Wolters Kluwer

Strategic Perspectives

Battle royale kicks off as financial exchanges move into sports betting markets

By Lene Powell, J.D.

A colossal clash is shaping up in federal courts over regulation of sports betting.

Several financial exchanges are challenging enforcement actions by states and tribal nations aimed at preventing them from offering sports-related trading in those jurisdictions.

Kalshi and other exchanges say federal law preempts state regulation of the contracts. But the states and tribes say the trades constitute illegal sports betting and Congress did not intend for state and tribal laws to be displaced.

The litigation is being fought in multiple states. Kalshi has won preliminary victories in district courts in New Jersey and Nevada, and the Third Circuit is slated to hear related oral arguments on September 10. But Kalshi was denied a preliminary injunction in Maryland and has appealed to the Fourth Circuit.

Billions of dollars are potentially at stake. State-regulated sports betting has shot up from less than $2 billion in 2020 to almost $14 billion in 2024, according to a recent report by the American Gaming Association. Shifting part of this market to financial exchanges could siphon off much-needed state tax revenue.

Major amicus groups also warn of societal harms from unregulated gambling, cautioning that an "ill-equipped CFTC" cannot provide the same safeguards as "robust" state regimes.

Precedent that may arise from the litigation could also potentially affect other state interests, like regulation of crypto markets.

Backing from the sidelines

Powerful interests are backing New Jersey in its Third Circuit appeal, including 34 state attorneys general along with major gaming associations, Indian tribes, and public interest organizations.

Going to bat for Kalshi are several former members of Congress, including former Sen. Blanche Lincoln, who helped enact the Dodd-Frank Act provision at issue. (Lincoln has disclosed that she receives compensation from Kalshi.) Several crypto firms have also filed amicus briefs for Kalshi.

Billions of dollars are at stake as financial exchanges take on states, tribes, and gaming associations over lucrative sports betting.

Adding to the fray, a group of gaming trade associations and tribal organizations have raised questions about the nomination of Brian Quintenz for chairman of the CFTC, which is Kalshi's primary regulator. Quintenz is on the Kalshi board.

Sports betting vs. trading

State-regulated sports betting is widely offered at sportsbooks and online. Forty-seven states allow legal sports betting as of February 2025, according to the American Gaming Association. The market has expanded dramatically since 2018, when the Supreme Court struck down a federal law restricting states' authorization of sports betting in *Murphy v. National Collegiate Athletic Association*.

Coming from a different angle, financial exchanges like Kalshi and Robinhood have begun offering trades on the outcome of

Inside

Backing from the sidelines 1
Sports betting vs. trading 1
Litigation overview 2
Federal preemption 2
Public interest 3
CFTC nomination controversy 4
What's next 4

©2025 CCH Incorporated and its affiliates. All rights reserved. Reprinted with permission from CCH Incorporated.

sports events. The exchanges offer "event contracts," which are typically Yes-No positions that predict outcomes of various events, from political elections to disease epidemics to rocket launches. Sports-related contracts include game outcomes and player awards, among others.

Kalshi began listing sports-related contracts shortly before the 2025 Super Bowl. Significantly, the exchange got an important break when the CFTC allowed the sports contracts to proceed. Sports-related trading was mentioned in the CFTC's appeal of a district court's ruling that certain Kalshi contracts did not involve impermissible gaming under the Commodity Exchange Act (CEA). However, the CFTC changed direction following the January 2025 turnover in administration, and ultimately dropped its appeal in May.

With the CFTC currently on the sidelines, some states and tribes are raising a red card. Here is how the federal cases are playing out.

Litigation overview

The litigation involves two main issues: federal preemption and public interest.

Preemption

Exchanges say the state gaming laws are preempted by the CEA. They say their registered entities and contracts are regulated exclusively by the CFTC.

The states and tribes argue that their gaming laws function alongside the CEA and are not preempted. Pointing to a long history of state and federal gaming regulation, they assert that Congress could have preempted state sports betting laws but did not.

With the CFTC currently on the sidelines, some states and tribes are raising a red card.

Public interest

In amicus briefs, state attorneys general, tribes, and public interest groups warn of harms from unregulated sports trading on financial exchanges. They say it upsets carefully crafted state and tribal regulatory regimes that mitigate societal damage from gambling.

