

## **Securities Regulation Daily Wrap Up, FEDERAL PREEMPTION—3d Cir.: Third Circuit blocks New Jersey gambling enforcement against Kalshi sports trades, (Apr 7, 2026)**

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

A dissenting judge noted that Kalshi advertises its trades as “legal sports betting.”

A three-judge panel of the Third Circuit upheld a preliminary injunction for the Kalshi exchange against enforcement by the state of New Jersey over sports-related event contracts. In a 2-1 ruling, the panel upheld an injunction for Kalshi granted by the New Jersey district court, ruling that New Jersey’s state gambling laws directly interfere with swaps transactions offered by Kalshi in violation of the CFTC’s exclusive jurisdiction ( [KalshiEx LLC v. Flaherty](#), No. 25-1922 (3d Cir. Apr. 6, 2026)).



The ruling means that New Jersey may not proceed with its enforcement action against Kalshi over trading of sports-related contracts.

The panel found that the event contracts are swaps traded on a CFTC-licensed designated contract market (DCM). The panel agreed with the district court that Kalshi demonstrated a likelihood of success on its argument that the Commodity Exchange Act (CEA) preempts New Jersey law from reaching into CFTC-licensed DCMs.

It is the first ruling by a federal appeals court on whether states can enforce gambling laws against the trading of event contracts offered by prediction markets. Similar litigation is pending in several other circuits.

**New Jersey’s laws are federally preempted.** Looking to the text of the CEA, the panel concluded that the CFTC has exclusive jurisdiction over swaps traded or executed on a DCM, including Kalshi’s sports-related event contracts.

“Because Kalshi’s sports-related event contracts are traded on a CFTC-licensed DCM and depend on event outcomes associated with economic consequences, they fit within the Act’s definition of ‘swaps’ subject to the CFTC’s jurisdiction,” the panel wrote.

The panel agreed with the district court that the scope of field preemption was the regulation of trading on a DCM (a form of futures trading) rather than regulation of gambling (a broader and traditionally state-regulated field).

Going beyond the district court’s ruling, the panel found that conflict preemption also applied. The panel concluded that allowing New Jersey to enforce its gambling laws and state constitution would “create an obstacle” to executing the Act because such state enforcement would prohibit Kalshi, which operates a licensed DCM under the exclusive jurisdiction of the CFTC, from offering its sports-related event contracts in New Jersey.

“This state regulation is exactly the patchwork that Congress replaced wholecloth by creating the CFTC,” the panel stated.

The majority rejected the dissent’s emphasis on the “strong presumption against preemption in areas of the law that States have traditionally occupied.” The majority noted that the federal government has regulated the derivatives market for over a century.

The majority also rejected New Jersey’s argument that the Act’s savings clause carveouts preserved state jurisdiction over sports-related event contracts on CFTC-licensed DCMs.

**Dissent.** Judge Jane Roth dissented, saying Kalshi's sports contracts offerings are "virtually indistinguishable" from bets available on state-regulated online sportsbooks like DraftKings and FanDuel. She pointed to specific Kalshi contracts on the Carolina Panthers vs. Tampa Bay Buccaneers football game on January 3, 2026, including winner, point spread and prop trades like whether a certain wide receiver would score a touchdown.

"I see Kalshi's actions as a performative sleight meant to obscure the reality that Kalshi's products are sports gambling," Roth wrote. "Because Kalshi is facilitating gambling, it can be subjected to state regulation."

In Roth's view, neither field nor conflict preemption applied. She concluded that the majority's preemption analysis failed to adequately consider the presumption against preemption, which applied with special force in this context because gambling has traditionally been regulated by the states.

Roth included screenshots of Kalshi ads promoting "Sports Betting Legal in All 50 States on Kalshi" and "The First Nationwide Legal Sports Betting Platform."

"Basic abductive reasoning tells us that if it looks like gambling, talks like gambling, and calls itself gambling, it's gambling," Roth wrote.

The case is [No. 25-1922](#).

Judge: Porter, D.

Attorneys: Gurbir S. Grewal (Milbank LLP) for KalshiEX, LLC. Emily M. Bisnauth (Office of Attorney General of New Jersey) for Mary Jo Flaherty.

Companies: KalshiEX, LLC

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