IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

BLOCKCHAIN ASSOCIATION; CRYPTO COUNCIL FOR INNOVATION, Plaintiffs, v. DAVID HARRIS, in his official capacity as the Director of the Illinois Department of Revenue; KWAME RAOUL, in his official capacity as the Illinois Attorney General; and JOHN MILHISER, in his official capacity as the State's Attorney of Sangamon County, Defendants.	Case No. 2026 MR 000312

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Illinois's Digital Asset Tax Act imposes a tax on digital assets that is unprecedented in Illinois and nationwide. 35 ILCS 195/3-5 *et seq*. That discriminatory tax, which takes effect in January, violates a host of statutory and constitutional provisions and was the product of a rushed and unlawful legislative process. Plaintiffs—two leading digital-asset trade associations—and their members are left to spend millions of dollars to try to comply with the Act on an expedited basis, without meaningful guidance, and under the threat of the Act's criminal penalties. Even if compliance were possible, the digital-asset industry will suffer irreparable harm if the Act takes effect. This Court should preserve the status quo by preliminarily enjoining enforcement of the Act.

Digital assets are assets that exist entirely on the internet. Like other assets (such as money or gold), digital assets (such as Bitcoin) store economic value. Digital assets represent an emerging and innovative segment of the economy and are increasingly used by millions of Americans and Illinoisans. The Act's first-in-the-nation tax on digital-asset activities threatens to stunt the growth of this new industry. The Act taxes *only* digital-asset activities, and it works unlike any traditional tax: The Act taxes a percentage of the *full value* of a digital asset *each time* a customer exchanges, transfers, or stores the asset in Illinois using a "digital asset broker"—even if the customer buys nothing, sells nothing, gains nothing, and transfers no ownership. The Act further requires brokers to collect and remit the taxes on pain of criminal penalties, while requiring ordinary Illinoisans to pay the tax absent broker collection. Illinois taxes no other asset like this. And if the Act is permitted to stand, Illinois will not be the last State to impose discriminatory taxes on digital assets, which will result in catastrophic consequences for digital commerce even beyond Illinois.

A discriminatory and novel tax of this magnitude should have been informed by careful legislative deliberation. But the Act was publicly revealed on the last day of the General Assembly's 2026 session as a small part of a 1,624-page bill addressing everything from truck weights to

social media to sports wagering. That bill was rushed through the legislature within hours, without meaningful debate and despite legislators' concerns about the Act's lawfulness.

That flawed and unlawful process led to a flawed and unlawful statute. The Act violates the federal Internet Tax Freedom Act by taxing internet commerce—activities involving *digital* assets—without taxing activities involving similar non-digital assets, such as using cash or buying gold. *See Performance Mktg. Ass'n v. Hamer*, 2013 IL 114496; *Google LLC v. Comptroller of Maryland*, 2026 WL 2437106, at *10 (Md. Tax Ct. Aug. 14, 2026). The ITFA was enacted precisely to protect innovative internet commerce like this from being squelched by state taxes.

In addition, the Act violates the dormant Commerce Clause because its novel tax—a percentage of the *full value* of the digital assets transacted or held by Illinois residents and visitors—discriminates against interstate commerce. And the tax is grossly disproportionate to (and often will exceed) the amount of the fees brokers earn for the taxed activities. The Act also violates due process by failing to provide regulated parties, including the ordinary Illinoisans who must comply with the Act, answers to basic questions about what is taxed, who is taxed, and when brokers must register, collect, and remit the tax—while threatening civil and criminal penalties for noncompliance. And it violates bedrock limitations that the Illinois Constitution imposes on lawmaking.

Illinois should be enjoined from implementing this unprecedented and flawed tax before it goes into effect in January. The Act is imposing serious and irreparable harm on Plaintiffs and their members. Plaintiffs' members—innovative digital-asset firms—are incurring millions of dollars in costs to develop new systems to comply with the Act before it takes effect. And even if they are able to comply once the Act goes into effect, they will lose business as their customers shift their activities to untaxed assets. To prevent those irreparable harms and preserve the status quo, this Court should grant a preliminary injunction barring Illinois from enforcing the Act.

BACKGROUND

I. Digital Assets Are Assets On The Internet

Digital assets are assets that exist entirely on the internet. The digital assets at issue here—often called "cryptocurrencies"—involve the use of a blockchain. Generally speaking, a blockchain is a technology that allows many people around the world to maintain a public database of transactions on the internet without any single person or entity controlling the database. Chris Jaikaran, Cong. Rsch. Serv., *Blockchain: Background and Policy Issues* at 1, https://perma.cc/AZ29-JTVT (updated Feb. 28, 2018). Digital assets are snippets of computer code associated with a particular blockchain. They store or represent economic value because, among other reasons, they are often made scarce by the blockchain's rules. *See* David W. Perkins, Cong. Rsch. Serv., *Cryptocurrency: The Economics of Money and Selected Policy Issues* at 8, https://perma.cc/34P8-B83P (updated Apr. 9, 2020).

Owners hold their digital assets in "wallets." A wallet stores the credentials—called "private keys"—needed to transfer a digital asset on a blockchain. Jaikaran, *Blockchain* at 5. Wallets can connect to the blockchain only through the internet.

Bitcoin was the first digital asset (and blockchain). Its creator called it "electronic cash"; others have called it "digital gold." *See* Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System* (2008), https://bitcoin.org/bitcoin.pdf; Sarah Wynn, *Fed Chair Powell Says Bitcoin Is Like Digital Gold*, The Block (Dec. 4, 2024), https://perma.cc/6HA5-UMPA. Many other digital assets (and blockchains) have been created since Bitcoin. These assets and blockchains differ in their particulars, but they all exist exclusively in electronic form and require the internet to function.