The actions include:

- 3rd Circuit: *Kalshiex LLC v. Flaherty*, No. 25-1922
- 4th Circuit: *Kalshiex LLC v. Martin*, No. 25-1892
- District of New Jersey: *Kalshiex LLC v. Flaherty*, No. 25-cv-02152
- District of New Jersey: *Robinhood Derivatives LLC v. Flaherty*, No. 25-cv-14723
- District of Nevada: *Kalshiex LLC v. Hendrick*, No. 25-cv-00575
- District of Nevada: *Robinhood Derivatives, LLC v. Dreitzer*, No. 25-cv-01541
- District of Nevada: *North American Derivatives Exchange, Inc. et al v. The State of Nevada on relation of the Nevada Gaming Control Board*, No. 25-cv-00978
- District of Maryland: *Kalshiex LLC v. Martin*, No. 25-cv-01283
- District of Maryland: *North American Derivatives Exchange, Inc. v. Martin*, No. 25-cv-01285
- Northern District of California: *Blue Lake Rancheria v. Kalshi Inc.*, No. 25-cv-06162
- Western District of Wisconsin: *Ho-Chunk Nation v. Kalshi Inc.*, No. 25-cv-00698

Federal preemption

Federal preemption comes in three types: express, field and conflict.

Types of preemption

- **Express:** Congress expressly preempts state law within the federal statute's language;
- **Field:** Federal law leaves no room for state regulation and Congress had a clear and manifest intent to supersede state law in that field;
- **Conflict:** State law conflicts with federal law such that compliance with both state and federal regulations is impossible, or a challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law.

In the Third Circuit appeal, which is the furthest along, the New Jersey Division of Gaming Enforcement (DGE) is challenging a preliminary injunction prohibiting it from pursuing enforcement against Kalshi for violation of New Jersey state gaming laws.

Field preemption

Kalshi argues that the New Jersey state gaming laws are field-preempted by the CEA. Kalshi says its sports-related event contracts are "swaps" or "future delivery" contracts and that Kalshi is a CFTC-registered designated contract market (DCM). The CFTC's "comprehensive" regulation of swaps and DCMs leaves no room for states to supplement it.

This view is backed in amicus briefs filed by former members of Congress and crypto firms Bitnomial and Paradigm. The field preemption argument is also put

©2025 CCH Incorporated and its affiliates. All rights reserved. Reprinted with permission from CCH Incorporated.

forward in a separate complaint in New Jersey federal district court by Robinhood Derivatives LLC, which seeks similar injunctive relief to Kalshi's.

"The statutory text and legislative history could not make Congress's intent any clearer," the former congressional members wrote. "It intended event contracts on designated contract markets to be regulated by the CFTC, and the CFTC alone."

New Jersey counters that Kalshi is functionally equivalent to state-regulated sports gaming entities. "In the end, no matter how much Kalshi likens itself to the Chicago Mercantile Exchange or other derivatives markets, it is no different than any other sportsbook or gambling house."

New Jersey also rejects the argument that Kalshi's sports contracts are swaps, which it says are tied to events that are "financial, economic, or commercial" in nature. The state argues that to follow Kalshi's expansive reading of "swaps" would subject all wagers on all events to exclusive CFTC jurisdiction—even raffles and casino games.

New Jersey further contends that Congress has repeatedly indicated its awareness of state gambling laws but has left these in place. In fact, they noted, in the CEA's "Special Rule" for event contracts, Congress specifically empowered the CFTC to prohibit the exact type of sports-wagering contracts offered by Kalshi as "unlawful under state law."

This view is backed in an amicus brief by attorneys general from 34 states plus the District of Columbia and Northern Mariana Islands.

"Gambling undeniably qualifies as an area of 'traditional state responsibility,'" wrote the AGs. "Thus, under the federalism canon, this Court should not interfere with the State's police power over gambling absent 'clear, unmistakable' legislation from Congress."

The AGs called this the "no elephants in mouseholes" principle.

"When Congress removes the States' historic police powers, it does not whisper in the dark of night," the AGs wrote. "Rather, courts expect Congress to speak clear as day when it intends a dramatic shift in our country's traditional balance of power."

While the New Jersey and Nevada district courts found field preemption, the Maryland district court did not. In its order denying preliminary injunction, the court concluded that even if Kalshi's sporting event contracts are "swaps" within the meaning of the CEA, the statute does not preempt Maryland's gambling laws that apply to sports wagers.

According to the Maryland court, the statutory text confirmed that Congress intended for at least some state laws to operate alongside the CEA, not to be preempted by it. The court also found evidence of congressional intent in the CEA's express preemption clauses.

Conflict preemption

Kalshi contends that conflict preemption is an alternative basis for affirmance. Kalshi emphasizes the potential for "disuniformity," in which 49 other states can attempt to impose varying penalties, making compliance impossible.

"Fifty different regimes for licensing, permissible contracts, age limits, and liquidity standards would grind a national DCM to a halt," wrote Kalshi. "Congress did not want that to happen."

"Fifty different regimes for licensing, permissible contracts, age limits, and liquidity standards would grind a national DCM to a halt," wrote Kalshi.

