitments. The Federal Government's position would allow prediction markets to compete for the same customers while bypassing many of the requirements that govern AGA members. In practical terms, a ruling for the Federal Government would confer a significant competitive advantage on unlicensed prediction markets while disadvantaging the businesses that have complied with the existing regulatory system.

The claim at issue in this litigation is part of a broader dispute that extends beyond Wisconsin. The Federal Government has filed nearly identical actions against at least seven other states and has advanced the same legal theory elsewhere around the country. It seeks, in effect, to facilitate the nationwide expansion of prediction markets under the banner of CFTC jurisdiction. AGA members operate throughout the United States and therefore have a unique perspective on the broader legal, competitive, and economic consequences of the Federal Government's claim.

Given those interests, AGA satisfies all of Rule 24's requirements for intervention. *First*, AGA's motion is timely because this case remains at an early stage and AGA is prepared to adhere to any schedule the Court may set. *Second*, AGA has a direct and significant interest in the regulatory structure that governs sports betting. Its members would face competitive harm if (per the Federal Government's unprecedented theory) prediction markets are able to offer sports betting in Wisconsin, without complying with the laws that govern the rest of the gaming industry. *Third*, AGA cannot rely on the existing parties to protect its distinct interests. The State is appropriately focused on vindicating its sovereign interests and ability to enforce Wisconsin law. AGA's interests are distinct. Its members face concrete competitive injuries that arise from their role as regulated market participants. They have invested capital, entered commercial arrangements, and assumed regulatory burdens that prediction markets seek to avoid. Accordingly, AGA is entitled to intervene as of right—or, at a minimum, should be granted permissive intervention—to ensure that its voice is heard before those interests could be irrevocably harmed.

AGA has conferred with the parties and is authorized to state that Plaintiffs oppose this motion to intervene, and the State of Wisconsin and the Wisconsin Attorney General (collectively, "Defendants" or "the State") do not oppose AGA's motion.

BACKGROUND

A. AGA Members Offer Legal, Regulated Gaming in Wisconsin

AGA is a non-profit trade association whose members represent the full spectrum of the legal, regulated gaming industry—including commercial and tribal casino operators, suppliers, and sports betting operators.[1] AGA members participate in legal gaming markets throughout the United States, including in Wisconsin. For instance, the Menominee Indian Tribe of Wisconsin has partnered with Hard Rock International, an AGA member,[2] to develop the Hard Rock Hotel & Casino in Kenosha, Wisconsin.[3] Since the project was announced in 2022, the Menominee Tribe and Hard Rock International have incurred significant costs to secure approvals from both the federal government and the State.[4] Once all approvals are finalized, Hard Rock intends to invest $360 million into the Kenosha casino project, including $104 million in construction payroll alone.[5] The Kenosha casino is expected to employ more than 1,000 people, generate more than 1.6 million annual visits from out-of-state visitors, and have an annual economic impact of $492

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[1] *See* Am. Gaming Ass'n, *Our Membership*, https://perma.cc/Y6KR-6S8S.

[2] Hard Rock International is a wholly owned subsidiary of AGA member Seminole Tribe of Florida and thus is also an AGA member under AGA's bylaws.

[3] *See* Hard Rock Hotel & Casino Kenosha, *Project Information & Updates*, https://perma.cc/96ME-73KF (last visited July 5, 2026).

[4] *See, e.g.*, Notice of Gaming Land Acquisition Application, U.S. Dep't of the Interior (Mar. 24, 2026), https://perma.cc/4XKA-HQEM; Environmental Assessment, Menominee Indian Tribe of Wisconsin Kenosha Casino Project, U.S. Dep't of the Interior (Mar. 2026), https://perma.cc/RL3X-SR4U.

[5] Hard Rock, *Project Information & Updates*, *supra*.

million for the State of Wisconsin.[6] It will offer a broad range of casino games, including sports betting.[7]

B. Prediction Markets Offer Sports Betting in Violation of Wisconsin Law

Wisconsin generally prohibits commercial gambling. *See* Wis. Stat. § 945.03. State law defines a "bet" as a "bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement." Wis. Stat. § 945.01(1). And state law generally does not permit anyone to, for gain, "receiv[e], recor[d] or forwar[d] a bet," become "custodian of anything of value bet," or use a "wire communication facility for the transmission or receipt of information assisting in the placing of a bet." Wis. Stat. § 945.03(1m)(b), (c), (g).

