

White Collar Defense and Investigations



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Third Circuit Affirms Kalshi's Preliminary Injunction

Executive Summary

- **What's new:** The Third Circuit held that sports event contracts traded on federally regulated exchanges are swaps under the Commodity Exchange Act subject to the CFTC's exclusive jurisdiction.
- **Why it matters:** The decision is the first by a federal appellate court to address whether sports event contracts traded on CFTC-regulated exchanges are subject to state gaming laws.
- **What to do next:** The decision is the first by a federal appellate court to address whether sports event contracts traded on CFTC-regulated exchanges are subject to state gaming laws.

On April 4, 2026, the U.S. Court of Appeals for the Third Circuit issued an opinion affirming the District of New Jersey's order granting Kalshi's motion for a preliminary injunction against the New Jersey Division of Gaming. The decision marks the first federal appellate ruling on whether sports event contracts qualify as swaps under the Commodity Exchange Act (CEA), an issue that has produced conflicting decisions across federal and state courts nationwide.

Writing for the majority, Judge David Porter, joined by Chief Judge Michael Chagares, held that sports event contracts are swaps under the CEA, and that the CEA preempts state laws purporting to regulate sports event contracts offered on a Commodity Futures Trading Commission (CFTC)-registered Designated Contract Market (DCM). Judge Jane Richards Roth dissented, contending that state gambling laws, as applied to sports event contracts, are not preempted because states, not the federal government, have historically regulated gambling and that state gambling laws do not frustrate the congressional objectives behind the CEA.

Sports Event Contracts Are Swaps

The court determined that sports event contracts listed on a DCM are swaps under the CEA. The court reasoned that sports event contracts fall within the CEA's broad definition of "swap," which includes any agreement, contract or transaction that provides for any payment or delivery "that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of any event or contingency associated with a potential financial, economic, or commercial consequence." Sports events, the court found, can affect numerous stakeholders, including sponsors, advertisers, television networks, franchises, and local and national communities, and therefore "can be associated with a potential financial, economic or commercial consequence."

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The court also suggested that the risk that the CFTC's authority would sweep too broadly was mitigated by the CFTC's ability, along with the Securities and Exchange Commission (SEC), to "further define" the meaning of "swap," by which they had already excluded certain "consumer transactions" from the statutory definition.

The CEA Preempts State Law

Having determined that sports event contracts qualify as swaps under the CEA, the court held that the CEA preempts New Jersey's gambling laws. The court identified two bases for preemption: field and conflict preemption. The court found that field preemption applied based on the CEA's grant of exclusive

jurisdiction to the CFTC over swaps, including sports event contracts, traded or executed on a DCM. The court also found that allowing states to prohibit the offering of sports event contracts would conflict with the purposes and objectives of the CEA by permitting the exact patchwork of state regulation that Congress sought to eliminate.

More Appellate Rulings Are Expected

While the Third Circuit's opinion marks the first federal appellate opinion regarding the applicability of state gaming law to sports event contracts traded on prediction markets, more rulings from other circuits are expected, as similar cases are pending in the Fourth, Sixth and Ninth Circuits.