Securities Regulation Daily Wrap Up, FEDERAL PREEMPTION—S.D.N.Y.: No injunction for Kalshi in its case against N.Y. gaming commissioners, says court, (Jul 8, 2026)

By Rebecca E. Hoffman, J.D.



The court found that the DCM failed to sufficiently demonstrate federal preemption of New York's gambling restrictions.

Prediction markets operator KalshiEX LLC is not entitled to a temporary restraining order or preliminary injunction in its action seeking to block New York gaming officials from enforcing their anti-gambling laws against Kalshi's activities in the state, the Southern District of New York ruled July 7, finding that New York's gambling laws are not preempted by the CEA (KalshiEX LLC v. Williams, No. 25 Civ. 8846 (S.D.N.Y. July 7, 2026)).

This matter is just one of many pending cases asking courts to resolve the clash between the CFTC's authority to regulate swap trading and the states' efforts to control gambling activities within their borders. Courts have granted injunctions in some of these cases and denied it in others.

Under the CEA, entities like Kalshi that trade event contracts must be registered as designated contracts markets, and then they can self-certify that their contracts are in compliance. But in New York, sports gambling entities must be licensed by the New York Gaming Commission, and thus the Gaming Commission sent Kalshi—which does not carry a license—a cease-and-desist letter, demanding that Kalshi refrain from operating its "unlicensed mobile sports wagering platform in New York State in connections with any sports event."

Kalshi then brought the present action against the Gaming Commission and the individual commissioners, seeking injunctive relief based on the CFTC's exclusive jurisdiction over sports-related event contracts.

At the outset, the court dismissed the Gaming Commission from the case, finding that it had not waived its Eleventh Amendment immunity.

Preemption. The court initially noted that there is a presumption against preemption in areas where, as here, states have historically exercised their police powers. The court then assumed without deciding that the event contracts at issue are swaps under the CEA (which the defendants dispute). But even though the CEA grants the CFTC exclusive jurisdiction over swap transactions, this does not necessarily mean that all state laws must give way, the court explained.

The court pointed to language in the statute that "evinces Congress' intent to leave room for states to regulate certain activities that may have otherwise been covered by the CEA." For example, 7 U.S.C. § 7a-2(c)(5)(C) gives the CFTC the ability to prohibit event contracts that involve activity "that is unlawful under any … State law." State gambling laws are mentioned in another section, prohibiting state regulation in specific circumstances that are not at issue here, which indicates that the intent was to allow regulation in other contexts.

Conflict and field preemption. The court moved to conflict preemption, finding that Kalshi did not show how New York's gambling prohibitions would interfere with achieving the purposes of the CEA. Kalshi could comply with both, the court found. Per state law, Kalshi would have to limit access to its exchange to those living only in New York, but although the CFTC does require that DCMs provide "impartial access" to its offerings, the purpose of that requirement is to prevent discrimination, not to require that DCMs offer contracts nationwide. Further, "New York's gambling laws as applied to Kalshi's sports-event contracts do not frustrate Congress' objectives underpinning the

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CEA," the court observed. The congressional record for the CEA shows that "Congress sought to prohibit the exact types of event contracts that Kalshi seeks to offer," the court observed.

The court went on to find that Kalshi would not suffer irreparable harm from an injunction, and that the gaming commissioners' exercise of authority over gaming in New York and enforcing the gambling statutes "heavily outweigh" Kalshi's interests.

The case is No. 25 Civ. 8846.

Judge: Torres, A.

Attorneys: Andrew Leighton Porter (Milbank LLP) for KalshiEX LLC. Katherine Rhodes Janofsky, Office of the Attorney General, for Robert Williams.

Companies: KalshiEX LLC

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