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Gaming

SEPTEMBER 18 , 2026

"Kalshi May Reshuffle the Cards, but It Cannot Change the Hand": Ninth Circuit Holds Event Contracts Are Illegal Sports Betting on Tribal Lands

EXECUTIVE SUMMARY

On September 16, 2026, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit reversed in part the district court's denial of a preliminary injunction in *Blue Lake Rancheria v. Kalshi, Inc.*, No. 25-7504, holding that Kalshi's sports event contracts constitute class III gaming under the Indian Gaming Regulatory Act ("IGRA") when accessed from tribal lands. The panel found that the plaintiff tribes are likely to succeed on the merits of their IGRA claim. The panel separately affirmed the district court's rejection of the tribes' Lanham Act (false advertising) claim.

The decision is a landmark ruling at the intersection of prediction markets, tribal sovereignty, and federal gaming regulation. It adds the powerful interests of Indian Tribes to an already fractured national debate over whether event contracts are regulated financial instruments or illegal sports gambling.

BACKGROUND: SPORTS BETTING IN CALIFORNIA

Sports betting is illegal in California under Cal. Penal Code § 337a(a)(6). In November 2022, California voters decisively rejected both Proposition 26 (which would have permitted in-person sports wagering at tribal casinos and licensed racetracks) and Proposition 27 (which would have authorized online sports betting statewide). In the eyes of the Ninth Circuit, despite this public policy, Kalshi's exchange platform allows California users to place what the Ninth Circuit found to functionally identical to sports bets packaged as "event contracts." As the Court observed, "[t]rading data suggests that up to 90 percent of Kalshi's trading volume comes from sports."

"THE STUFF OF SPORTS BETTING": THE COURT'S FUNCTIONAL ANALYSIS

The Ninth Circuit's opinion is notable for its unsparing functional analysis. Rejecting Kalshi's characterization of its products as derivatives or "swaps," the Court appears to have decided to focus its attention on what it views to be practical considerations relating to sports prediction markets. The opinion opens with a vivid hypothetical: "Say you live in California and want to wager whether the San Francisco Giants will win on Sunday. In California, where sports betting is illegal, you can't place your bet. Instead, you might try to buy an 'event contract' keyed to that outcome in the now burgeoning national prediction markets." Citing the Supreme Court's decision in *Bay Mills*, the court declared that "[t]his is the 'stuff' of sports betting."

In one of the opinion's most memorable passages, the Court imagined a user standing on the floor of the Blue Lake Casino Hotel downloading both Kalshi and DraftKings to place bets on the same game: "The bettor, the place, the stake, and the contingency remain the same. The only thing that changes is Kalshi's vocabulary." Drawing on an earlier decision by a separate panel of the Ninth Circuit in *KalshiEX v. Assad*, ___ F.4th ___. 2026 WL 2543846 (9th Cir. Aug. 28, 2026), the panel emphasized that "[t]he substance of the sports event contracts offered on Kalshi's DCM is sports gambling, regardless of whether Kalshi calls them swaps."

"ITS ADVERTISING IS LESS COY": KALSHI'S MARKETING TACTICS

The Court also drew a sharp contrast between what it views to be Kalshi's legal arguments and its marketing activities. While "[i]n this court, Kalshi studiously wraps its product in the language of derivatives," the opinion noted, "[i]ts advertising is less coy." Kalshi's own advertisements proclaimed that "Sports Betting [Is] Legal in all 50 States on Kalshi." Meanwhile, it argued in court that its products are not sports betting at all.

The Court also observed that in its view Kalshi offers bets on point spreads, over/under totals, and player proposition bets, and permits parlays (which Kalshi calls "combos"). The opinion included a side-by-side graphic comparing Kalshi's interface with a traditional sportsbook, noting that both "use the same format and nearly mirror each other."