One common type of digital asset is a "stablecoin." Stablecoins are designed to hold a constant value pegged to another financial asset—for instance, the U.S. dollar. Jack Spira & David Wessel, *What Are Stablecoins, And How Are They Regulated?*, Brookings Institution (Oct. 24,

2025), https://perma.cc/J8DP-5728. Individuals and businesses increasingly use stablecoins to, among other things, pay for goods and services, settle transactions, and send money abroad. *Id.*

Today, digital assets are a mainstream part of U.S. and global financial markets, with a total market capitalization of more than $2 trillion and millions of holders in the United States and around the world. *See* Compl. ¶ 25. Both Congress and Illinois have recently passed legislation to bring digital assets within regulatory frameworks similar to those that apply to traditional financial assets. *See* GENIUS Act, Pub. L. No. 119-27, 139 Stat. 419 (2025) (codified at 12 U.S.C. § 5901 *et seq.*); Digital Assets and Consumer Protection Act, 205 ILCS 731/1-1 *et seq*.

II. Digital-Asset Service Providers Also Operate Over The Internet

In today's economy, people who want to use digital assets often do so through digital-asset service providers, like trading platforms or payment applications. Those online platforms facilitate the online trading, transfer, and storage of digital assets.

Trading. Some digital-asset service providers, such as online trading platforms, facilitate the exchange of digital assets for fiat currency (such as U.S. dollars) or for other digital assets—for example, U.S. dollars for Bitcoin, Bitcoin for a different digital asset, or Bitcoin back into U.S. dollars. The customer places an order on the platform's website or mobile application, and the platform's computers match the order with another customer's order, execute the trade, and update each customer's account to reflect the trade. The entire trade consists of computers exchanging messages over the internet. *See* Zlatkin Decl. ¶ 7; Nydegger Decl. ¶ 7.

Transfer. Customers also can use digital-asset service providers to transfer digital assets without trading anything. A customer enters a destination digital wallet and clicks send. The provider then submits the transfer request to the blockchain over the internet, and the computer network that maintains the blockchain processes the transfer. Many transfers operate as payments by sending one person's digital assets to someone else, in the same way a person transfers other

assets (like money) to make a payment. Others involve no sale, no gain, and no change in ownership—for example, an owner might move digital assets from his account with a provider to his own wallet just like he might withdraw cash from his bank account. *See* Zlatkin Decl. ¶ 8.

Storage. A digital asset cannot be kept in a drawer or a safe, because there is nothing physical to put there. Instead, an owner holds a "private key"—in essence, a password—that allows whoever knows it to transfer the digital asset on the blockchain. Many customers store their assets with digital-asset service providers rather than in their own wallets. That storage is not a single event but an ongoing service. *See* Anderika Decl. ¶ 7.

Like digital assets themselves, service providers operate within an extensive body of federal and state regulation. *See* Compl. ¶ 33; 205 ILCS 731/1-1 *et seq*.

III. Illinois Previously Taxed Digital Assets Just Like Traditional Financial Assets

Illinois principally raises revenue through a familiar set of taxes. For example, the State taxes income, including gains realized on the sale of property, under the Illinois Income Tax Act. 35 ILCS 5/201(a), 5/203. And the State taxes retail sales and the use of tangible personal property under the Retailers' Occupation Tax Act and the Use Tax Act. 35 ILCS 120/2, 105/3.

Illinois generally does not tax transactions or services involving financial assets, beyond taxing income and capital gains associated with those transactions or services, and sales in which financial assets (such as money) are used as a method of payment. The State's sales and use taxes do not otherwise reach activities involving intangible personal property, including most financial assets, and those laws expressly exempt money and precious metals. *See* 35 ILCS 105/3-5(8), 120/2-5(18). Thus, a person who buys or sells stocks or gold through a broker pays no Illinois tax on the exchange itself (though he may pay taxes on any realized gains). A person who withdraws cash from an ATM and then uses it at a grocery store pays no Illinois tax on the withdrawal or

transfer of cash to the store (though he may pay a sales tax on his groceries). And a person who gives cash, gold, or stocks to a bank or broker for storage pays no Illinois tax at all.

Digital assets have long been subject to this same tax framework. Like activities involving traditional financial assets, activities involving digital assets could give rise to Illinois income, capital-gains, or sales taxes. Compl. ¶ 36. But until the Act challenged here, no tax in Illinois—or anywhere in the country—applied solely to the exchange, transfer, or storage of digital assets.

IV. Illinois Enacts The Digital Asset Tax Act

On the very last day of the 2026 legislative session, the Illinois General Assembly passed (and the Governor later signed) the Digital Asset Tax Act. 35 ILCS 195/3-5 *et seq*. The Act imposes an unprecedented tax on exchanging, transferring, and storing digital assets using a broker. 35 ILCS 195/3-20(a). The tax is assessed not on the fee that the broker charges for its services, but on the value of the digital assets involved in the taxed activity—regardless of whether it results in any sale, gain, or change in ownership. *Id.* The Act further makes digital-asset brokers liable for collecting and remitting the tax to the State, and it subjects them to novel registration and recordkeeping requirements backed by the threat of civil and criminal penalties. *Id.* §§ 3-35, 3-40, 3-45, 3-55. The Act takes effect on January 1, 2027. *Id.* § 3-20(a).

Despite its unprecedented nature, the Act was rushed through the General Assembly with minimal debate or opportunity for public input. The predecessor to the bill that eventually included the Act was introduced in January 2026 as a two-page bill concerning loans for agricultural property. *See* S.B. 3019, 104th Gen. Assemb., Reg. Sess. (Ill. 2026) (as introduced). But on the very last day of the 2026 legislative session, the substance and scope of the bill changed completely through a "gut and replace" procedure: Two amendments replaced everything after the enacting clause and transformed the two-page agricultural-finance bill into a 1,624-page behemoth covering everything from gambling licenses to vehicle weight restrictions. *See* Compl. ¶ 39. The Digital

Asset Tax Act was 20 pages of the 1,624-page total, and it contained no legislative findings or statements of purpose. In less than 24 hours, with just one hour's notice to the public, the new bill was rushed through committee hearings and a final vote in the House and Senate. *See id.* ¶ 40.

