

# Sportsbooks or Commodity Exchanges? The Rising Legal Tensions Between Sports Betting and Prediction Markets

Article

11.13.2025

By Brett Shanks and Alex Gunning

We have all seen the commercials with witty comedians and sports legends extolling how easy it is to pick up your phone and place a bet for your favorite sports team. That is, unless you live in a state where gambling on sports is illegal or highly regulated. Historically, even going back as far as the colonies in pre-revolution America, the legality of sports betting has been left to the states and local authorities to decide, but that may have dramatically changed.

Kalshi, specifically KalshiEX, LLC, came to prevalence a relatively short time ago, when it started offering events-based prediction contracts. To put it simply, users can buy binary “yes” or “no” contracts for specified future events related to politics, economics, culture, the environment and, most recently, sports. At one point, Kalshi users could buy an event contract for whether the Philadelphia Eagles will win the NFC Championship, with the “yes” at writing trading at 24 cents per contract, and the “no” trading at 78 cents. If yes is selected, meaning you purchased that contract at 24 cents, and the Eagles win the NFC, then you would receive one dollar, or a profit of 76 cents (setting aside Kalshi’s fees) per contract purchased. If wrong, then you lose your 24 cents. But if the NFL is not for your portfolio, Kalshi also sells contracts for college football, the NBA, golf, soccer, tennis, chess, and whether Cardi B will have a #1 hit this year.

But how has Kalshi sidestepped state gambling authorities? The answer is Article VI of the U.S. Constitution, also known as the Supremacy Clause.

# Sportsbooks or Commodity Exchanges? The Rising Legal Tensions Between Sports Betting and Prediction Markets

In 2020, Kalshi applied for and was approved by the Commodity Futures Trading Commission (CFTC) as a Designated Contract Maker (DCM). As a DCM, Kalshi is allowed to create and offer “event contracts” regulated by the Commodities Exchange Act (CEA) and to self-certify that such contracts are compliant with CEA and CFTC regulations. The catch is that the CFTC can review and prohibit certain types of event contracts that are contrary to the public interest, including those related to gaming (CFTC Prohibition Rule).

After obtaining DCM status, Kalshi started offering political event contracts, such as whether the Democrats would control the House after the 2024 election. This drew the ire of the Democrat-controlled CFTC, which used its authority to prevent Kalshi from offering political event contracts. Kalshi challenged the CFTC’s regulations against it and, in a surprising result, the federal district court in Washington, DC, sided with Kalshi, holding that offering event contracts on politics was allowed under the CEA because the underlying event did not involve “gaming”—it involved politics (*KalshiEX LLC v. CFTC*, 2024). The CFTC initially appealed the ruling but dropped its appeal in May 2025 after the change in administration.

Since January 24, 2025, Kalshi has been offering event contracts based on sports, and the CFTC has taken no action. In response, several states, including Nevada, New Jersey and Maryland, sent cease and desist letters to Kalshi, claiming the company was operating in violation of state law and their respective gaming regulations. In response, Kalshi sued Nevada, New Jersey and Maryland, seeking a declaratory judgment that the federal CEA preempted state gaming laws, and also asked for a preliminary injunction to prevent the states from interfering with Kalshi’s event contracts.

In Nevada and New Jersey, federal district courts sided with Kalshi and found the CEA preempted state law and state gaming regulations under field preemption principles inherent in the Supremacy Clause. The Nevada and New Jersey district courts reasoned that, because Kalshi is a DCM under the CEA, its event contracts are governed exclusively by the CEA. As a result, the CFTC is the only entity that can take authoritative action against Kalshi, and it has chosen not to do so (*KalshiEX LLC v. Flaherty*, 2025).

However, the U.S. District Court for the District of Maryland was less impressed with Kalshi’s arguments, holding that Kalshi is not entitled to a preliminary injunction against the state’s gaming commission. The Maryland court reasoned that, while the CEA contains some field-preemptive effects, that does not mean Congress intended for the scope of the CEA’s preemption to encompass state gambling and sports wagering laws (*KalshiEX LLC v. Martin*, 2025).

The split in the district courts and the CFTC’s discretionary decisions raise significant questions about the viability of Kalshi’s business model over the long term. Nevertheless, this uncertainty has not stopped other companies, like Sleeper Markets LLC, from attempting to get in the game. However, while the CFTC has allowed Kalshi to enter the world of sports betting, Sleeper Markets recently filed suit against the CFTC

# Sportsbooks or Commodity Exchanges? The Rising Legal Tensions Between Sports Betting and Prediction Markets

and its acting chair, accusing the CFTC of intentionally delaying Sleeper Market's application to register with the CFTC, which would allow it to offer sports event contracts (*Sleeper Markets LLC v. CFTC, et al.*, 2025).

For now, the CEA appears to provide a viable vehicle for gaming companies to legally offer sports gambling across the country. Perhaps the days of betting against the house are fading, replaced by trading sports-based contracts with day traders and other speculators?

## CONTACTS

Alex J. Gunning

Brett A. Shanks

## RELATED CAPABILITIES

Esports, Sports Technology & Wagering

Sports & Recreation

STINSON

STINSON LLP \ STINSON.COM