

Securities Regulation Daily Wrap Up, FEDERAL PREEMPTION—U.S.: New Jersey takes prediction markets fight to the Supreme Court, (Sep 3, 2026)

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

The petition stressed the unity of 44 states on the critical importance of their police power to regulate sports gaming.

The State of New Jersey has filed a petition for certiorari asking the Supreme Court to affirm its authority over sports-related trading on financial prediction markets. New Jersey is challenging a Third Circuit decision that the federal Commodity Exchange Act preempts the state's gambling laws as to event contracts traded on the Kalshi exchange (Petition for Writ of Certiorari, [Flaherty v. KalshiEx](#) (Sept. 2, 2026)).



"These companies have no right to offer their sports bets without following state law, which is why dozens of States across the ideological spectrum have opposed them," New Jersey Attorney General Jennifer Davenport said in a [press release](#).

At least 20 states are litigating whether Congress displaced states' authority over sports wagering via the Dodd-Frank Act in 2010, the petition stated.

The petition cited a "direct, acknowledged, and irreconcilable split" between the Third Circuit, which ruled for Kalshi on preemption, and the Ninth Circuit, which ruled the opposite.

"That split has tremendous importance, as it will determine whether a multi-billion-dollar gaming industry can suddenly operate free from state sports-gaming laws," the petition stated.

"Exceptionally important" question. The petition cited "overwhelming" practical economic impacts, saying that sports wagering generated \$16.89 billion in revenue for states, as well as revenue from sportsbooks in tribal casinos.

The petition noted that in an amicus brief 40 states had stressed their critical police power to regulate sports gaming.

Moreover, the dispute goes to the heart of the states' police power "posing a fundamental threat to the over 150-year-long tradition of state gaming regulation."

"The decision below upends state police powers and policy choices regarding sports gambling and imposes a one-size-fits-all rule for sports gambling across the Nation," the petition stated.

State laws on sports betting are diverse, with 39 permitting some gambling while 11 prohibit it, the petition explained.

"But in Kalshi's view, sports bets offered on CFTC-registered markets—even if advertised as sports bets and functionally indistinguishable from sports bets—are immune from state laws and subject only to CFTC oversight, which has 'no expertise in crafting' betting policy," said the petition.

Forty-four states wrote a [comment letter](#) to the CFTC emphasizing the critical nature of their police power to regulate sports gaming, the petition explained. In addition, 40 states filed an [amicus brief](#) backing this position and hundreds of tribes have expressed concern that the Third Circuit's reading allows Kalshi to "override the entire purpose and function of the Indian Gaming Regulatory Act" and "enter Indian lands and siphon gaming revenues away from tribes."

Third Circuit decision for Kalshi. Kalshi sued New Jersey in 2025 after a state gaming authority sent a cease-and-desist letter stating that Kalshi was violating the law by offering trading on sports-related event contracts without a

sports wagering license.

New Jersey adopted its sports gambling laws after the Supreme Court's 2018 decision in *Murphy v. NCAA* that allowed states to regulate sports wagering, the petition explained.

"Just eight years ago, this Court reiterated that 'each State is free to act on its own' in regulating sports betting. But Kalshi has a different view," the petition said.

The Third Circuit affirmed an injunction against the enforcement of New Jersey's sports-gambling laws by a 2-1 vote, agreeing with the district court that the Commodity Exchange Act (CEA) preempts New Jersey law from regulating swaps contracts traded on CFTC-licensed exchanges like Kalshi.

"Deep errors below." The petition disputed that Kalshi's contracts are not wagers, noting that Kalshi has billed itself as "the first app for legal sports betting in all 50 states." Moreover, the Third Circuit decision was "mistaken" because sports bets are not swaps contracts and federal law does not preempt state sports-gambling laws regardless.

"The text and structure of the statute Congress enacted confirm Congress did not in fact federalize this multi-billion-dollar industry," said the petition.

The petition argued that the outcome of a match or number of goals scored by a player is not an "event" for purposes of the CEA. This was especially true because Congress also included the separate term "occurrence" in the statute, meaning an "event" must be more than anything that occurs.

Further, the sports-related outcomes on which Kalshi allows bets are not "associated with" potential financial consequences as used in Dodd-Frank, the petition stated. There was no limiting principle for the term, and the Third Circuit's holding would "expand the CFTC's jurisdiction to an absurd degree" because of the CEA's requirement that swaps must be traded on CFTC-registered markets.

"In other words, if 'swaps' actually include sports bets, CFTC-registered markets become the only place that they can be offered, suggesting casinos across the Nation have been flouting federal law since 2010," the petition said.

The petition argued that field preemption did not apply because Congress had indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts. Conflict exemption did not apply either, as Kalshi was not prohibited from offering sports bets in New Jersey as long as it obtains a sports-wagering license.

Seeking certiorari. Based on the circuit split and "wrong" decision by the Third Circuit, New Jersey asked the Supreme Court to grant its petition for review.

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Companies: KalshiEX, LLC

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