Even still, the House hearing revealed grave concerns and confusion about the Act. Legislators recognized that the digital-asset tax was not "something that other States have proposed" and questioned whether the unprecedented tax would be "upheld in the courts." *Hearing on S.B. 3019 Before the H. Comm. on Revenue & Fin.*, at 12:53-13:00, 15:00-13, 25:50-55, 104th Gen. Assemb., Reg. Sess. (Ill. May 31, 2026) ("*Hearing*"), https://tinyurl.com/47zwaf9k. One legislator criticized the bill for "just picking on one type of asset" and questioned why it should pass when lawmakers had previously rejected a "similar" tax on financial assets. *Id.* 13:45-14:23. A proponent explained that a broader tax was not viable due to "concern[s] about jobs actually leaving the State," a concern the legislator did not have for a tax on digital assets alone. *Id.* 14:37-52. Another legislator expressed frustration that no one from the Governor's office had attended the hearing and that "the very people who are proposing these ideas … aren't here to answer our questions." *Id.* 25:22-26:04. The House nonetheless passed the bill, and the Senate passed it in the early morning hours the next day. The Governor signed the bill into law on June 16.

The Act imposes a tax "upon the privilege of receiving any digital asset business activity by a customer in this State at the rate of 0.2% of the value of the digital asset to which the digital asset business activity relates." 35 ILCS 195/3-20(a). That provision incorporates nested statutory definitions and interacts with other requirements in the Act. To determine whether tax is due, how much is due, and who must collect, pay, and remit it, the Act requires answers to at least seven questions: (1) what qualifies as a "digital asset"; (2) which activities are taxed; (3) which customers are deemed to be "in" Illinois; (4) how the "value" of a digital asset is assessed; (5) who

qualifies as a "digital asset broker"; (6) which brokers must register, collect, remit, and keep records; and (7) how affected businesses and individuals must collect and remit the tax.

What counts as a "digital asset." The Act taxes only transactions involving "digital assets." It defines a "digital asset" by incorporating the definition of that phrase in another Illinois statute. *See* 35 ILCS 195/3-15; 205 ILCS 731/1-5(a). Under that definition, a "digital asset" is "a digital representation of value that is used as a medium of exchange, unit of account, or store of value, and that is not fiat currency." 205 ILCS 731/1-5(a); *see* 35 ILCS 195/3-15.

Several exclusions limit the definition of a "digital asset." For example, exclusion (3) carves out "digital representations of value that have substantial value, utility, or significance beyond the asset's mere existence as a digital asset, including digital equivalents of tangible and intangible goods." 205 ILCS 731/1-5(a). That exclusion should put stablecoins beyond the Act's reach, as stablecoins derive their value from the U.S. dollars (or similar highly liquid assets) backing the stablecoins on at least a 1-to-1 basis. *See* 12 U.S.C. § 5903(a)(1). But Illinois nonetheless takes the position that stablecoins *are* covered by the statutory definition. *See, e.g.,* Ill. Dep't of Fin. & Pro. Regul., Digital Assets and Consumer Protection Act, 50 Ill. Reg. 6746, 6752-55 (May 15, 2026) (proposed rule defining "[p]ayment stablecoin[s]" as a kind of "digital asset").

Which activities are taxed. The Act imposes its tax "upon the privilege of receiving any digital asset business activity" through a digital-asset broker. 35 ILCS 195/3-20(a). The Act defines "[d]igital asset business activity" as "*any single occurrence* of exchanging, transferring, or storing a digital asset as part of a business or on behalf of a customer who has entered into an agreement with a business for the provision of those services." 35 ILCS 195/3-15 (emphasis added). The terms "exchange," "transfer," and "storage" are defined capaciously—for example, "transfer" expressly includes "moving the digital asset from one account or storage of a customer

to another account or storage of the same customer." *Id.* The Act does not explain how to tax exchange, transfer, and storage services when they are bundled together, as they often are. For a typical trade, for example, a service provider may: (i) exchange the customer's dollars for a digital asset (an "exchange"); (ii) credit the digital asset to the customer's account (a "transfer"); and (iii) thereafter hold the private keys for the digital asset for the customer ("storage"). The Act does not clearly explain whether that activity incurs one, two, or three taxes. *See id.* Nor does it explain how continuous custody can be divided into the taxable unit of "any single occurrence" of "storing."

Which customers are "in" Illinois. The Act taxes only transactions occurring "in this State." 35 ILCS 195/3-20(a). But to identify customers "in" Illinois within the meaning of the Act, digital-asset brokers must apply the Act's "sourcing" provision. 35 ILCS 195/3-25. For "a sale occurring electronically," the Act creates "a rebuttable presumption that the customer requesting the sale is located in this State" if information "available to" a broker shows that the customer has "an Illinois home address, an Illinois mailing address, or an Illinois internet protocol address or other data showing [a] 'place of primary use' in Illinois" within the meaning of another Illinois statute. *Id.* "The burden of proving that a customer is not located in this State is on the digital asset broker," and reliance on "reasonable categorization standards" does not "alleviate" that burden. *Id.*

The Act does not explain what a broker should do when, for example, an account of record shows an Indiana home address for a customer who used an Illinois IP address to make a trade. Nor does it say what "other data" "available to" a broker might give rise to the presumption that the customer is in Illinois. The consequence of guessing wrong falls entirely on the broker, which "shall be liable for the tax whether or not the tax has been collected." 35 ILCS 195/3-35(a).

What is the "value" of the digital asset. The measure of the tax is "0.2% of the *value* of the digital asset to which the digital asset business activity relates"—even if the broker's fee for

the service is only a tiny fraction of that value. 35 ILCS 195/3-20(a) (emphasis added). The Act says nothing about how to determine "value," and it does not specify the time at which value is measured. This poses a particular problem for storage and for certain transfers because storing or transferring a digital asset does not require assigning a value to it (unlike a purchase or exchange).

Who counts as a "digital asset broker." The Act taxes only activities involving "digital asset brokers," and it imposes registration, collection, remittance, and recordkeeping requirements on certain brokers. 35 ILCS 195/3-20(a), 3-30, 3-35, 3-40, 3-45. The Act defines a "digital asset broker" in part based on federal law: "a person, as defined in Section 6045(c)(1)(D) of the Internal Revenue Code and any regulations as the Secretary of the Treasury may prescribe, who is engaged in the business of providing digital asset business activity to customers in this State." *Id.* § 3-15. The Act does not explain how much Illinois "digital asset business activity" renders a company "engaged in the business of providing digital asset business activity to customers in this State." *Id.*

Which brokers must register, collect, remit, and keep records. The Act imposes registration, collection, remittance, and recordkeeping obligations on brokers. But differently situated brokers are subject to different requirements. The Act's registration requirement applies to "any person" "engage[d] in business as a digital asset broker in this State"—an undefined threshold. 35 ILCS 195/3-30(a). The Act's collection requirement seemingly applies only to brokers "maintaining a place of business in this State," which the Act defines to include brokers with "gross receipts from digital asset business activity sales to Illinois customers" of "$100,000 or more" over the prior 12 months. *Id.* §§ 3-35(a), 3-15. But another section appears to contradict that one, requiring "the digital asset broker making or effectuating the sale … to collect the tax," with no gross-receipts limitation. *Id.* § 3-20(a). And the remittance and recordkeeping requirements apply to a "digital asset broker" without any gross-receipts limitation. *Id.* §§ 3-40, 3-45.