That said, Wisconsin has entered into eleven tribal-state gaming compacts that authorize casino gaming under state law and the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 *et seq*. *See* Wis. Stat. § 14.035.[8] There are currently 27 tribal casinos in Wisconsin that offer Class II or Class III gaming pursuant to these compacts.[9] Several of these casinos offer sports betting—

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[6] KlasRobinson Q.E.D., Proposed Kenosha Casino and Destination Entertainment Center Packs Major Economic Boost, https://perma.cc/H57H-JTHY.

[7] *See* Hard Rock Hotel & Casino Kenosha, *Casino*, https://perma.cc/B3RC-QK82 (accessed July 10, 2026).

[8] *See also* Wisconsin Dep't of Admin., *Tribal Compacts and Amendments*, https://perma.cc/MV5S-CUUL (accessed July 10, 2026).

[9] *See* Am. Gaming Ass'n, *State of the States – 2026*, at 17 (May 2026), https://perma.cc/7APF-Y88F. Class II gaming "includes bingo and certain nonbanked card games that are 'explicitly authorized by the laws of the State.'" *Wisconsin v. Ho-Chunk Nation*, 784 F.3d 1076, 1077–78 (7th Cir. 2015) (quoting 25 U.S.C. § 2703(7)(A)(ii)). Class III gaming includes "sports betting," games such as "roulette," "slot machines," and "wagering on horse racing." 25 C.F.R. § 502.4.

in some cases through a partnership between the tribe and a commercial gaming operator.[10]

Earlier this year, Wisconsin enacted a law that, for the first time, authorizes persons in Wisconsin to place sports wagers from mobile and electronic devices. *See* Act 601, 2025 Wis. Assemb. Bill 601 (April 9, 2026). Assembly Bill 601 excludes "event or sports wager[s]" from the definition of "bet" so long as the server used to conduct the wager "is physically located on a federally recognized American Indian tribe's Indian lands located in [the] state" and is "conducted pursuant to an Indian gaming compact." Wis. Stat. § 945.01(1)(h). These gaming compacts, which are negotiated between the State and the tribes pursuant to state law, *see* Wis. Stat. § 14.035, set the rules governing sports betting in Wisconsin, including that individuals "must be at least 21 years of age to participate in sports betting" and that bets are not allowed "on Wisconsin college sports teams nor on the outcomes of sporting events with participants aged under 19."[11] As with the brick-and-mortar sportsbooks already in operation, state law, IGRA, and the gaming compacts permit the tribes to partner with commercial gaming operators to manage the online sportsbooks authorized by this new state legislation. *See, e.g.*, 25 U.S.C. §§ 2710(d)(9), 2711.[12]

Beginning in late 2024, several companies registered with the CFTC as Designated Contract Market ("DCM") operators, including proposed-intervenors KalshiEX, LLC ("Kalshi") and the North American Derivatives Exchange, Inc., d/b/a Crypto.com | Derivatives North

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[10] *See, e.g.*, Lake of the Torches Resort Casino, *Sports Betting*, https://perma.cc/2L95-KA6Z (accessed July 10, 2026) (stating that tribe "has partnered with DraftKings to provide retail sportsbook operations").

[11] Am. Gaming Ass'n, *Gaming Regulations and Statutory Requirements – Wisconsin*, at 4 (2025) ("AGA Wisconsin Overview"), https://perma.cc/295E-UUGM; *see also, e.g.*, Amendments to the Forest County Potawatomi Community of Wisconsin and the State of Wisconsin Gaming Compact of 1992, at 2 (Jan. 22, 1999) (restricting gaming access for persons under 21), https://perma.cc/Q3WJ-8A2L.

[12] *See also* AGA Wisconsin Overview at 1 (Wisconsin compacts allow "the tribes" to "enter into management contracts for the operation and management of the tribal casinos").