However, the Maryland court concluded that the state's gaming laws do not conflict with the CEA to the extent required for conflict preemption. The court said that as long as Kalshi complied, the state laws would not be an obstacle to Kalshi making the sports gambling portion of its platform available to users in Maryland.

Kalshi has appealed the Maryland decision to the Fourth Circuit.

Public interest

Teen gambling is among the social ills warned of by several amicus briefs, which caution that federal regulation cannot substitute for states' "robust" gaming laws.

An amicus brief by several public interest groups, including the Association of American Physicians and Surgeons (AAPS), warns of special harm to young people, noting that adolescents are more prone to risky behavior. New Jersey, Nevada and Maryland prohibit sports wagering under age 21; the groups say Kalshi's age limit is just 18.

More broadly, the groups warn of "immense public harm" from unregulated commercialized gambling.

©2025 CCH Incorporated and its affiliates. All rights reserved. Reprinted with permission from CCH Incorporated.

Gambling-related harms cited by public interest groups include:

- A suicide rate 15 times higher among gamblers compared with the overall population;
- Physical harm including cardiovascular disease, hypertension, peptic ulcer disease, and loss of sleep. Research suggests a link between gambling and dementia, as well as Parkinson's disease;
- Psychiatric harm including severe depression, anxiety and substance use disorders and intense feelings of shame;
- Financial losses inflicted by gambling exceed $115 billion annually in the U.S. These losses particularly harm demographics that can least afford it and regressively transfer wealth from the poor to the rich.

The state AGs said state regulations offer a "powerful tool" for combating the dangers of gambling. For example, Nevada state gaming regulations require a rigorous licensing process, reporting of suspicious activity, restrictions on improper betting and posting of resources for problem gamblers.

The American Gaming Association (AGA) points to other benefits of state sports wagering laws, including that they "incorporate safeguards for responsible gaming; protect the integrity of sports wagers and the underlying sporting events; and generate substantial tax revenue for roads, schools, and other public programs."

The gaming association also argued the CFTC is "ill-equipped" to regulate the sports betting market. "Federal regulation by the CFTC cannot fill that void because the agency lacks the legal authority, experience, and resources necessary to provide effective oversight of sports-wagering markets— particularly on the vast, nationwide scale adopted by Kalshi," the AGA wrote.

CFTC nomination controversy

Complicating an already fraught situation, a group of gaming trade associations and tribal organizations have expressed concerns about the nomination of Brian Quintenz for CFTC chairman. Quintenz, a former CFTC commissioner and current head of crypto policy at Andreesen Horowitz, is a board member at Kalshi and owns stock in the company, but he has pledged to resign his position and divest his stock if confirmed.

Quintenz was nominated by President Donald Trump in February. He appeared before the Senate Agriculture Committee in June, but the committee has not yet advanced his nomination and has twice cancelled confirmation hearings.

In a letter to Senate Agriculture Committee Chairman John Boozman (R-Ark) and Ranking Member Amy Klobuchar (D-Minn), the group said that Quintenz implied that if he is confirmed, the CFTC will continue to do nothing to address gaming contracts. The group asked the committee to require Quintenz to commit to upholding and enforcing applicable CFTC regulations before moving forward with his nomination.

The letter was signed by 29 national, state, and tribal organizations.

The group's concerns were amplified by U.S. Representative Dina Titus (D-Nev.), who is co-chair of the Congressional Gaming Caucus. In a letter to Acting Chairman Caroline Pham, Titus asked for the CFTC to conduct an inquiry into Quintenz, citing a news report that Quintenz has sought information from the CFTC regarding competitors of the Kalshi derivatives exchange.

What's next

With such a crowded field of litigation, it is difficult to predict outcomes. So far there are district court cases in at least the Third, Fourth, Seventh, and Ninth Circuits. Cases with similar claims may be consolidated within circuits, but some claims and authorities may be too different. For example, state and tribal actions may end up running in different channels.

The September 10 oral argument in the Third Circuit may narrow the preemption issues. For example:

- Are Kalshi's contracts "swaps" within the meaning of the CEA?
- Are CFTC-regulated exchanges exempted from state gaming laws even if violation is found?
- Is it significant that some state sports wagering laws explicitly include "bettor-v-bettor" wagers (versus "bettor-v-house") and some do not?

Finally, public interest concerns may have sway due to potential societal harms of unregulated gaming. The collective weight of state attorneys general, national gaming associations, and public interest groups all arguing that the states are better situated to regulate these markets will likely influence courts.

With so much on the line, it's a good bet the conflict will continue to heat up before it finally plays out.

©2025 CCH Incorporated and its affiliates. All rights reserved. Reprinted with permission from CCH Incorporated.