How affected parties collect and remit the tax. The Act requires a covered broker to "collect the tax … from the customer" and remit it to the Department of Revenue; once collected, the tax is "held in trust" for the Department. 35 ILCS 195/3-35(a). The broker must "ad[d] the tax to the amount of the purchase price received from the customer" and generally must itemize the tax "as a distinct item separate and apart from the purchase price." *Id.* § 3-35(b). Where the broker makes "no charge … of the tax," the customer must self-assess and pay the Department directly. *Id.* § 3-35(f). Illinois customers thus are independently responsible for understanding the terms of the Act. The Act empowers the Department of Revenue to collect those taxes from Illinoisans, including through liens and levies on property and foreclosures of homes. *See id.* § 3-60 (cross-referencing the remedies of the Retailers' Occupation Tax Act); 35 ILCS 120/5a, 5e, 5f.

Penalties for noncompliance. Compliance failures have serious civil and criminal consequences. Any digital-asset broker "who violates" "any" provision of the Act, including merely failing to register as a broker, "is guilty of a Class 3 felony," subject to a five-year limitations period. 35 ILCS 195/3-55. Any broker "who willfully violates" any Department rules implementing the Act likewise is guilty of a Class 3 felony. *Id.* The Act's willfulness requirement for regulatory, but not statutory, violations leaves open the possibility that Illinois will take the position that the Act imposes strict liability for statutory violations. The Act also incorporates the harsh penalties of the Uniform Penalty and Interest Act. *Id.* § 3-60. Among other things, those include deficiency penalties and potential *personal* liability for officers of digital-asset brokers who willfully fail to file or pay the tax. *See* 35 ILCS 735/3-3 to -7.

ARGUMENT

To obtain a preliminary injunction, a party must establish: (1) "a clearly ascertained right in need of protection," (2) "irreparable injury in the absence of an injunction," (3) "no adequate remedy at law," and (4) "a likelihood of success on the merits of the case." *Mohanty v. St. John*

Heart Clinic, S.C., 225 Ill. 2d 52, 62 (2006). The moving party need only "raise a *fair question* that each of the elements is satisfied." *Makindu v. Ill. High Sch. Ass'n*, 2015 IL App (2d) 141201, ¶ 31 (emphasis added and citation omitted). "If these elements are met, then the court must balance the hardships and consider the public interests involved." *Id.* (citation omitted). Plaintiffs satisfy all of the requirements for preliminary injunctive relief.

I. Plaintiffs Have Clearly Ascertained Rights In Need Of Protection, And They Are Likely To Succeed On The Merits Of Their Claims

The first and fourth requirements for a preliminary injunction are met when a movant raises a "fair question" that it will succeed on its claims. *See Makindu*, 2015 IL App (2d) 141201, ¶ 38. Plaintiffs easily clear that bar here.

A. The Act Is Preempted By The Internet Tax Freedom Act

In 1998, Congress passed and the President signed the Internet Tax Freedom Act to shield internet commerce from state taxation that could "stifl[e] the potential" for the internet "to provide information, goods, and services quickly and cheaply throughout the world." H.R. Rep. No. 105-808, pt. 1, at 7 (1998); Pub. L. No. 105-277 (codified at 47 U.S.C. § 151 note). The ITFA's sponsor explained that internet commerce is "inherently susceptible" to state taxes that "seek to place [it] at a disadvantage compared to similar commerce conducted through more traditional means." H.R. Rep. No. 105-570, pt. 1, at 29, 33. Congress therefore enacted the ITFA to "protect" electronic commerce "from being singled out and taxed in new and creative ways." *Id.*, pt. 1, at 29; *see also* S. Rep. No. 105-184, at 3 (1998) (the ITFA requires a "technology-neutral tax policy"). Although initially a temporary measure, Congress made the ITFA permanent so that "consumers, innovators and investors" can "permanently rely" on its protections. H.R. Rep. No. 113-510, at 2 (2014).

As relevant here, the ITFA forbids "discriminatory taxes on electronic commerce," defined as taxes on "transaction[s] conducted over the Internet or through Internet access" that are "not

generally imposed … on transactions involving similar property, goods, services, or information accomplished through other means." ITFA §§ 1101(a)(2), 1105(2)(A)(i), 1105(3). "Congress could not have been any clearer that it did not want internet services of any kind taxed unless other similar services in the broader sense were taxed." *Google*, 2026 WL 2437106, at *10.

The Supreme Court of Illinois applied the ITFA in striking down a discriminatory tax in *Performance Marketing*. There, a statute imposed a tax-collection obligation on retailers who used online performance marketing but not economically similar offline marketing. 2013 IL 114496, ¶¶ 5-8. The Court explained that the statute "impose[d] discriminatory taxes within the meaning of the ITFA" because it "singl[ed] out" digital services for unfavorable tax treatment relative to analogous non-digital services. *Id.* ¶¶ 19, 22.

Here, the Digital Asset Tax Act discriminates against electronic commerce even more starkly than the law at issue in *Performance Marketing*. Illinois generally imposes no taxes on the exchange, transfer, or storage of assets except when they result in income or a sale. *See supra* 5-6. But the Act imposes novel and burdensome taxes exclusively on *digital* assets—which are used only for electronic commerce and exist only because of the internet. That hampers and fragments an innovative national marketplace and undermines the ITFA's purpose of "protect[ing]" novel uses of the internet "from being singled out and taxed." H.R. Rep. No. 105-570, pt. 1, at 29.