America ("Crypto.com"), began offering sports bets nationwide, including in Wisconsin. *See* Dkt. 1, ¶ 63 ("Compl."); Dkt. 31. Referring to themselves as "prediction markets," these companies permit users to wager real money on whether a particular team will win or lose a sporting event, as well as outcomes within games, such as point spreads and point totals. *See KalshiEX, LLC v. Schuler*, 2026 WL 1295806, at *2 (6th Cir. Apr. 24, 2026); *KalshiEX, LLC v. Hendrick*, 817 F. Supp. 3d 1014, 1022 (D. Nev. 2025) ("*Hendrick II*"). They also offer proposition bets on individual player performances within a single game and parlays that combine bets on multiple sporting event outcomes into a single wager that pays only if *all* of the individual bets are correct.[13] Prediction markets offer these bets despite their prior arguments to federal courts that "Congress did not want sports betting to be conducted on derivatives markets." Br. of Appellee at 41, *KalshiEX, LLC v. CFTC*, 2024 WL 4802698 (D.C. Cir. Nov. 15, 2024). Now, however, prediction markets argue that their textbook sports bets qualify as "swaps" under the CEA and are thus subject to the CFTC's exclusive jurisdiction and a federal statutory regime that preempts state gaming laws. *See, e.g.*, Dkt. 13 at 5–6; Dkt. 24 at 4–5.

The graphic below—published in a *New York Times* article regarding Kalshi's expansion into sports betting—illustrates the prediction markets' sports bets and their resemblance to traditional wagers.[14] The first image shows betting options for an NFL game on a state-regulated online sportsbook; the second shows betting options offered by Kalshi for the same game. Both use the same format, offer bets on the same point spread, and offer bets on the same over/under for the number of points scored.

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[13] *See* Kalshi, *Combos* (Mar. 25, 2026), https://perma.cc/WH6Z-G73N; Dustin Gouker, *Most of Kalshi's Recent Volume Growth Comes From Parlays*, Event Horizon (May 6, 2026), https://perma.cc/5VKV-KRCG.

[14] Ben Blatt & Amy Fan, *Is Sports Betting Illegal in Your State? Not If You Call It a 'Prediction Market.'*, N.Y. Times (Oct. 5, 2025), https://perma.cc/JZ9K-7HX8.

On April 23, 2026, the State filed civil enforcement actions against prediction market operators (including Kalshi and Crypto.com), alleging that they are "engaged in illegal gambling in violation of Wis. Stat. § 945.03(1m)(b), (c), and (g), thereby causing a public nuisance." Compl. ¶ 63; *see also* Dkt. 13-1. The enforcement action explains that prediction markets are "facilitating illegal sports betting" by permitting Wisconsin residents to "plac[e] bets on the outcome of sporting events, just like how ordinary casino sportsbooks profit from the bets people make there." Dkt. 13-1, ¶¶ 2–3. The prediction markets "us[e] a fig leaf to disguise the casino-style sports betting" they facilitate, as their "event contracts" are "indistinguishable from an ordinary sports bet." *Id.* ¶¶ 4–5. "By making money from illegal sports betting," the prediction markets are "engaging in criminal gambling activity" under Wis. Stat. § 945.03(1m). *Id.* ¶ 7.

C. Procedural History

On April 28, 2026, the Federal Government initiated this action against the State "to halt defendants' efforts" to enforce Wisconsin's gaming laws against prediction markets "that are governed by federal law." Compl. ¶ 1. The Federal Government asserted that the State's efforts to restrict unauthorized sports betting "intrud[e]" on federal authority to "oversee national swaps markets." *Id.* ¶ 5. The Complaint asserts a single claim under the Supremacy Clause alleging that Wisconsin law is preempted as applied to transactions on DCMs. *Id.* ¶¶ 84–93.[15]

On May 1, the Federal Government moved for a preliminary injunction to block the State from enforcing state gaming laws against prediction markets. Dkt. 6. On May 12 and 28, respectively, Crypto.com and Kalshi moved for leave to intervene and to join the Federal Government's motion for a preliminary injunction. Dkt. 12, 13, 14 (Crypto.com); Dkt. 23, 24, 26 (Kalshi). On May 29, the State moved to dismiss for lack of subject matter jurisdiction, asserting that the Federal Government lacks standing to pursue its claim. Dkt. 27.[16] These motions remain pending.

