

Disagreement Deepens Among Federal Courts Over Whether Sports Event Contracts Are Subject to State Regulation

The Commodity Exchange Act (“CEA”) has long been understood to grant exclusive regulatory authority over certain types of financial contracts to the Commodity Futures Trading Commission (“CFTC”).¹ This includes event contracts, i.e., binary option contracts where payoff depends on the occurrence or non-occurrence of a certain event, that are traded on designated contract markets (“DCMs”).² KalshiEX LLC (“Kalshi”), a designated contract market that offers retail participants the opportunity to trade event contracts, introduced event contracts related to sports in January 2025. These sports event contracts have caught the attention of gaming regulators in various states, and some of those regulators have issued cease-and-desist letters asserting that Kalshi’s sports outcome markets constitute unlawful sports wagering conducted without state licensure.³ In response, Kalshi has filed several lawsuits arguing that the CEA preempts state regulation of its sports event contracts.

These lawsuits have revealed a disagreement among the courts that only continues to deepen. Specifically, in April 2025, federal district courts in Nevada and New Jersey issued preliminary injunctions enjoining those states’ gaming regulators from enforcing certain state laws against Kalshi’s sports event contracts on the ground that the CEA preempts those laws.⁴ Subsequently, a federal district court in Maryland rejected Kalshi’s preemption arguments and denied its motion for a preliminary injunction.⁵ Then, in recent weeks, Chief Judge Andrew Gordon of the U.S. District Court for the District of Nevada, the judge who had issued a preliminary injunction in favor of Kalshi in April, shifted course. After denying a preliminary injunction in a case brought by another plaintiff raising similar issues in October,⁶ Chief Judge Gordon on November 24, 2025, dissolved his earlier preliminary injunction for Kalshi and rejected his earlier holding that the CEA preempted state regulation of such contracts.⁷

¹ See 7 U.S.C. § 2(a)(1)(A).

² See 7 U.S.C. § 7a-2(c)(5)(C)(i); 17 C.F.R. § 40.11(a).

³ See, e.g., Press Release, Nevada Gaming Control Board Release, KalshiEX Cease and Desist Order (Mar. 4, 2025).

⁴ See *KalshiEX LLC v. Hendrick*, 2025 WL 1073495, at *8 (D. Nev. Apr. 9, 2025) [hereinafter *Hendrick I*]; *KalshiEX LLC v. Flaherty*, 2025 WL 1218313, at *8 (D.N.J. Apr. 28, 2025).

⁵ *KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667, 676-77, 682, 687 (D. Md. 2025).

⁶ See *North American Derivatives Exchange, Inc. (d/b/a Crypto.com) v. Nevada Gaming Control Board*, 2025 WL 2916151, at *14 (D. Nev. Oct. 14, 2025) [hereinafter *Crypto.com v. Nevada*].

⁷ *KalshiEX LLC v. Hendrick*, 2025 WL 3286282, at *3 (D. Nev. Nov. 24, 2025) [hereinafter *Hendrick II*].

The district court decisions coming out of Nevada, New Jersey, and Maryland have all been appealed, and those appeals are currently pending in the Ninth, Third, and Fourth Circuits, respectively.⁸ Additionally, Kalshi has lawsuits pending in other districts that may deepen the split in authorities.⁹ Moreover, on September 30, 2025, the CFTC issued an advisory indicating awareness of pending and potential litigation, and confirmed that it had not yet taken any official action to approve DCM-listed sports event contracts.¹⁰ These divergent views among the district courts underscore a lack of regulatory clarity in this emerging area of law. And continued division in the courts increases the possibility of Supreme Court intervention deciding this critical issue.

I. Event Contracts and the CEA's Regulatory Scheme

Event contracts are a category of derivatives “whose payoff is based on a specified event, occurrence, or value.”¹¹ These contracts typically pose yes-or-no questions, i.e. the buyer can take a “yes” position on whether an underlying event will occur and the seller implicitly takes the “no” position.¹² An event contract’s price fluctuates based on the current probability the specified event will occur, and (similar to derivatives generally) can be used to manage risk.¹³

The CEA is the critical statute governing most derivatives, and the CFTC is responsible for administering and enforcing the CEA. Section 2 of the CEA grants the CFTC, with limited exceptions, “exclusive jurisdiction” over “accounts, agreements ... and transactions involving swaps or contracts of sale of a commodity for future delivery ... traded or executed on [DCMs].”¹⁴ A “swap” is defined to include “any agreement, contract, or transaction ... that provides for any purchase, sale, payment, or delivery ... that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.”¹⁵