The Act's novel and discriminatory tax violates the plain text of the ITFA. The Act taxes only transactions involving a "*digital* asset," 35 ILCS 195/3-20(a) (emphasis added), defined to mean "a *digital* representation of value that is used as a medium of exchange, unit of account, or store of value," 205 ILCS 731/1-5(a) (emphasis added). As the name suggests, *digital*-asset transactions are "electronic commerce" under the ITFA because they occur "over the Internet or through Internet access." ITFA § 1105(3); *see supra* 4-5. And the Act discriminates against electronic

commerce by exempting from taxation "transactions involving similar" *non*-digital assets, ITFA § 1105(2)(A)(i)—*i.e.*, non-digital assets "used as a medium of exchange, unit of account, or store of value." 205 ILCS 731/1-5(a). For example, the Act does not tax transactions involving non-digital forms of money—the paradigmatic "means of payment," "unit of account," and "store of value." Board of Governors of the Federal Reserve System, *Money and Payments: The U.S. Dollar in the Age of Digital Transformation* 5 (Jan. 2022). Indeed, the Act expressly exempts "fiat currency" from the definition of "digital asset" to ensure that the statute applies only to currency that exists exclusively on the internet—*i.e.*, cryptocurrency. 205 ILCS 731/1-5(a).

Thus, if an Illinois customer walks into a currency-exchange business and trades U.S. dollars for euros or another fiat currency, the customer incurs zero taxes under the Act. But if the customer uses a digital-asset service provider to exchange U.S. dollars for cryptocurrency (such as Bitcoin), the customer incurs between one and three taxes of 0.2% of the amount exchanged. Similarly, an Illinois customer incurs no taxes (other than a sales tax) for making cash payments, but if the customer makes the same payments using cryptocurrency through a digital-asset broker, the customer incurs the Act's taxes *plus* a sales tax. Likewise for storage: Storing U.S. dollars at a bank is tax-free, while storing Bitcoin with a broker is taxed. And if the Act taxes stablecoin transactions (as Illinois appears to believe, *supra* 8), the discrimination is even starker. Stablecoins are pegged to and backed by U.S. dollars, yet Illinois appears to believe that transferring a dollar's blockchain equivalent is subject to a tax while transferring a physical dollar is not.

No other Illinois law fills the discriminatory void created by the Act. Illinois has expressly exempted the sale and use of traditional currencies from its sales and use taxes. *See, e.g.*, 35 ILCS 105/3-5(8), 120/2-5(18). Nor does Illinois tax activities involving *any other* asset used as a medium of exchange, unit of account, or store of value like the Act taxes digital-asset activities. For

example, Illinois does not tax the exchange, transfer, or storage of precious metals, stocks, or bonds. *See, e.g.*, 35 ILCS 105/3-5(8), 120/2-5(18) (exempting "bullion" from sales and use taxes); 86 Ill. Admin. Code 130.120(a) (sales tax "does not apply" to sales of "intangible personal property, such as shares of stocks" and "bonds"). An Illinois customer purchasing a gold bar in person at a bullion dealer thus is subject to no tax. But if he purchases Bitcoin (sometimes referred to as "digital gold") through a broker, he is subject to up to three taxes. As one Illinois legislator aptly put it: The Act "just pick[s] on one type of asset" even though Illinois previously rejected "similar" taxes on other financial assets. *Hearing* 13:45-14:23.

In short, the only thing distinguishing taxed and untaxed transactions in Illinois is the very thing that triggers the ITFA: the "digital" nature of the transacted asset. Thus, just like the statute in *Performance Marketing*, the Act "singl[es] out" digital activities and is "void and unenforceable" under the ITFA. 2013 IL 114496, ¶¶ 19, 23. Plaintiffs are likely to succeed (and certainly raise a "fair question") on the merits of this claim. *Makindu*, 2015 IL App (2d) 141201, ¶ 31.

B. The Act Violates The Dormant Commerce Clause

The U.S. Constitution grants Congress the power "[t]o regulate Commerce" "among the several States." U.S. Const. art. I, § 8, cl. 3. That language "contain[s] a further, negative command, known as the dormant Commerce Clause," which "prohibit[s] States from discriminating against or imposing excessive burdens on interstate commerce without congressional approval." *Comptroller of Treasury of Maryland v. Wynne*, 575 U.S. 542, 549 (2015) (citation omitted).

State taxes are subject to dormant Commerce Clause scrutiny. Under the *Complete Auto* test, "no state tax may be sustained unless the tax: (1) has a substantial nexus with the State; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the State." *Maryland v. Louisiana*, 451 U.S. 725, 754 (1981) (applying *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977)). Here, the Digital Asset Tax Act

fails at least the second prong of *Complete Auto* because it is not fairly apportioned. "[T]he central purpose behind the [fair] apportionment requirement is to ensure that each State taxes only its fair share of an interstate transaction." *Goldberg v. Sweet*, 488 U.S. 252, 260-61 (1989). To be fairly apportioned, a state tax must be "internally and externally consistent." *Id.* at 261. The Act is neither.

Internal consistency. The internal-consistency test "looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate." *Wynne*, 575 U.S. at 562 (citation omitted). A tax is not internally consistent when activities would be "subject to more than one State's tax" if every State imposed an identical tax. *Okla. Tax Comm'n v. Jefferson Lines*, 514 U.S. 175, 185 (1995).

The U.S. Supreme Court has repeatedly invalidated internally inconsistent state taxes. *See Wynne*, 575 U.S. at 563-64 (collecting cases). In *Wynne*, for example, the Supreme Court struck down a Maryland law that taxed the income Maryland residents earned nationwide as well as the income non-residents earned in Maryland. *Id.* at 564-65. That law, if adopted by other States, would have imposed double taxation *only* on people who lived in one State and worked in another. *See id.* at 564-65. It was thus "inherently discriminatory and operate[d] as a tariff." *Id.* at 565.