ARGUMENT

I. AGA Is Entitled to Intervene as of Right Under Rule 24(a).

Under Federal Rule of Civil Procedure 24(a), a court "*must* permit intervention if (1) the motion is timely; (2) the moving party has an interest relating to the property or transaction at issue in the litigation," (3) "that interest may, as a practical matter, be impaired or impeded by disposition of the case," and (4) the "existing parties" do not "adequately represent [the movant's] interests." *Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 746 (7th Cir. 2020). AGA satisfies all four elements.

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[15] The Federal Government has filed nearly identical suits in Arizona, Illinois, New York, Connecticut, New Mexico, Minnesota, and Kentucky. *See United States v. Arizona*, No. 2:26-cv-2246 (D. Ariz.); *United States v. Illinois*, No. 1:26-cv-3659 (N.D. Ill.); *United States v. New York*, No. 1:26-cv-3404 (S.D.N.Y.); *United States v. Connecticut*, No. 3:26-cv-498 (D. Conn.); *United States v. New Mexico*, No. 1:26-cv-1912 (D.N.M.); *United States v. Minnesota*, No. 0:26-cv-02661 (D. Minn.); *United States v. Kentucky*, No. 3:26-cv-49 (E.D. Ky.). The Federal Government has also moved to intervene as a plaintiff in a suit brought by Kalshi against Rhode Island state officials. *See KalshiEX LLC v. Furcolo*, 1:26-cv-327, Dkt. 19 (D.R.I. May 28, 2026).

[16] The State has also moved to transfer this case to the Western District of Wisconsin. Dkt. 9.

A. AGA's Motion Is Timely.

AGA's motion to intervene is timely. It was filed less than three months after this action began and before the Court has ruled on any substantive motions, such that no party will be prejudiced by the timing of AGA's motion.

Courts consider four factors in determining timeliness: "(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; and (4) any other unusual circumstances." *Lopez-Aguilar v. Marion Cnty. Sheriff's Dep't*, 924 F.3d 375, 388 (7th Cir. 2019) (cleaned up). "[W]hen intervention of right is sought" and the "would-be intervenor may be seriously harmed if intervention is denied, courts should be reluctant to dismiss such a request for intervention as untimely." *Id.* (citation omitted).

All four factors counsel in favor of finding that AGA's motion is timely. *First*, this action was filed less than three months ago, meaning that AGA necessarily learned of it only recently. *See Nissei Sangyo Am., Ltd. v. United States*, 31 F.3d 435, 439 (7th Cir. 1994) (intervention timely when movant "filed its motion to intervene … three months" after it "learned of this matter").

Second, granting the motion would not prejudice the other parties. The Seventh Circuit has described this factor as "the most important consideration" in deciding whether intervention is timely. *Lopez-Aguilar*, 924 F.3d at 389 (cleaned up). The State does not oppose AGA's motion, and while the Federal Government opposes AGA's motion, it notably took no position on similar intervention motions filed by Crypto.com and Kalshi. *See* Dkt. 13 at 9; Dkt. 24 at 9. Moreover, this case remains at its early stages. This Court has yet to issue any substantive rulings and the parties have not yet engaged in discovery. *Clorox Co. v. S.C. Johnson & Son, Inc.*, 627 F. Supp. 2d 954, 961 (E.D. Wis. 2009) (timeliness requirement satisfied after parties had fully briefed and held hearing on preliminary injunction motion); *Kavanaugh v. Badalamenti*, 2005 WL 8164844, at *3 (E.D. Wis. July 18, 2005) (no prejudice when "[d]iscovery ha[d] only just begun" and "a scheduling conference ha[d] not taken place"); *N. Am. Derivatives Exch., Inc. v. State of Nevada*, 2025 WL 4670470, at *1 (D. Nev. Sept. 9, 2025) ("*Crypto.com*") (granting intervention to gaming trade association where motion "was timely filed less than three months" after case began, "[n]o discovery ha[d] occurred, and no substantive rulings ha[d] yet been made").