Entities seeking to list event contracts on DCMs have two principal pathways to do so. First, a listing entity may self-certify that the contract complies with all relevant rules and regulations.¹⁶ Even if a contract is self-certified, however, the CFTC has authority under a “special rule” to review and prohibit specific types of event contracts for particular reasons, including if the contract is “unlawful under any Federal or State law,” involves “gaming,” or that the CFTC

⁸ See *KalshiEX LLC v. Flaherty*, 2025 WL 1218313 (D.N.J. Apr. 28, 2025), *appeal pending*, No. 25-1922 (3d Cir.) (argued in September 2025; decision pending); *KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667 (D. Md. 2025), *appeal pending*, No. 25-1892 (4th Cir.) (state enforcement paused pending appeal); *North American Derivatives Exchange, Inc. (d/b/a Crypto.com) v. Nevada Gaming Control Board*, 2025 WL 2916151 (D. Nev. Oct. 14, 2025), *appeal pending*, No. 25-7187 (9th Cir.); *KalshiEX LLC v. Hendrick*, 2025 WL 3286282 (D. Nev. Nov. 24, 2025), *appeal pending*, No. 25-7516 (9th Cir.).

⁹ To date, Kalshi has filed additional lawsuits against state gaming regulators in Connecticut, Ohio, and New York. See, e.g., *KalshiEX LLC v. Schuler*, No. 2:25-cv-1165 (S.D. Ohio Oct. 7, 2025); *KalshiEX LLC v. Williams*, No. 1:25-cv-8846 (S.D.N.Y. Oct. 28, 2025); *KalshiEX LLC v. Cafferelli*, No. 25 Civ. 2016 (D. Conn. Dec. 3, 2025).

¹⁰ CFTC Advisory No. 25-36, at 2 n.4 (Sept. 30, 2025), <https://www.cftc.gov/csl/25-36/download>.

¹¹ *Contracts & Products: Event Contracts*, CFTC, <https://www.cftc.gov/IndustryOversight/ContractsProducts/index.htm>.

¹² *KalshiEX LLC v. Commodity Futures Trading Comm’n*, 2024 WL 4164694, at *2 (D.D.C. Sept. 12, 2024) [hereinafter *KalshiEX v. CFTC*].

¹³ *Id.*

¹⁴ See 7 U.S.C. § 2(a)(1)(A).

¹⁵ 7 U.S.C.A. § 1a(47)(A)(ii).

¹⁶ 7 U.S.C. § 7a-2(c)(1). In 2000, Congress amended the CEA to allow DCMs to self-certify that their proposed contracts comply with the statute and regulations with no prior CFTC review. See *id.*

otherwise determines is “contrary to the public interest.”¹⁷ Alternatively, the entity can voluntarily request that the CFTC preapprove its proposed event contract.¹⁸

II. Divergent District Court Rulings on Preemption and Jurisdiction

Kalshi has been a CFTC-certified DCM since 2020.¹⁹ On January 24, 2025, Kalshi self-certified sports event contracts for listing and public trading.²⁰ In the months that followed, several state regulators issued cease-and-desist letters asserting that Kalshi’s sports outcome markets constitute unlawful sports wagering conducted without state licensure.²¹ Kalshi sought preliminary injunctive relief against the state gaming regulators in multiple federal jurisdictions, arguing that the CEA preempts states’ enforcement of gaming laws against DCM-listed sports event contracts.²²

The resulting decisions have so far been split. The first two federal district courts to consider the preemption issue granted preliminary injunctions in favor of Kalshi against state gaming regulators in Nevada and New Jersey.²³ Since then, the District of Maryland ruled against Kalshi and the Nevada district court’s injunction has been dissolved after the judge changed his views on the merits of Kalshi’s arguments.²⁴