The Digital Asset Tax Act is internally inconsistent for the same reason. The Act taxes digital-asset activities that occur when a customer is "in" Illinois, and the Act presumptively deems a customer to be in Illinois when the customer either: (1) has an Illinois home address or mailing address, (2) uses an Illinois IP address, or (3) has other data showing a "place of primary use" in Illinois. 35 ILCS 195/3-25. Thus, Illinois residents are presumptively taxed on their digital-asset activities no matter where those activities occur, and non-residents are presumptively taxed when they engage in digital-asset activities while they are in Illinois. That presumption will be

conclusive in many cases because the Act says nothing about how or when it can be rebutted.

Just as in *Wynne*, that scheme, if adopted by other States, would result in double taxation. For instance, if Indiana adopted an identical tax, an Indiana resident who works in Chicago presumptively would be subject to double taxation on trades placed from an Illinois IP address while he is at work—once by Indiana based on his home address, and once by Illinois based on his IP address. Likewise for a Notre Dame fan who lives in Chicago but trades digital assets while visiting South Bend, Indiana on Saturdays. Only when a customer resides, works, and remains in a single State while engaging in digital-asset activities can he escape the threat of double taxation.

The Act's omission of any credit mechanism clinches the constitutional violation. A "credit against … taxes paid to other States" is how "most States" (including Illinois) avoid internal-consistency problems. *Wynne*, 575 U.S. at 568; *see also, e.g.*, *Goldberg*, 488 U.S. at 264 (upholding tax based on credit provision). Yet Illinois declined to provide a credit here, confirming that the Act is "inherently discriminatory" and unlawful. *Wynne*, 575 U.S. at 568.

External consistency. The Act also fails the external-consistency test. A state tax cannot claim more than the State's "fair share of the value" of an interstate activity. *Jefferson Lines*, 514 U.S. at 184. The test turns on "whether a State's tax reaches beyond that portion of value that is fairly attributable to economic activity within the taxing State." *Id.* at 185. A tax assessed on value that is "out of all appropriate proportions to the business transacted in that State" is unlawful. *Id.* at 195 (citations omitted). Thus, for example, New York could not tax even a small percentage of a bus company's *total* ticket sales for interstate trips originating in New York; the State could constitutionally use only the New York portion as the tax base. *See Cent. Greyhound Lines of N.Y. v. Mealey*, 334 U.S. 653, 662 (1948).

Here, the Act creates an extraordinary mismatch between the "economic activity"

purportedly occurring "within the taxing State" and the value taxed. *Jefferson Lines*, 514 U.S. at 185. The Act taxes a customer's "privilege of receiving any digital asset business activity" from a digital-asset broker in Illinois. 35 ILCS 195/3-20(a). A tax on the sale of a service (like a brokerage service) *can* be externally consistent if the tax is assessed on the "gross receipts in the hands of the seller"—*e.g.*, the fees charged by a broker. *Jefferson Lines*, 514 U.S. at 189; *see Goldberg*, 488 U.S. at 262 (discussing taxes that apply to the "revenues" from "the activity being taxed").

But that is not what the Act does. Instead, the Act's tax is calculated based on the *full value* of the digital assets involved in the service. The full value of a digital asset is not "fairly attributable" to any in-state brokerage service. *Jefferson Lines*, 514 U.S. at 185. It instead derives from interstate (and international) activity, including trading in other jurisdictions and the development and maintenance of blockchains by participants around the world. That mismatch results in taxes that are "out of all appropriate proportions" to the value of any economic activity in Illinois. *Id.* at 195 (citations omitted). For example, a broker might charge a nominal fixed fee (*e.g.*, $1 to $10) to exchange, transfer, or store $1 million in digital assets, yet Illinois would collect $2,000 in taxes on the transaction—hundreds or thousands of times the value of the taxed activity. *See, e.g.*, Zlatkin Decl. ¶¶ 12, 24.

Courts have long invalidated taxes like the Act's that lay claim to value far in excess of the in-state activity purportedly being taxed.[1] For example, a Maryland tax court recently invalidated a digital-advertising tax under the dormant Commerce Clause. *Google*, 2026 WL 2437106, at *13-16. The tax was externally inconsistent because, although the tax was triggered by a company's digital advertising in Maryland, the "tax rate increase[d] as a taxpayer's global revenues

[1] *See, e.g.*, *Int'l Paper Co. v. Massachusetts*, 246 U.S. 135, 140 (1918) (invalidating "annual excise" charged as a percentage of a company's total capital stock); *Northwood Const. Co. v. Twp. of Upper Moreland*, 856 A.2d 789, 804 (Pa. 2004) (invalidating tax measured by gross receipts when "a significant portion" of a taxpayer's revenues were generated outside of Pennsylvania).

increase," and the "taxpayer's global revenue has nothing to do with its Maryland activity." *Id*. The tax here is invalid for the same reason: The tax increases along with the value of the digital asset, which has nothing to do with the value of any in-state brokerage activities being taxed.

C. The Act Is Unconstitutionally Vague

The Act is unconstitutionally vague because it provides no clear standard by which regulated parties—who face criminal penalties for violations—can determine whether they are in compliance. A statute is impermissibly vague "if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits." *City of Chicago v. Pooh Bah Enters.*, 224 Ill. 2d 390, 441-42 (2006). "The Constitution tolerates a lesser degree of vagueness in enactments with criminal rather than civil penalties." *Wilson v. County of Cook*, 2012 IL 112026, ¶ 23. "[U]ncertainties" that "may be tolerable in isolation" make a statute unconstitutionally vague if "their sum makes a task for [courts] which at best could be only guesswork." *Johnson v. United States*, 576 U.S. 591, 602 (2015) (quoting *United States v. Evans*, 333 U.S. 483, 495 (1948)).

The Digital Asset Tax Act is indeterminate from beginning to end. It imposes criminal penalties on any digital-asset broker who fails to collect the tax, and it mandates that Illinois customers remit the taxes in the absence of broker collection. But companies and customers cannot know their obligations given the Act's many unanswered questions. *See Hearing* 25:22-26:04 (legislator expressing frustration about the lack of answers concerning the digital-asset tax).