If the Court grants AGA's motion to intervene, AGA will not seek to participate in this Court's resolution of the State's motion to dismiss or the Federal Government's motion for a preliminary injunction. As a result, allowing AGA to intervene would not delay the litigation or prejudice the other parties. *See Peterson Builders, Inc. v. A.C. Hoyle Co.*, 163 F.R.D. 550, 553 (E.D. Wis. 1995) (granting United States' motion to intervene 35 months after case began because intervention will not "delay the resolution of this case or prejudice" opposing party).

Third, for the same reasons discussed below, AGA would suffer significant prejudice if it were denied leave to intervene. *See* pp. 14–15, *infra*.

Fourth, case-specific circumstances here support finding that AGA's motion is timely. Two prediction market operators—Crypto.com and Kalshi—have also moved for leave to intervene, and those motions remain pending. Those motions underscore the broader importance of the issues presented in this litigation to AGA and its members.

Courts in the Seventh Circuit—including the Seventh Circuit itself—have applied these factors and granted motions for leave to intervene that were filed in similar circumstances. For instance, in *Nissei Sangyo*, the "only question" before the Seventh Circuit "with respect to timeliness [was] whether three months is too long." 31 F.3d at 439. The answer was no. "[T]he passage of three months" did not suggest to the court that the movant was "dallying" and "three months d[id] not seem to [the court] to be an unreasonable length of time in which" to complete all the steps required to bring a motion to intervene. *Id.*; *see also Clorox*, 627 F. Supp. 2d at 961 (finding intervention timely after completion of TRO and PI briefing and hearing, but before decision rendered); *U.S. ex rel. Christiansen v. Healing Corner, LLC*, 2022 WL 4638581, at *1 (E.D. Wis. Sep. 30, 2022) (state's motion to intervene, "filed less than six months after the State became aware of the complaint and investigation, [was] timely"); *Liguria Foods, LLC v. Palermo Villa, Inc.*, 2022 WL 1665105, at *1 (E.D. Wis. May 25, 2022) (intervention motion "seven months after [p]laintif[f] first filed the action" was "timely"); *Kavanaugh*, 2005 WL 8164844, at *3 (motion to intervene filed six months after case was filed was timely). Similarly, the Seventh Circuit has held that an association of gas dealers timely moved for leave to intervene after the district court issued an injunction when "all the association want[ed] [was] to take an appeal." *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572–73 (7th Cir. 2009).

B. AGA Has a Substantial Interest in the Outcome of This Litigation.

AGA also has a significant interest in this litigation, as required under Rule 24(a). A would-be intervenor must have a "direct, significant, and legally protectable interest in the subject at issue in the lawsuit." *Bost v. Ill. State Bd. of Elec.*, 75 F.4th 682, 686 (7th Cir. 2023) (brackets removed). This interest must "belong to the would-be intervenor in its own right, rather than derived from the rights of an existing party." *Id.* at 687. The Seventh Circuit has "interpreted statements of the Supreme Court as encouraging liberality in the definition of an interest." *Lopez-Aguilar*, 924 F.3d at 392 (cleaned up).

This case is no ordinary dispute between private parties. The Federal Government's preemption claim concerns the regulatory structure for sports betting, a large and growing market. Resolution of that issue will affect the competitive balance in that market by determining whether prediction market operators may offer sports betting without complying with state gaming laws. That outcome will have substantial economic effects for a broad range of stakeholders, including AGA's members. Those members participate in legal gaming markets that generate $53 billion in annual tax revenue and support 1.8 million jobs nationwide.[17] They also operate in Wisconsin. For example, Hard Rock is developing the Hard Rock Hotel & Casino in Kenosha, which will involve a capital investment of $360 million, including $104 million in construction payroll alone. Hard Rock has invested in that project under a regulatory regime established pursuant to state law, *see, e.g.*, Wis. Stat. § 14.035, and has done so with the reasonable expectation that all competitors will operate under the same rules. Commercial gaming operators are also involved in other aspects of Wisconsin's casino gaming market, and the state's recently enacted online sports betting law expands the opportunities for AGA members to compete in that market. *See* pp. 4–5, *supra*. And resolution of an appeal in this case will also have direct implications for AGA's members in Illinois, which has 17 commercial casinos and generated $1.48 billion of sports betting revenue in 2025, and Indiana, which has 13 commercial casinos and generated $570.5 million of sports betting revenue in 2025.[18]

