

Securities Regulation Daily Wrap Up, DERIVATIVES—D.C. Cir.: CFTC abandons appeal in Kalshi elections markets case, (May 7, 2025)

By [Lene Powell, J.D.](#)

The Kalshi exchange will have a freer hand to offer trading on outcomes in political elections.

The CFTC asked the D.C. Circuit to dismiss its appeal in a case involving the Kalshi predictions market. The CFTC was challenging a district court ruling that the regulator did not have the authority to restrict certain event contracts based on political elections. Kalshi agreed to the dismissal ([KalshiEx v. CFTC](#), No. 24-5205 (D.C. Cir. filed May 5, 2025)).



Recent developments in Kalshi actions against state gaming regulators in Nevada and New Jersey may have influenced the CFTC's decision to drop its appeal.

Kalshi challenge. The Kalshi trading platform offers contracts on the outcomes of a broad variety of events including political elections. In 2023, the CFTC [disapproved](#) certain Kalshi contracts predicting political control of the U.S. Congress, finding that they were against the public interest, constituted "gaming," and violated state or federal law.

Kalshi [challenged](#) the action in D.C. federal district court. The court [granted summary judgment to Kalshi](#), ruling that the [CFTC did not have the authority](#) under the Commodity Exchange Act to conduct a public interest review of the contracts.

The CFTC appealed to the D.C. Circuit, which held [oral argument](#) on January 17.

CFTC motion to dismiss. The CFTC filed an unopposed motion to dismiss its appeal. The parties stipulated that they would bear their own costs, and Kalshi waived any claims arising from the litigation.

State gaming regulators. The CFTC did not say why it decided to abandon its appeal and let the district court decision stand. However, recent developments in two related cases may have played a role.

In April, Kalshi obtained restraining orders in federal district court blocking cease-and-desist orders by state gaming regulators in [Nevada](#) and [New Jersey](#). The state authorities asserted that Kalshi was offering illegal wagers on sports and elections outcomes. However, the district courts found that the state actions were preempted by the Commodity Exchange Act, which provides exclusive jurisdiction over registered derivatives exchanges.

This affects the CFTC's case because one of the CFTC's arguments was that the contracts constituted illegal "gaming" under state law. This is arguably undermined by the Nevada and New Jersey district court decisions that the state regulators do not have the power to regulate Kalshi.

Although the rulings are in different federal jurisdictions than D.C. and the state authorities may appeal the decisions, at the moment the law has tilted toward Kalshi.

Kalshi reaction. Kalshi celebrated the CFTC's move in a post on the X social media platform.

"The CFTC has moved to dismiss its appeal against us," [wrote](#) Kalshi. "Election markets are here to stay."

This is case [No. 24-5205](#).

Attorneys: John Henry Thompson (Jones Day) for KalshiEX LLC. Margaret P. Aisenbrey for the CFTC.

Companies: KalshiEX LLC

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