

Securities Regulation Daily Wrap Up, FEDERAL PREEMPTION—9th Cir.: **Ninth Circuit hears oral argument on Nevada gambling enforcement against prediction markets, (Apr 17, 2026)**

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

The panel explored whether event contract trading counts as “gaming” under the Commodity Exchange Act.

In oral argument to the Ninth Circuit, three prediction markets operators argued that Nevada cannot regulate the sports-related trading they offer because the Commodity Exchange Act preempts Nevada’s gambling laws. Nevada called this a “severe intrusion on state sovereignty” that would force most sports gambling to take place on CFTC-regulated derivatives exchanges (*State of Nevada v. KalshiEX, LLC*, No. 26-1304 (9th Cir. Apr. 16, 2026)).

The [three-judge panel](#) asked pointed questions of both sides, with Judge Ryan Nelson at one point calling a Crypto.com argument “sophistry of the nth degree.”

The CFTC argued as amicus on behalf of Crypto.com, Kalshi, and Robinhood, who consolidated their separate actions for appeal.

The oral argument follows a recent [Third Circuit ruling for Kalshi on similar issues](#), with a three-judge panel upholding a preliminary injunction against New Jersey’s enforcement of state gambling laws.

District court rulings. The exchanges are appealing rulings by a Nevada federal district court [denying requests for injunctive relief](#) against enforcement by Nevada gaming regulators.

“Special rule” for event contracts. Much of the discussion involved the Commodity Exchange Act’s “special rule” for event contracts enacted by the Dodd-Frank Act.

Under the “special rule,” the CFTC may determine that contracts or swaps based on an occurrence involving certain activities including “gaming” are against the public interest. If the CFTC makes this determination, exchanges may not list contracts involving that activity.

So far, the CFTC has not made a broad determination that contracts involving “gaming” are against the public interest.

Relating to gaming. Judge Nelson discussed the special rule in depth, saying that it appeared to prevent the listing of contracts involving gaming. Counsel for Crypto.com countered that the CFTC has not enforced it that way and has issued guidance indicating to the contrary.

When asked why the CFTC has not taken up the issue, Crypto.com said that would be for the CFTC to address—not Nevada.

Similarly, counsel for Kalshi argued that the CFTC *could* prohibit contracts relating to gaming, but so far has not.

Nelson posed a hypothetical about a video link to a roulette table at Caesar’s palace. If you traded a contract on whether the outcome was red or black, would that involve gaming?

Kalshi said yes, that would be gaming. Nelson asked if state regulation of that contract would be preempted because the contract was offered on an exchange. Kalshi demurred, saying that their exchange does not offer contracts like



that and the CFTC would not likely allow it.

Broad or narrow preemption? Judge Bridget Bade said it would be “a little bit troubling” if the argument was that all state gambling laws were preempted. But instead, she understood the exchanges’ argument to be that preemption applied because event contracts should not be viewed as gaming. They are swaps and involve a contractual arrangement instead of betting against the house.

Crypto.com agreed, adding that another distinction is that event contracts are offered by financial institutions, unlike sports bets. Counsel said that Dodd-Frank’s concern was with financial transactions offered by intermediaries.

Nelson was skeptical of the distinction between trading of contracts between participants on exchanges and betting against the house. He noted that odds change as trading occurs, just as the house changes the odds.

“This is sophistry to the nth degree,” said Nelson. “I mean, it’s still the house.”

Nelson was also concerned that a strict interpretation of the special rule would mean that the CEA preempts all state gambling.

“The import of that is that everything that’s going on in Caesars is illegal,” said Nelson.

Counsel for Kalshi protested vigorously, saying the CEA only regulates trading on exchanges, not off-exchange transactions.

“But it’s the same action. In many cases, it’s the same action. That’s where I struggle,” said Nelson.

Kalshi pointed to structural differences between CFTC-regulated trading and state-regulated betting. The trading of event contracts on exchanges serves hedging and price discovery functions, bringing together buyers and sellers who sell and buy at market prices.

Financial consequences. Judge Kenneth Lee picked up on the point about hedging and price discovery. He challenged whether sports outcomes have financial consequences.

“The most valuable franchise in America is the Dallas Cowboys. They haven’t won anything in decades,” said Lee. “I don’t know if any single game or even series really has a financial consequence.”

Kalshi pushed back, saying that the CFTC has told the court that there are millions of dollars at stake on the outcome of games, and there are bonuses tied to player performance.

“Sucking in” all gambling. Counsel for the state of Nevada warned of major disruption if the court ruled for the exchanges.

“What plaintiffs and the CFTC are urging is a severe intrusion on state sovereignty, because the consequence of their position is that all sports bets would qualify as swaps,” she said.

“And critically, CEA section 2(e) requires that all consumer swaps be traded on DCMs. That would suck in all sports betting as we know it, and make the CFTC the nation’s gaming regulator.”

Judge Nelson said he could envision a world where some sports-related transactions are traded on sports betting outlets and others on exchanges.

“What seems to be more traditionally regulated by the state is, the Raiders are playing in the Super Bowl—are they going to win?” said Nelson. “What color is the Gatorade that is going to get dumped on the coach at the end of the game? That seems to be a little bit less in the traditional wheelhouse of state regulatory gaming.”

The case is No. 26-1304.

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