These interests satisfy the standard for intervention. *Forest County Potawatomi Community v. United States*, 317 F.R.D. 6 (D.D.C. 2016), illustrates the point. There, the court granted the Menominee Tribe's motion to intervene to defend the Interior Department's disapproval of another Wisconsin tribe's gaming compact. *Id.* at 8. The court held that the Menominee Tribe had an interest in the litigation because a decision in the plaintiff's favor "would put the Menominee at a 'competitive disadvantage when seeking state approval for off-reservation

[17] Am. Gaming Ass'n, *Our Impact*, https://perma.cc/6N6M-FRCX.

[18] *AGA State of the States – 2026*, *supra*, at 47–52.

gaming.'" *Id.* at 12 (quoting *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 497 (7th Cir. 2005)). That type of "alteration in competitive conditions 'clearly amount[ed] to a concrete injury,'" and thus provided a sufficient "interest" to intervene. *Id.* at 12–13; *cf. Flying J*, 578 F.3d at 572 (intervenors had sufficient interest because, under unfavorable decision, "they would lose much or even all of their business" to competitors).

Here, AGA's competitive interests are directly threatened by the Federal Government's claim. The Federal Government seeks to preempt Wisconsin's gaming laws to benefit prediction markets at the expense of licensed gaming operators that expend significant resources to comply with the operative rules and regulations in each state. Although the Federal Government characterizes the prediction markets' "sports event contracts" as CFTC-regulated derivatives, they are indistinguishable from sports wagers. *See, e.g.*, *QCX LLC v. Nessel*, 2026 WL 1895958, at *8–9 (W.D. Mich. June 17, 2026); *KalshiEX, LLC v. Schuler*, 2026 WL 657004, at *5–6 (S.D. Ohio Mar. 9, 2026) ("*Schuler I*"); *Hendrick II*, 817 F. Supp. 3d at 1029–30.

A ruling in the Federal Government's favor would free prediction markets to offer sports bets in Wisconsin without complying with laws that govern all other competitors. Among other things, prediction markets could offer sports betting statewide without participating in tribal partnerships, known as "management contracts," that Wisconsin law requires AGA members to enter into to operate in the State—and that substantially limit the revenue share for commercial operators. *See* 25 U.S.C. § 2711(c) (limiting management contractors to no more than 40 percent of a gaming operation's net revenues); Wis. Stat. § 945.01(1)(h) (extending these rules statewide as a matter of state law). Prediction markets could also offer sports bets to persons under age 21 and on games involving Wisconsin college sports teams, in violation of state law. *See* pp. 4–5, *supra* (describing Wisconsin gambling regulations); *Schuler I*, 2026 WL 657004, at *10 n.9 (state legislature determined that individuals ages 18–20 "were too young to participate in legal sports gambling, but they have unrestricted access to sports-event contracts on Kalshi's exchange").

Such a decision would upend AGA members' settled expectations and create a significant competitive disadvantage in Wisconsin. Courts have repeatedly held that such competitive harms satisfy Rule 24(a)'s requirements. *See, e.g.*, *KalshiEX, LLC v. Hendrick*, 2025 WL 1901399, at *1 (D. Nev. June 2, 2025) ("*Hendrick I*") (finding that gaming industry association members had "significantly protectable interests in their Nevada gaming licenses that they have spent substantial sums to obtain, maintain, and protect," and faced "a considerable competitive disadvantage" from prediction markets); *Sault Ste. Marie Tribe of Chippewa Indians v. Bernhardt*, 331 F.R.D. 5, 10 (D.D.C. 2019) (intervenor tribes had interest in potential "loss of gaming dollars" and "consequent reduction in funding for governmental services the tribes provide to their members"); *Connecticut v. U.S. Dep't of the Interior*, 344 F. Supp. 3d 279, 304 (D.D.C. 2018) (holding that threat of "imminent competition" enabled casino operator to intervene).

