

CLIENT ALERT

Betting on Uncertainty in the Regulation of Event Contracts

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Courts across the country are considering whether an event contract on a basketball game is a novel derivative subject to federal commodities law or an old-fashioned bet governed by state gambling law. Litigation currently pending in Maryland, New Jersey, Nevada, New York, and Ohio asks whether the Commodity Exchange Act (“CEA”), as applied to sports and event contracts offered by companies like KalshiEx LLC (“Kalshi”), Nadex (d/b/a Crypto.com/Derivatives North America) (“Nadex”), and Robinhood Markets, Inc. (“Robinhood”) preempts state gambling laws. Other states have issued cease and desist letters to these companies.¹ At stake is whether such contracts, when listed on federally regulated exchanges, fall under the exclusive jurisdiction of the Commodity Futures Trading Commission (“CFTC”) and benefit from federal preemption, or remain subject to state gaming regulation. The outcomes will shape the trajectory of event-based derivatives markets.

¹ Nine states (Arizona, Illinois, Maryland, Michigan, Montana, Nevada, New Jersey, New York, and Ohio) have sent cease-and-desist letters to Kalshi as of the date of publication.

Divergent Precedents in Key Litigation

Kalshi, a CFTC-registered designated contract market, lists contracts enabling users to take positions based on their expectations regarding a variety of events, including elections, sporting events, and other matters relevant to financial markets, the economy, and commerce, such as whether Taylor Swift will announce a new tour.² State regulators in Maryland, New Jersey, Nevada, and Ohio have taken the position that offering these contracts in their states constitutes unlicensed betting in violation of state gaming laws. In response, Kalshi has sought injunctive relief from enforcement of these laws, arguing that the CEA both expressly preempts state law through the CFTC's "exclusive jurisdiction" and reflects congressional intent to occupy the field.

In April 2025, district courts in Nevada and New Jersey both ruled that Kalshi showed a likelihood of success on its preemption arguments and granted preliminary injunctions enjoining state gaming authorities from enforcing regulations against Kalshi. Both courts read Section 2(a)(1)(A) of the CEA as conferring exclusive jurisdiction indicative of express preemption and evidencing congressional intent to occupy the field.³ The New Jersey case is currently under appellate review by the Third Circuit, and oral argument took place in September. Nevada has not appealed the decision to the Ninth Circuit.⁴

Then, in August, a Maryland district court denied Kalshi's motion for a preliminary injunction, concluding that Kalshi had not demonstrated a likelihood of success on the merits of its preemption claim.⁵ Emphasizing the strong state interest in gambling regulation, the court noted that it was "highly unlikely" that Congress intended the CEA to override state gambling laws. Unlike the New Jersey and Nevada cases, where the courts considered derivatives regulation to be the "field" that was pre-empted by the CEA, the Maryland court viewed the field to be gambling regulation. The case is on appeal, though Maryland has paused enforcement of state gaming law against Kalshi pending a Fourth Circuit decision.

In a surprising ruling in October, Judge Andrew P. Gordon, the same Nevada judge who granted the preliminary injunction for Kalshi in April, denied an injunction sought by Nadex, which offers similar event contracts.⁶ In that case, the court ruled that the event contracts offered on Crypto.com are not swaps under the CEA and therefore fall outside the CFTC's exclusive jurisdiction. Nadex is currently pursuing an appeal in the Ninth Circuit. And then, on November 14, according to press reports, Judge Gordon commented that he was likely to dissolve the injunction against the state gaming regulators that he issued in the Kalshi case back in April, commenting that "[i]t seems like

² Robinhood and Nadex provide similar offerings.

³ *KalshiEx v. Flaherty*, No. 25-cv-02152 (D.N.J. Apr. 28, 2025); *KalshiEx v. Hendrick*, No. 2:25-cv-00575 (D. Nev. April 9, 2025).

⁴ Robinhood has also brought cases seeking injunctive relief in Nevada and New Jersey, though they have not yet been heard on the merits. *Robinhood Derivatives v. Dreitzer et al.*, No. 2:25-cv-01541 (D. Nev. Aug. 19, 2025); *Robinhood Derivatives v. Flaherty et al.*, 1:25-cv-14723 (D.N.J. Aug. 19, 2025).

⁵ *KalshiEx v. Martin*, No. 25-cv-1283 (D. Md. Aug. 1, 2025).

⁶ *North American Derivatives Exchange v. Nevada Gaming Control Board*, No. 2:25-cv-00978 (D. Nev. Oct. 14, 2025).

your definition is so broad that pretty much anything can become a swap — anything can have a financial consequence.”⁷

On October 27, Kalshi filed a motion in the Southern District of New York seeking an injunction against the New York State Gaming Commission in the Southern District of New York.⁸ This follows a similar action seeking an injunction against the Ohio Casino Control Commission filed in the Southern District of Ohio on October 7, 2025.⁹ The defendants have not yet responded in either case.