Most basically, the Act provides no discernible guidance on which "digital assets" are subject to taxation. One exclusion from the definition of "digital assets" carves out "digital representations of value that have substantial value, utility, or significance beyond the asset's mere existence as a digital asset." 205 ILCS 731/1-5(a). But the exclusion supplies no standard for what it means to have "substantial" independent "value," "utility," or "significance" "beyond the asset's mere existence as a digital asset." And it is circular because it uses the very phrase ("digital asset")

that the exclusion is supposed to help define. *Folkers v. City of Waterloo*, 2007 WL 3430936, at *11 (N.D. Iowa Nov. 14, 2007) (a "circular definition does not provide any guidance for the public and is unconstitutionally vague"). Underscoring the problem, the State somehow has concluded that U.S.-dollar stablecoins do *not* fall within the exclusion (and thus are within the statutory definition), even though stablecoins clearly have substantial independent value—*i.e.*, the U.S. dollars (and other liquid assets) backing them on at least a 1-to-1 basis. *Supra* 8.

The Act's rule for determining which activities occur "in" Illinois is also inscrutable. It lists several indicia that each create a "rebuttable presumption" of an Illinois locus, but it provides no guidance on how that presumption can be rebutted. Do records showing a customer's Indiana residence rebut the presumption that arises from the customer's use of an Illinois IP address? What if the customer also has an Illinois business address? The Act provides no way to answer those questions, and it expressly states that one potential option—"reasonable categorization standards" for "analyzing [customer] data"—does not "alleviate" a broker's burden. 35 ILCS 195/3-25.

There are many other unanswered questions—for example, whether trades are taxed once or three times and how frequently storage is taxed. *See supra* 8-9; Compl. ¶¶ 41-58. Yet ordinary Illinoisans and businesses who guess the answers incorrectly face civil or (for brokers) even criminal liability, without even an assurance that they can avoid committing a felony through good-faith efforts to comply. That will cause regulated parties to "steer far wider of the unlawful zone" than the Act requires, resulting in over-collection and harm to Illinois customers and businesses. *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (citation omitted); Zlatkin Decl. ¶ 28. This "combination of indeterminacy with indeterminacy" cannot be squared with due process. *United States v. Vivas-Ceja*, 808 F.3d 719, 722 (7th Cir. 2015). Plaintiffs thus have posed at least a "fair question" that they will succeed on the merits. *Makindu*, 2015 IL App (2d) 141201, ¶ 31.

D. The Act Violates The Illinois Constitution

The Act suffers from four additional infirmities under the Illinois Constitution.

First, the Act violates the Uniformity Clause by creating an unreasonable tax classification between digital and non-digital assets. Ill. Const. art. IX, § 2; *see also* Compl. ¶ 101 (collecting cases in which tax classifications were invalidated on this basis). There is no "real and substantial difference" between exchanging, transferring, and storing digital assets (services that are taxed) and exchanging, transferring, and storing non-digital assets (services that are not taxed). *Mut. Life Ins. Co. of N.Y. v. Washburn*, 137 Ill. 2d 312, 331 (1990). In each case, the real-world economic activity—exchanging, transferring, or storing representations of value—is the same. Moreover, the Act's tax classification does not bear a "reasonable relationship" to its purpose or public policy. *Id.*

Second, the Act impermissibly outsources the power to define the scope of Illinois tax liability. The Illinois Constitution "places the formulation of tax policy in the legislature" alone. *Hoffmann v. Clark*, 69 Ill. 2d 402, 423 (1977) (citation omitted); Ill. Const. art. IV, § 1. The legislature's "power of taxation shall not be surrendered, suspended, or contracted away." Ill. Const. art. IX, § 1. Here, the Act taxes only services provided by a "[d]igital asset broker." *See, e.g.*, 35 ILCS 195/3-15. But it defines that phrase by reference to "the [federal] Internal Revenue Code" and regulations that "the Secretary of the Treasury may prescribe." *Id.* The Act thus makes an ongoing delegation to Congress and the Treasury Secretary to determine which activities are taxed under Illinois law. As the Attorney General has long recognized, incorporating future changes to federal law in this way "involve[s] a surrender, abandonment, or delegation of legislative power by this State in violation of … the Illinois Constitution." 1951 Ill. Att'y Gen. Op. No. 256, at 183; *see also Coram v. State*, 2013 IL 113867, ¶ 85 (Burke, J., specially concurring, joined by Freeman, J.) (Illinois law cannot turn on "future amendments to the federal law").

Third, the omnibus bill containing the Act flouts the single-subject rule. *See* Ill. Const. art. IV, § 8(d). That sprawling, 1,624-page law is "unconstitutional in its entirety" because it "encompass[es] at least two unrelated subjects." *People v. Reedy*, 186 Ill. 2d 1, 12 (1999). Among many other things, the bill regulates the conduct of social media companies; creates a licensing and regulatory regime for fantasy sports backed by criminal penalties; creates a licensing scheme for remote tobacco sellers; and revises wheel, axle, and gross vehicle weight limits. *See* Compl. ¶¶ 126-28; Pub. Act 104-468, § 140-10. Those provisions lack "a natural and logical connection" to one another or to the Act's new tax on digital-asset activities. *Johnson v. Edgar*, 176 Ill. 2d 499, 515 (1997). As a result, the omnibus bill—including the Act—is void in its entirety.

Finally, the Act violates the three-readings rule. The Illinois Constitution requires all bills to be "read by title on three different days in each house." Ill. Const. art. IV, § 8(d). That did not happen here; the bill containing the Act passed the House and Senate within hours of being announced, depriving legislators—and the public—of the opportunity to understand and refine the law as the three-readings rule intends. Although the "enrolled bill doctrine" precludes this Court from holding the legislature to its constitutional duties, Plaintiffs preserve the argument for appellate review. *See First Midwest Bank v. Rossi*, 2023 IL App (4th) 220643, ¶¶ 232-40.

II. Plaintiffs Are Suffering Irreparable Injury And Lack An Adequate Remedy At Law

The "closely related" second and third requirements for a preliminary injunction—irreparable harm and the lack of an adequate remedy at law—are likewise satisfied here. "Once a protectable interest is established, irreparable injury is presumed if that interest is not protected." *Cameron v. Bartels*, 214 Ill. App. 3d 69, 73 (1991). And both requirements are met when money damages cannot adequately compensate the plaintiff's injuries. *Happy R Securities, LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶ 36. Here, Plaintiffs' members are suffering at least three forms of irreparable harm: ongoing violations of their constitutional rights, significant

compliance costs, and lost business and harm to customer relationships. *See Am. Fed'n of State, County & Mun. Emps., Council 31 v. Schwartz*, 343 Ill. App. 3d 553, 563 (2003) (finding irreparable injury to union based on harm to its members).