Interestingly, and despite the Court's apparent focus on what it views to be parallels between traditional regulated sports wagering and prediction markets, the Court *affirmed* the district court's rejection of the tribes' Lanham Act false advertising claim. The Court maintains that the legality of Kalshi's products remains unsettled across multiple jurisdictions. Thus, the Court found that Kalshi's advertisement about nationwide legality constitutes a non-actionable statement of opinion rather than a verifiable statement of fact. It can be expected that the State will take a close look at this issue to determine if there is a basis for any appeal.

STATUTORY FRAMEWORK: IGRA, UIGEA, AND THE CEA

The Court also rejected each of Kalshi's statutory preemption arguments. First, it held that the Unlawful Internet Gambling Enforcement Act ("UIGEA") does not displace IGRA, because UIGEA expressly disavows any intent to alter, limit, or extend existing federal, state and tribal gaming regulations. Second, it held that the Commodity Exchange Act's ("CEA") "exclusive jurisdiction" provision consolidates federal regulation in the CFTC but does not "create a roving exemption from every other federal statute that may apply to the same conduct for a different reason."

The Court found it "implausible that Congress took 'a wrecking ball to all sports gambling regulations built up over decades by federal, state, and tribal governments when it amended the CEA to add the definition of swap.'" Notably, the Ninth Circuit had already held in *KalshiEX v. Assad* that Kalshi's sports event contracts are "likely not swaps under the CEA."

INDIAN TRIBES: A POWERFUL NEW VOICE IN THE PREDICTION MARKETS DEBATE

The case underscores that Indian Tribes are a uniquely powerful stakeholder in the saga over prediction market regulation and constitutes what appears to be the first Circuit-level decision to address the interests of Indian Tribes as an important stakeholder to the wider prediction market dispute. As the Court noted, class III gaming has become "the lifeblood on which many tribes have come to rely." Under IGRA and California law, tribes hold the exclusive right to conduct Las Vegas-style gaming in the state. Unregulated prediction markets offering functionally identical products threaten that hard-won exclusivity.

The breadth of amicus support also signals the stakes in the ever-changing legal battle over the existence and regulation of sports event prediction market products. The tribes were joined by, amongst others, the Indian Gaming Association, the National Congress of American Indians, the California Nations Indian Gaming Association, tribal gaming associations from multiple states, the United South and Eastern Tribes Sovereignty Protection Fund, the Native American Finance Officers Association, San Manuel Gaming and Hospitality Authority, 15 additional federally recognized tribes, the American Gaming Association, and a coalition of 27 state attorneys general plus the District of Columbia (led by Massachusetts and California).

It will be fascinating to see how tribal sovereignty interests factor into the debate when the Supreme Court inevitably takes up the question of prediction market regulation. Tribes bring not only legal arguments grounded in IGRA and decades of compact negotiations, but also the political weight and long history of their relationships with multiple states and the federal government.

LOOKING AHEAD

- **Prediction market operators must reassess exposure on tribal lands.** The Ninth Circuit's holding that sports event contracts are class III gaming under IGRA means that – for now – operating on or accessible from tribal lands without a compact or ("secretarial procedures" approved for the tribe by the Secretary of the Interior) may violate federal law.

- **The circuit split makes Supreme Court review increasingly likely.** With the Third, Sixth, and Ninth Circuits reaching divergent conclusions, and a district court adding a fourth perspective, the question of whether and how the CEA interacts with state and tribal gaming regulation is ripe for certiorari.

- **Tribal gaming compacts and secretarial procedures have real enforcement teeth.** The Blue Lake and Chicken Ranch tribes operate under 2024 secretarial procedures issued after the Ninth Circuit ruled that California failed to negotiate compacts in good faith. This decision confirms that third parties, and not just states, can face claims under this framework.

- **The regulatory landscape remains highly uncertain and varies by jurisdiction.** Market participants, including financial institutions and gaming operators, should monitor developments closely and tailor compliance strategies to the specific federal circuit and tribal jurisdictions in which they operate.

- **Marketing claims carry litigation risk.** While the Lanham Act claim was rejected here, the rejection was not without pointed criticism of Kalshi's advertising. Such criticism by the Court may embolden future false advertising challenges or a further appeal as the legal landscape expands in this very dynamic area.

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