Other Litigation

Several Native American Indian tribes have also filed suit against certain designated contract markets and futures commission markets (i.e., brokers) offering event contracts, alleging that the companies are engaging in illegal sports gambling on tribal lands in violation of the Indian Gaming Regulatory Act (“IGRA”) and the Tribes’ Tribal-State Gaming Compacts with California and Wisconsin.¹⁰ The tribes seek preliminary and permanent injunctions against Kalshi’s and Robinhood’s operations on their reservations. On November 12, a California district court denied a motion for a preliminary injunction filed by three California tribes, holding that they had not shown a likelihood of success on the merits of their claim because the Unlawful Internet Gambling Enforcement Act (“UIGEA”), rather than IGRA, governs intrastate event contracts. UIGEA contains an express carveout for any transaction “conducted on or subject to the rules of a registered entity” under the CEA. In a written opinion, the Court noted that it “does not take lightly Plaintiffs’ concerns about the effects Kalshi’s activities might have on tribal sovereignty and the Tribes’ finances. Indeed, by self-certifying the legality of its event contracts in a way that insulates its activities from judicial review, Kalshi may have found a way around prohibitions on interstate gambling that were created with the Tribes’ best interest in mind. But, on the record currently before the Court, and in light of the Commodity Exchange Act’s self-certification process, Plaintiffs have not met their burden of showing a likelihood of success on their IGRA claim.”¹¹

In other related cases, the Massachusetts Attorney General sued Kalshi in state court, arguing that the event contracts that it offers constitute unlicensed gambling and create a public health risk.¹² Others have brought

⁷ Judge Signals Kalshi Likely to Lose Bid Over Nevada Sports Bets, Bloomberg (Nov. 14, 2025), <https://www.bloomberg.com/news/articles/2025-11-14/judge-signals-kalshi-likely-to-lose-bid-over-nevada-sports-bets>.

⁸ *KalshiEx v. Williams*, No. 1:25-cv-08846 (S.D.N.Y. Oct. 27, 2025).

⁹ *KalshiEx v. Schuler*, No. 2:25-cv-01165 (S.D. Ohio Oct. 7, 2025).

¹⁰ *Ho-Chunk Nation v. Kalshi*, No. 3:25-cv-00698 (D. Wis. Aug. 20, 2025); *Blue Lake Rancheria v. Kalshi, et al.*, No. 3:2025-cv-06162 (N.D. Cal. Jul. 22, 2025).

¹¹ *Blue Lake Rancheria v. Kalshi*, No. 25-cv-06162, slip op. at 12 (N.D. Cal. Nov. 10, 2025).

¹² *Massachusetts v. Kalshi*, No. 2584CVQ1, 525 (Mass. Super. Ct. Sept. 12, 2025). Kalshi is seeking to remove the case to federal court; the merits of the case have not been addressed.

lawsuits against Kalshi and other entities to recover gambling losses, alleging that the companies operated illegal gambling enterprises.¹³ These cases remain in the early stages and the defendants have not yet responded.

Recent CFTC Advisory

On September 30, the CFTC issued an advisory warning of the pending and potential litigation around sports-related event contracts.¹⁴ The advisory cautioned that market intermediaries and market operators supporting trading in such event contracts should have appropriate contingency planning, disclosures, and risk management policies and procedures in place, given this uncertainty. In a footnote, the CFTC stated that it had not “taken any official action” approving the listing of sports-related event contracts on a designated contract market (“DCM”), noting that any sports-related event contracts that are currently listed on DCMs had been listed pursuant to self-certifications.

Potential Outcomes

Divergent rulings on CEA preemption have created substantial uncertainty for market participants that may persist unless and until it is addressed by the Supreme Court, Congressional action, or further CFTC action. Ongoing litigation and regulatory developments should be closely monitored, particularly as appellate decisions and potential Supreme Court review may clarify the scope of CFTC authority and the degree to which state gaming laws may continue to apply to event contracts. The Senate confirmation hearing for Michael Selig, the nominee for CFTC Chairman, took place this week. When asked whether sports events contracts should be listed on CFTC-regulated markets, Mr. Selig observed that the issue is complex and that he would respect the decision of the courts and would work with Congress should it determine that amendment of the CEA was appropriate.

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If you have any questions regarding this alert, please contact one of the authors, any member of our event contracts team listed below, or the Willkie attorney with whom you regularly work.

¹³ See, e.g., *South Carolina Gambling Recovery v. Kalshi*, No. 8:25-cv-12867 (D.S.C. Oct. 7, 2025); *Georgia Gambling Recovery v. Kalshi*, No. 4:25-cv-00311 (M.D. Ga. Oct. 2, 2025); *Ohio Gambling Recovery v. Kalshi*, No. 4:25-cv-01573 (N.D. Ohio July 28, 2025).

¹⁴ CFTC Advisory No. 25-36 (Sept. 30, 2025).

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