C. The Disposition of This Action Could Impair AGA's Interests.

The disposition of this action could, "as a practical matter impair or impede" AGA's "ability to protect its interest." *Lopez-Aguilar*, 924 F.3d at 392 (quoting Fed. R. Civ. P. 24(a)(2)).

AGA and its members would suffer concrete practical disadvantages from a ruling in the Federal Government's favor. The prediction markets would operate in Wisconsin under the guise of the CFTC's authority, without needing to enter into partnerships with Indian tribes, comply with the State's gaming rules, or share any percentage of their winnings with the State.[19] AGA members, like Hard Rock, that have invested significant resources to operate lawful and licensed

[19] Amendments to the Forest County Potawatomi Community of Wisconsin and the State of Wisconsin Gaming Compact of 1992, at 12–13 (Dec. 3, 1998) (Potawatomi Tribe pays 6.5% of its net winnings to the State), https://perma.cc/YQL8-ACVL.

gaming in Wisconsin would face significant competitive harms, including reductions in their ability to earn returns on the investments they have made in the state. *See Hendrick I*, 2025 WL 1901399, at *1 (gaming industry association's members "benefit from the well-regulated market of betting in Nevada" and disposition of litigation could "impair … members' ability to protect their interests" because "Kalshi's efforts in this case could erode that market"); *Forest Cnty.*, 317 F.R.D. at 14 ("requested relief, if granted, would, as a practical matter, impede the Menominee's efforts … to develop a gaming facility in Kenosha"); *Connecticut*, 344 F. Supp. 3d at 304 (intervenor's interest "may be impaired" because litigation could "create imminent competition for [intervenor's] casino").

D. The Existing Parties Do Not Adequately Represent AGA's Interests.

AGA also satisfies the "minimal" burden to "sho[w] that representation of [its] interest may be inadequate." *Driftless*, 969 F.3d at 747 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). The "default rule, which applies when there is no notable relationship between the existing party and the applicant for intervention, is a lenient one." *Bost*, 75 F.4th at 688. The Seventh Circuit has explained that because "a prospective intervenor must intervene on one side of the 'v.' or the other and will have the same general goal as the party on that side," it is insufficient to simply examine whether the intervenor has a common "general goal," such as "want[ing] the case dismissed." *Driftless*, 969 F.3d at 748. Instead, to conclude the prospective intervenor and named party "have the same goal," their interests must be "genuinely identical." *Bost*, 75 F.4th at 688 (cleaned up).

Here, the State cannot adequately represent AGA because their interests differ in material respects. For instance, the State is likely to focus on its own sovereign authority and the Federal Government's lack of interest in a dispute between the State and the prediction markets. *See*

Dkt. 27 (arguing that the Federal Government lacks Article III standing); *Hendrick I*, 2025 WL 1901399, at *1 (granting intervention, in part, because state's "pending motion to dismiss demonstrates some of the divergent interests" between state and gaming trade association). AGA recognizes the State's prerogatives on those issues, but as noted above, does not intend to participate in briefing on the State's motion to dismiss. Instead, AGA intends to advance its members' own distinct arguments, including the competitive and economic harms they would face if prediction markets are permitted to skirt state regulations, as well as the nationwide implications of the Federal Government's arguments, which the Federal Government has pressed in several other states. *See* p. 8 n.15, *supra*; *Hendrick I*, 2025 WL 1901399, at *1 (trade association's "members are concerned about the competitive disadvantages they face if Kalshi is unregulated by states, and they can discuss the impacts on gaming entities licensed in multiple states"). The State is not the proper party to vindicate these commercial interests.

The Seventh Circuit's decision in *Driftless* is instructive on this point. There, the court explained that the proposed intervenors—two utilities and a cooperative seeking to build a transmission line—were not adequately represented by the state agency that approved construction of the line because the proposed intervenors had several distinct interests, including that they "own[ed], finance[d], and w[ould] operate the transmission line," "ha[d] obligations to their investors," "ha[d] substantial sunk and anticipated future investments in the power line," and had "a valid expectation of a return on their investment." 969 F.3d at 748. The state agency's "obligations [were] to the general public," rather than "the transmission companies or their investors," and while the agency "*regulates* the transmission companies, it does not *advocate for* them or represent their interests." *Id.*

The same reasoning applies here. AGA and its members have several interests that differ from those held by the State because AGA members partner with tribes to operate gaming in Wisconsin, have obligations to their investors, and have already made significant investments with additional future investments planned. And AGA members—which are principally regulated by Wisconsin and other states—"cannot be forced to rely entirely on *their regulators* to protect their investment[s]." *Driftless*, 969 F.3d at 748.