Ongoing constitutional violation. The Act violates the rights of Plaintiffs' members under a host of provisions of the federal and Illinois Constitutions, including the Due Process Clause, the Commerce Clause, and the Uniformity Clause. For example, the Act is depriving Plaintiffs' members of their due process rights by forcing them to attempt compliance with an indeterminate statute under the threat of criminal punishment. *See, e.g.*, Zlatkin Decl. ¶ 28. That ongoing loss of constitutional rights is "*per se* irreparable" because it "cannot be adequately compensated with money." *C.J. v. Dep't of Hum. Servs.*, 331 Ill. App. 3d 871, 891 (2002) (finding irreparable harm because ongoing "due process violation" "cannot be measured by any monetary standard").

Compliance costs. The Act also forces Plaintiffs' members to incur substantial costs to prepare for the Act's felony-backed requirements before they go into effect in January. Plaintiffs' members are expending significant resources simply to understand their obligations under this law. *See* Nydegger Decl. ¶ 16; Zlatkin Decl. ¶ 16; Anderika Decl. ¶ 22. And they will spend millions of dollars more implementing new systems to identify taxable customers, communicate changes to customers, collect and remit the tax, maintain required records, and register with the Department. *See, e.g.*, Zlatkin Decl. ¶¶ 4, 17-23. Changes on this scale could take 18 months or longer to implement, but the Act requires Plaintiffs' members to do so in six months. *Id.* ¶ 22. This means that Plaintiffs' members must immediately divert key employees from other important, time-sensitive tasks. *See, e.g.*, Nydegger Decl. ¶ 24; Anderika Decl. ¶ 22. And Plaintiffs' members will face further costs to unwind these systems and educate customers if the tax is later declared invalid. Nydegger Decl. ¶ 25.

Lost business and customer relationships. The Act also will cause Plaintiffs' members to lose customers and revenue. The Act makes covered digital-asset activity more expensive for affected Illinois customers by imposing a tax equal to 0.2% of the value of their assets—potentially up to three times for a single transaction. That creates a financial incentive for customers to reduce or refrain altogether from covered digital-asset activity and allocate their capital to untaxed alternatives (such as cash in a savings account). *See, e.g.*, Zlatkin Decl. ¶ 25. In turn, that will cause Plaintiffs' members to lose revenue and customers, some of whom may never return even if the Act is invalidated. *Id.* ¶ 27. Those losses are exceptionally difficult to calculate. *Id.*

These injuries are irreparable because they will not be compensable if the Act is declared invalid. Due to sovereign immunity, Plaintiffs and their members likely cannot recover damages from the State, and any refund suit would be limited to the amounts of taxes paid (plus interest). *See Lavery v. Dep't of Fin. & Pro. Regul.*, 2025 IL 130033, ¶¶ 17-20, 33-37, 40-43 (sovereign immunity generally bars "claims for money damages"); *Parmar v. Madigan*, 2018 IL 122265, ¶ 48 (refund action available only for "disposition of the [taxes] paid under protest" (citation omitted)).

The Supreme Court of Illinois has recognized that a party's potential inability to recover damages from lost business due to "governmental immunity" establishes "a threat of irreparable harm and the lack of an adequate remedy at law." *See Bio-Med. Labs., Inc. v. Trainor*, 68 Ill. 2d 540, 549 (1977). The U.S. Supreme Court and other courts have reached the same conclusion for "nonrecoverable" compliance costs and other financial harms. *See, e.g.*, *Ohio v. EPA*, 603 U.S. 279, 291-92 (2024) (compliance costs); *Odebrecht Const., Inc. v. Fla. Dep't of Transp.*, 715 F.3d 1268, 1288 (11th Cir. 2013) (lost revenues). The difficulty of "reasonably calculat[ing]" damages further underscores that the harms are irreparable. *Travelport, LP v. Am. Airlines, Inc.*, 2011 IL App (1st) 111761, ¶¶ 40, 43-44.

III. The Balance Of The Equities Favors Plaintiffs

Courts must "weigh the benefits of granting [an] injunction against the possible injury to the opposing party" and "consider the injunction's effect on the public interest." *Makindu*, 2015 IL App (2d) 141201, ¶ 47. Here, the equities strongly favor preliminary injunctive relief.

The public has a strong interest in preserving the status quo. Without an injunction, regulated parties (including ordinary Illinoisans) will be forced to try to comply with the Act with six months' notice at significant cost and under the threat of severe civil or even criminal penalties. And if the Act is ultimately held unlawful, the public and the State will need to incur further costs (and generate further confusion) by unwinding those changes and providing refunds.

Conversely, Illinois has no cognizable interest in enforcing a statute that is likely unlawful: "A probable violation of law should never be the status quo." *Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4*, 396 Ill. App. 3d 1105, 1119 (2009). Nor does the government or the public have any overriding interest in the taxes that would be collected absent an injunction. The projected revenues under the Act amount to less than 0.03% of the State's total appropriations. *Compare* Comm'n on Gov't Forecasting & Accountability, *State of Illinois Budget Summary Fiscal Year 2027*, at 23 (July 30, 2026) ($224.6 billion in appropriations), *with id.* at 36 ($60 million in projected revenue under the Act). And under the Protest Monies Act, Illinois likely will be barred from expending a substantial portion of any taxes paid under the Act pending a challenge anyway. *See* 30 ILCS 230/2a. A preliminary injunction thus would allow the public to conserve significant resources while obtaining legal certainty, without any meaningful impact on the fisc.

CONCLUSION

For these reasons, Plaintiffs' motion for a preliminary injunction should be granted.

Dated: September 8, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies, pursuant to Section 1-109 of the Code of Civil Procedure, I electronically filed the foregoing with the Sangamon County Circuit Clerk of the Court via the Odyssey eFileIL system, and on the same date I sent a copy of the foregoing by enclosing same in an envelope plainly addressed to each of the said addresses, with postage fully prepaid and depositing same in the United States Mail in Springfield, Illinois on September 8, 2026:

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