Securities Regulation Daily Wrap Up, FEDERAL PREEMPTION—9th Cir.: Ninth Circuit rules Nevada can regulate sports-related prediction markets under gambling laws, (Aug 31, 2026)

By Lene Powell, J.D.



The ruling creates a circuit split with the Third Circuit, increasing the likelihood of a Supreme Court showdown over state versus federal regulation of prediction markets.

The Ninth Circuit ruled against the Kalshi trading platform in its challenge to Nevada's enforcement of state gaming laws against sports-related prediction markets, dissolving a previous injunction blocking the state from acting. A three-judge panel concluded that the Commodity Exchange Act likely did not preempt Nevada laws because Kalshi's event contracts are not "swaps" and a CFTC rule prohibits the listing of contracts based on "gaming," (*KalshiEX, LLC v. Assad*, No. 25-7516 (9th Cir. Aug. 28, 2026)).

While the 3-0 ruling affirmed the Nevada district court's decision on sports-related contracts, the panel remanded for further proceedings concerning election-related contracts.

The panel's ruling conflicts with a Third Circuit decision that blocked New Jersey from enforcing state gaming laws against Kalshi's sports-related event contracts.

Kalshi challenge. Kalshi is fighting a cease-and-desist order by the Nevada Gaming Control Board relating to Kalshi's offering of sports-related event contracts without a Nevada gaming license. As in similar actions in other states, Kalshi argues that the CFTC's exclusive jurisdiction over contracts traded on designated contract markets (DCMs) preempts state gaming laws as applied to the contracts.

Kalshi initially won an injunction in Nevada federal district court that blocked the order, but following a ruling in a similar case involving Crypto.com, the district court subsequently dissolved the injunction, saying the law and facts had evolved. Kalshi asked for a stay from the Ninth Circuit, which held oral argument on April 16.

Nevada laws not preempted. The three-judge panel determined that Nevada's laws were not federally preempted as to Kalshi's sports-related contracts. First, the panel looked to Kalshi's own description of its services, noting that Kalshi has advertised offering "the first app for legal sports betting in all 50 states." Sports betting is a quintessential form of gambling, the panel said.

As a threshold issue, the court decided it had the authority to determine what is and is not a swap under Section 1a(47)(A)(ii) of the Commodity Exchange Act (CEA). Courts routinely interpret statutory language to determine whether state law is preempted and the scope of that preemption. This was not a collateral proceeding or attempted "end-run" around the Administrative Procedure Act (APA), the court said. Rather, Kalshi turned to the courts to seek injunctive relief against Nevada's enforcement of its own state law about what qualifies as a "bet" or "wager."

No express preemption. Next, the court decided that Nevada's laws were not expressly preempted by the CEA. While Section 2(a)(1)(A) does include an express preemption provision regarding swaps traded on DCMs, the CFTC's exclusive jurisdiction does not extend to *all* contracts traded on DCMs. For example, some "spot" contracts are traded on DCMs but are not subject to the CFTC's exclusive jurisdiction under § 2(a).

The court observed that Kalshi has described and marketed its sports event contracts as "legal sports betting."

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Looking past descriptions to substance, the court noted that one can make the same exact bet that the Las Vegas Raiders will win a game by over 7.5 points on both Caesars Sportsbook and Kalshi. Kalshi users can effectively place prop bets, bet the point spread, bet a specific score, or create a several-leg parlay.

“The substance of the sports event contracts offered on Kalshi’s DCM is sports gambling, regardless of whether Kalshi calls them swaps,” the court stated.

The panel was not persuaded by Kalshi’s argument that unlike a casino or “house,” Kalshi’s DCM is not counterparty to any trade, does not set betting odds, does not profit when its customers lose, and has no incentives to favor itself at customers’ expense. Those were distinctions without differences and did not relate to the definition of “swap.”

Further, Kalshi’s idea of “swap” lacked a limiting principle, the court said. “If there is not a difference under the CEA’s swap definition between sports betting on Kalshi and sports betting in Caesars Sportsbook, then every person placing a sports bet at Caesars Sportsbook (or anywhere else for that matter) is violating the CEA.”

If Congress had meant to delegate regulation of sports gambling to the CFTC, it would have done so more clearly, the court said. If an agency wants to exercise expansive regulatory authority over a major issue like gambling, an *ambiguous* grant of statutory authority is not enough. The CFTC is not a national gambling regulator, and no one suggested it was until over a decade after the law was passed.

And if Congress *did* intend to give the CFTC sweeping authority over gambling—a power traditionally exercised by the states and Tribes—that would create a major-questions problem, the court said. Americans wagered almost $150 billion on sports in 2024, and states understandably feel protective of their longstanding regulatory authority, given the significant impact gambling has on society.

“It is implausible that Congress intended to allow the CFTC to engage in the national regulation of gambling based on expansive definitions of the words ‘event’ and ‘associated with’ in a Wall Street reform bill,” the court stated.

The court also concluded that Kalshi’s event contracts were not “excluded commodities,” which do not fall under the CFTC’s exclusive jurisdiction, because they are “associated with a financial, commercial, or economic consequence” under Section 1a(19)(iv)(II).

The court determined that Kalshi’s self-certification of its sports contracts violated the CEA. The court read CFTC Regulation §40.11 as prohibiting the listing of event contracts based on “gaming.” The court noted that Kalshi itself previously told the D.C. Circuit in a CFTC lawsuit regarding Kalshi’s election contracts that “[a]n event contract therefore involves ‘gaming’ if it is contingent on a game or a game-related event—like the Kentucky Derby, Super Bowl, or Masters golf tournament,” and that “Congress did not want sports betting to be conducted on derivatives markets.” The panel agreed.

No conflict preemption. The court also found that the state regulations were not preempted under conflict preemption. Kalshi argued that it was impossible to comply with both Nevada law and the CEA because it cannot provide its users with “impartial access” to its markets and services if it bars Nevada residents from trading in sports event contracts.

But this was a false, all-or-nothing proposition, said the court. Kalshi did not explain why not offering sports events contracts in Nevada would run afoul of CFTC Regulation §38.151(b). The district court found no evidence that Kalshi would violate the CEA and thus be subject to adverse action from the CFTC if it complied with Nevada gaming laws. And, language in the CEA authorizing the CFTC to disallow contracts involving activity unlawful under state law established that state law and the CEA can coexist.

Kalshi could use geofencing like its competitors, the panel said. It just refused to.

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No field preemption. The court also found that field preemption did not apply.

“While the CEA preempts the field of regulating swaps traded on a DCM … the Nevada state laws and regulations at issue … regulate ‘gaming activity,’ including operating an unlicensed ‘sports pool’ in which ‘wagers’ on ‘sporting events or other events’ are accepted, a field which the CEA has not preempted,” the panel said.

Injunction factors. Finally, the court found that Kalshi did not show it was likely to suffer irreparable harm or that an injunction was both equitable and in the public interest. The costs of geofencing were unlikely to be too expensive for a company of Kalshi’s size, and other possible harms were either speculative or self-inflicted. The court noted that Kalshi began offering its contracts against the CFTC’s then-existing prohibition.

Affirmed for sports, remanded for elections. The court affirmed the district court’s order dissolving the preliminary injunction enjoining the Nevada Gaming Control Board, the Nevada Gaming Commission, and their members in their official capacities from enforcing state laws against Kalshi’s sports-related event contracts.

However, the court remanded to the district court for consideration of Nevada’s challenges to Kalshi’s election contracts.

This is case No. 25-7516.

Judge: Nelson, R.

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