¹⁷ 7 U.S.C. § 7a-2(c)(5)(C)(i); see also *KalshiEX v. CFTC*, 2024 WL 4164694, at *3. As a result of the 2010 amendment, the CFTC promulgated a related rule, 17 C.F.R. § 40.11(a). The CFTC’s authority under Regulation 40.11 has itself been questioned. In 2021, Commissioner Brian Quintenz dissented from the CFTC’s review of ErisX’s NFL futures contracts, arguing that the regulation was inconsistent with the statutory authority on which it was based and improperly shifted the burden to exchanges. *Statement of Commissioner Brian D. Quintenz on ErisX RSBIX NFL Contracts and Certain Event Contracts*, CFTC (Mar. 25, 2021), <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement032521>. More recently, in *KalshiEX v. CFTC*, the U.S. District Court for the District of Columbia ruled that the CFTC exceeded its statutory authority in prohibiting Kalshi’s political event contracts, holding that “Kalshi’s contracts do not involve unlawful activity or gaming”—and rejecting the CFTC’s expansive interpretation of “gaming” under Regulation 40.11. *KalshiEX v. CFTC*, 2024 WL 4164694, at *2. The CFTC appealed, but the D.C. Circuit denied its motion for a stay pending appeal, and the CFTC voluntarily dismissed its appeal in May 2025, leaving the district court ruling intact. See *KalshiEX LLC v. Commodity Futures Trading Comm’n*, 119 F.4th 58, 67 (D.C. Cir. 2024) (denying motion for stay pending appeal); *KalshiEX LLC v. Commodity Futures Trading Comm’n*, 2025 WL 1349979, at *1 (D.C. Cir. May 7, 2025) (order granting unopposed motion for voluntary dismissal).

¹⁸ 7 U.S.C. § 7a-2(c)(4)-(5). If prior approval is requested, the CFTC is required to take final action no later than 90 days after the submission of the request. *Id.* § 7a-2(c)(4)(C). An entity may seek CFTC preapproval to potentially reduce legal, regulatory, and operational risk.

¹⁹ See CFTC Release No. 8302-20 (Nov. 4, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8302-20>.

²⁰ Complaint at 11, *KalshiEX LLC v. Flaherty*, 2025 WL 1218313 (D.N.J. Mar. 29, 2025) (No. 25 Civ. 2152).

²¹ See, e.g., Press Release, Nevada Gaming Control Board Release, *KalshiEX Cease and Desist Order* (Mar. 4, 2025). To date, nine states have sent Kalshi cease-and-desist letters (Arizona, Connecticut, Illinois, Maryland, Montana, Nevada, New Jersey, New York, and Ohio). Relatedly, the Massachusetts Attorney General did not send a cease-and-desist letter, but initiated a lawsuit against Kalshi in state court. See *Commonwealth v. KalshiEX LLC*, 2025 WL 2637097 (Mass. Sept. 12, 2025). Additionally, private plaintiffs in various federal jurisdictions have initiated loss recovery cases against Kalshi alleging its sports event contracts constitute illegal, unregulated gambling. See, e.g., *Ohio Gambling Recovery v. Kalshi*, No. 4:25-cv-01573 (N.D. Ohio July 28, 2025); *South Carolina Gambling Recovery v. Kalshi*, No. 8:25-cv-12867 (D.S.C. Oct. 7, 2025); *Georgia Gambling Recovery v. Kalshi*, No. 4:25-cv-00311 (M.D. Ga. Oct. 2, 2025).

²² See, e.g., *Hendrick I*, 2025 WL 1073495, at *2; *Flaherty*, 2025 WL 1218313, at *4; *Martin*, 793 F. Supp. 3d at 674-75.

²³ *Hendrick I*, 2025 WL 1073495, at *8; *Flaherty*, 2025 WL 1218313, at *8.

²⁴ *Martin*, 793 F. Supp. 3d at 687; *Hendrick II*, 2025 WL 3286282, at *14.

In *KalshiEX LLC v. Hendrick* (“*Hendrick I*”), the first case to confront this issue, Chief Judge Andrew Gordon of the U.S. District Court for the District of Nevada granted Kalshi a preliminary injunction on April 9, 2025.²⁵ Examining the CEA’s text, the court held that Section 2 of the CEA “reflects congressional intent to occupy the field of regulating CFTC-designated exchanges and the transactions conducted on those exchanges,” thereby preempting Nevada’s gaming laws.²⁶ Even if the sports event contracts involved “gaming,” the court reasoned, the contracts would be subject to CFTC review via the “special rule” rather than state gaming laws.²⁷ The U.S. District Court for the District of New Jersey, in *KalshiEX LLC v. Flaherty*, reached a similar conclusion later that month.²⁸ After rejecting the defendants’ interpretations of various CEA provisions, the court held that the CEA’s exclusive-jurisdiction language evinced an intent to occupy the field of DCM-listed event contracts, thereby preempting New Jersey’s gaming law.²⁹