Going forward, the State's interests will "include enforcing the [Wisconsin] gaming laws," whereas AGA will be positioned to discuss its members' "concer[n] about the competitive disadvantages they face" if the prediction markets are able to offer unlicensed gaming, *Crypto.com*, 2025 WL 4670470, at *1. *See Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 197 (2022) (even when "state agents may pursue 'related' state interests," they "cannot be fairly presumed to bear 'identical' ones" (citation omitted)). Indeed, because the State's "overarching 'obligation is to represent the interests of the [Wisconsin] people,'" whereas AGA's "obligation is to represent its own interests," courts "often [have] concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Connecticut*, 344 F. Supp. 3d at 305 (quoting *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003)); *see also Forest Cnty.*, 317 F.R.D. at 15 (similar).

These differing interests are not merely theoretical; they are likely to produce different litigation strategies, different evidentiary priorities, and additional legal arguments. AGA's focus will be on the competitive, economic, and industry-wide consequences of the Federal Government's position, whereas the State's focus is naturally on its sovereign authority and enforcement prerogatives. That divergence is more than sufficient to satisfy Rule 24(a)'s minimal requirement that representation "may be" inadequate. Moreover, because the commercial operators supporting the Federal Government's arguments—Kalshi and Crypto.com—have moved to intervene as plaintiffs, it is particularly appropriate for commercial operators supporting the State's arguments to intervene as defendants.

II. Alternatively, AGA Should Be Permitted to Intervene Under Rule 24(b).

Federal Rule of Civil Procedure 24(b) allows a court to permit intervention where the motion is timely, the movant has a claim or defense that shares with the main action a common question of law or fact, and intervention will not unduly interfere with resolution of the suit. The "only *required* considerations … are undue delay and prejudice to the rights of the original parties." *Bost*, 75 F.4th at 691.

These considerations weigh in favor of allowing AGA to intervene. AGA's proposed intervention will not create undue delay or prejudice the adjudication of the rights of the original parties. As described above, AGA's motion is timely because this litigation remains at its early stages. *See* pp. 9–10, *supra*. And there is no prejudice to the State (which does not oppose AGA's motion) or the Federal Government (which took no position on Kalshi's and Crypto.com's intervention motions). *See* pp. 10–11, *supra*. AGA's participation will also benefit the Court because, like the Federal Government and the prediction markets, AGA has participated in similar litigation across the nation. AGA has thus developed significant expertise on the legal and regulatory issues that are implicated by the Federal Government's claim and can assist the Court in resolving the complex questions presented.

In similar circumstances, courts have not hesitated to grant permissive intervention. *See, e.g.*, *Hendrick I*, 2025 WL 1901399, at *2 (granting Nevada Resort Association leave to intervene in litigation against prediction markets because the Association "clearly shares common questions of law and fact"); *Crypto.com*, 2025 WL 4670470, at *2 (same); *see also Faulman Inv., Ltd. v.*

Engineered Prods. & Servs., Inc., 2026 WL 962840, at *5 (E.D. Wis. Apr. 9, 2026) (granting permissive intervention after finding that intervenor "nearly" meets requirement for intervention as of right); *Ashford v. City of Milwaukee*, 2014 WL 1281525, at *1 (E.D. Wis. Mar. 26, 2014) (granting permissive intervention).

CONCLUSION

For the reasons given above, AGA respectfully requests that the Court grant its motion to intervene as of right, or in the alternative, grant permissive intervention.

Respectfully submitted,

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July 14, 2026

CERTIFICATE OF SERVICE

I hereby certify that, on July 14, 2026, I caused the foregoing document to be filed with the Clerk of the Court of the United States District Court for the Eastern District of Wisconsin using the Court's CM/ECF system.

/s/ Allan B. Moore
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