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Sixth Circuit Deepens Circuit Split: Kalshi Sports-Event Contracts Are Not “Swaps,” and the CEA Does Not Preempt State Gambling Laws

A unanimous panel of the U.S. Court of Appeals for the Sixth Circuit rejected KalshiEX LLC’s effort to block Ohio and Tennessee from enforcing their gambling laws against its sports-event contracts on September 25, 2026.

KalshiEX LLC v. Schuler and *KalshiEX LLC v. Orgel*, Nos. 26-3196/5235 (6th Cir. Sept. 25, 2026). The ruling is the latest, and among the most thorough, appellate rejections of the prediction market industry’s central legal theory: that contracts listed on a federally regulated exchange fall under the exclusive jurisdiction of the Commodity Futures Trading Commission (“CFTC”) and are therefore beyond the reach of state gaming regulators.

BACKGROUND

Kalshi operates a designated contract market (“DCM”) registered with the CFTC and offers event contracts on the outcomes of sporting events. These include which team wins a game, how many corner kicks occur in a match, and whether a broadcaster says a particular word. After state gaming regulators in Ohio and Tennessee sought to enforce their sports gambling laws, Kalshi sued in federal court, arguing that the Commodity Exchange Act (“CEA”) preempts those laws.

The district courts reached opposite results. The Southern District of Ohio denied Kalshi’s motion for a preliminary injunction, while the Middle District of Tennessee granted one. The Sixth Circuit consolidated the appeals, affirmed the Ohio decision, and vacated the Tennessee injunction.

THE DECISION

Threshold Issue: Kalshi Has a Cause of Action. The Court first held that Kalshi may bring an equitable action under *Ex parte Young* to challenge state enforcement as preempted by federal law, and that the CEA’s remedial provisions do not foreclose that cause of action. The panel therefore decided the case on the merits, not on procedural grounds.

Sports-Event Contracts Are Not “Swaps.” The key statutory question was whether Kalshi’s contracts fall within 7 U.S.C. § 1a(47)(A)(ii). That provision defines a swap to include a contract dependent on an event “associated with a potential financial, economic, or commercial consequence.” Kalshi urged a broad reading of “associated with” that would capture any event having some downstream financial effect. The Court rejected that reading and held that the event

must be **inherently** associated with a financial consequence. Examples include a change in interest rates or a debt default. Attenuated or downstream financial effects are not enough.

Even If They Were Swaps, the CEA Does Not Preempt State Gambling Laws.

The Court also held, in the alternative, that Kalshi's preemption claims would fail even if the contracts were swaps. Because gambling regulation has traditionally been left to the states, the Court held that the presumption against preemption "applies with particular force." It then rejected each preemption theory:

- **Express preemption.** The "exclusive jurisdiction" clause in CEA § 2(a)(1)(A) is not a typical preemption provision. It uses jurisdictional language usually associated with courts, not "preempt" or "supersede." Its text and legislative history show that it was designed to draw lines between federal agencies (the CFTC and the U.S. Securities and Exchange Commission), not between the federal government and the states. The clause displaces direct state regulation and enforcement over the licensing and operation of DCMs. It does not displace ancillary state laws that only incidentally burden DCMs. State gambling laws regulate sports betting and affect Kalshi only because Kalshi chose to offer contracts that resemble sports bets.
- **Field preemption.** Congress did not occupy the field of on-DCM trading or futures trading. The CEA's savings clauses, its express preemption provisions elsewhere in the statute, and its grant of enforcement authority to the states (7 U.S.C. § 13a-2) all show that Congress intended to preserve a role for the states.
- **Impossibility preemption.** Kalshi can comply with both regimes. Geofencing is feasible, and other companies already use it. Federal impartial-access rules require equal access to whatever markets a DCM chooses to offer. They do not require a DCM to offer a particular market in every state.
- **Obstacle preemption.** State gambling laws do not obstruct Congress's objectives. The savings clauses show that national uniformity is not a goal to be pursued "at all costs." The CFTC's Special Rule authority to prohibit gaming-related event contracts is a backstop that

supplements state law rather than replacing it. Congress enacted the Special Rule while The Professional and Amateur Sports Protection Act of 1992 (PASPA) still banned most sports gambling nationwide, so Congress could not have intended the CFTC to be the exclusive regulator of sports-event contracts on DCMs.

THE CIRCUIT SPLIT AND SUPREME COURT REVIEW

Among the circuits that have decided the question (Third, Ninth, and now Sixth), the count is now 2–1 against Kalshi, with the Fourth Circuit still to rule. The disagreement goes to the core of the statute: how far "swap" extends and how far the CFTC's "exclusive jurisdiction" reaches. The Courts reached opposite results on materially similar products, so operators now face different rules depending on the circuit.

Until the U.S. Supreme Court resolves the issues addressed in each of these competing decisions, stakeholders across the gaming and prediction markets industries will continue to face substantial near-term uncertainty. The CFTC in the meantime continues to progress with its attempts to exercise broad regulatory authority over all prediction market activities, including proposing rules to the White House on September 28, 2026, which, among other things, would seek to definitively define prediction market event contracts as "swaps" (proposed rule identified as RIN 3038-AF82), contradicting the holdings of both the Ninth Circuit and the Sixth Circuit on this specific question.

For more information or assistance, please contact [Dennis M.P. Ehling](#), [Louise Bowes Marencik](#), [Stephen D. Schrier](#), [Michael P. Trainor](#), or another member of Blank Rome's [Gaming](#) industry group.

Dennis M.P. Ehling
424.239.3423 | dennis.ehling@blankrome.com

Louise Bowes Marencik
215.569.5391 | louise.marencik@blankrome.com

Stephen D. Schrier
215.569.5651 | stephen.schrier@blankrome.com

Michael P. Trainor
215.569.5685 | michael.trainor@blankrome.com