Kalshi’s first setback in these cases came in August 2025, when the U.S. District Court for the District of Maryland denied Kalshi’s motion for a preliminary injunction in the case *KalshiEX v. Martin*.³⁰ The court there emphasized the strong presumption against federal preemption in fields that the states have traditionally occupied, including gambling.³¹ And in the court’s view, even if sports event contracts were swaps, and thereby subject to Section 2’s exclusive-jurisdiction provision (a point the Maryland gaming officials contested), nothing in the CEA’s “structure, context and legislative history” supported overcoming that presumption as to gaming laws specifically.³² *Martin* emphasized two features of the CEA in particular to support its reasoning. The first is that the “special rule” preserved state determinations over lawfulness because one of the reasons the CFTC could invalidate an event contract was that the contract was unlawful under state law.³³ The second was that other provisions of the CEA expressly preempted certain state laws pertaining to gaming, which showed Congress knew how to preempt state gaming laws when it wanted to, thereby signaling that Congress did not want blanket preemption of state gaming regulations by the exclusive-jurisdiction provision.³⁴

III. Chief Judge Gordon’s Analytical Pivot on the Merits

After the *Martin* decision was issued, Chief Judge Gordon began to move away from the views he expressed in *Hendrick I*. This pivot began on October 14, 2025, when, in *Crypto.com v. Nevada*, Chief Judge Gordon denied

²⁵ *Hendrick I*, 2025 WL 1073495, at *2, 8.

²⁶ *Id.* at *6.

²⁷ *Id.*

²⁸ *Flaherty*, 2025 WL 1218313, at *5.

²⁹ *Id.* at *5-6.


³⁰ *Martin*, 793 F. Supp. 3d at 687.

³¹ *Id.* at 676-77, 682.

³² *Id.* at 679.

³³ *Id.* at 680.

³⁴ *Id.* at 679-81. The court further observed that Kalshi’s reading of the CEA would impliedly override the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2701 *et seq.*, and § 1084 of the Wire Act, 18 U.S.C. § 1084(a)-(b), which supports its holding against field preemption because there is a “strong presumption that repeals by implication are disfavored.” *Martin*, 793 F. Supp. 3d at 683 (citing *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018)). Kalshi is also facing various claims under the IGRA in other federal jurisdictions. See, e.g., *Blue Lake Rancheria v. Kalshi Inc.*, 2025 WL 3141202, at *1 (N.D. Cal. Nov. 10, 2025) (denying a motion seeking to enjoin Kalshi under IGRA claims); *Ho-Chunk Nation v. Kalshi*, No. 3:25-cv-00698 (D. Wis. Aug. 20, 2025) (ongoing proceedings regarding Kalshi’s alleged violation of the IGRA).



Crypto.com's request for a preliminary injunction in a case raising nearly identical issues to Kalshi's.³⁵ In *Crypto.com*, Chief Judge Gordon first addressed the issue the *Martin* court set aside: whether a sports event contract is even a swap (and thus within Section 2's ambit) in the first place.³⁶ Focusing on the term "event" within the CEA's definition of "swap," the court held that in the sports context, "event" means the sporting event itself, not who wins it.³⁷ Because Crypto.com's contracts turned on the outcome of sports events—as in, the contract would ask "Will the Eagles win Super Bowl LIX?" not "Will Super Bowl LIX occur as scheduled?"—the contracts were not "swaps" and therefore did not fall within the CFTC's exclusive jurisdiction.³⁸ Under the broader reading Crypto.com pressed, the court explained, the CEA would "sweep nearly all sports wagering into the CFTC's exclusive jurisdiction," despite states' historical regulation of gambling.³⁹

Within days of the *Crypto.com* ruling, the Nevada officials in *Hendrick I* moved to dissolve the preliminary injunction barring them from enforcing the State's gaming laws against Kalshi.⁴⁰ Chief Judge Gordon granted that motion on November 24, 2025.⁴¹ After explaining that "law and facts have evolved in this court and others,"⁴² he explicitly adopted his analysis in *Crypto.com* and concluded that Kalshi's sports event contracts are not "swaps" within the meaning of the CEA and therefore fall outside the CFTC's exclusive jurisdiction.⁴³ Chief Judge Gordon then went on to address several additional arguments Kalshi raised. For instance, he explained that the statutory definition of "swap" required the relevant event or contingency to be "associated with a potential financial, economic, or commercial consequence," which he reasoned meant the event or contingency itself had to be inherently connected with such a consequence, a condition sports event contracts do not satisfy.⁴⁴ Kalshi also proffered an alternative theory that its contracts involve sports event outcomes that are "excluded commodities" and on that basis within the CEA's definition of "swap" as a contract "based on the value" of commodities.⁴⁵ The court rejected this since the portion of the definition of excluded commodity potentially applicable to these sports event contracts requires an occurrence or contingency beyond the control of the parties to the trade and must be "associated with a financial, commercial, or economic consequence."⁴⁶ Underpinning all of Chief Judge Gordon's analysis was a concern that the

³⁵ See *Crypto.com v. Nevada*, 2025 WL 2916151, at *14.

³⁶ *Id.* at *6.

³⁷ *Id.* at *8. As relevant to sports event contracts, the CEA defines swaps as "any agreement, contract, or transaction ... that provides for any purchase, sale, payment, or delivery ... *that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency* associated with a potential financial, economic, or commercial consequence." See 7 U.S.C. § 1a(47)(A)(ii) (emphasis added).

³⁸ *Crypto.com v. Nevada*, 2025 WL 2916151, at *9.

³⁹ *Id.*; see also *id.* at *10 ("The CFTC made that public interest determination on a blanket basis when it promulgated 17 C.F.R. § 40.11(a), which prohibits DCMs from listing a swap based on an excluded commodity that 'involves, relates to, or references ... gaming,' or 'an activity that is similar to' gaming.").

⁴⁰ Defendants' Emergency Motion to Dissolve the Preliminary Injunction at 1-2, *KalshiEX LLC v. Hendrick*, 2025 WL 3286282 (D. Nev. Oct. 17, 2025) (No. 25 Civ. 575).

⁴¹ *Hendrick II*, 2025 WL 3286282, at *14; see also *Robinhood Derivatives, LLC v. Dreitzer*, 2025 WL 3283308 (D. Nev. Nov. 25, 2025) (Gordon, J.) (adopting the *Crypto.com* ruling again the following day after *Hendrick II*).

⁴² *Hendrick II*, 2025 WL 3286282, at *2.

⁴³ *Id.* at *2-3 ("I adopt in full my analysis in *Crypto*, so I give only a summary here.").

⁴⁴ *Id.* at *6. The court held that this prong does not include "externalities like potential downstream financial consequences such as parties extrinsic to the event betting on it." *Id.*

⁴⁵ See *id.* at *10; 7 U.S.C. § 1a(47)(A)(i).

⁴⁶ See 7 U.S.C. § 1a(19)(iv); *Hendrick II*, 2025 WL 3286282, at *10-12 ("[A]n event contract that does not satisfy the swap definition's requirement for a potential financial consequence also does not fit within the excluded commodity

interpretation of the CEA offered by Kalshi would impermissibly federalize state-regulated gambling. In his view, Kalshi's sports event contracts are "sports wagers and everyone who sees them knows it."⁴⁷

IV. Impact and Ongoing Litigation

Chief Judge Gordon's dissolution order in *Hendrick II* deepens the existing split in authorities over whether the CEA preempts the application of state gaming laws to sports event contracts. These issues continue to percolate in federal courts across the country and underscore a lack of regulatory clarity in this emerging area of law. Appeals currently pending in the Third, Fourth, and Ninth Circuits may further entrench this divide and increase the possibility of Supreme Court intervention on this critical issue. And hanging over all this litigation is the possibility that the CFTC might exercise its authority to prohibit event contracts it deems contrary to the public interest, including contracts that involve or relate to "gaming." As this developing space continues to change, we stand ready to assist in navigating any forthcoming needs.

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If you have any questions about the issues addressed in this alert, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Frank Weigand (Partner) at 212.701.3890 or fweigand@cahill.com; Gary Kalbaugh (Partner) at 212.701.3505 or gkalbaugh@cahill.com; Samuel Strongin (Counsel) at 202.862.8987 or sstrongin@cahill.com; or Paul Joseph (P.J.) Austin (Associate) at 212.701.3214 or paustin@cahill.com.

definition."). In relevant part, the excluded commodity definition requires the "occurrence, extent of an occurrence, or contingency" to be "associated with a financial, commercial, or economic consequence." 7 U.S.C. § 1a(19)(iv). It is notable that the definition of "swap" is so broad as to include any agreement "known to the trade as a swap." See 7 U.S.C. § 1a(47)(A)(iv).

⁴⁷ See *Hendrick II*, 2025 WL 3286282, at *8.