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Hedge or Bet? Ninth Circuit Says States Have Jurisdiction Over A Fast-Growing Segment of the Sports Betting Market

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In *KalshiEX, LLC v. Assad*, No. 25-7516 (9th Cir. Aug. 28, 2026), the Ninth Circuit cleared the way for Nevada to apply its gaming laws to Kalshi's sports event contracts, holding that Kalshi was unlikely to establish that those products are federally regulated "swaps" shielded from state regulation. The decision is only the second federal appellate ruling to weigh in on the nationwide fight over who regulates this rapidly growing industry, and puts the Ninth Circuit in direct conflict with the Third Circuit, creating a circuit split that could eventually lead to Supreme Court review.

The Core Dispute

Many states contend that sports event contracts are glorified sports betting subject to their gaming laws. Prediction-market operators, backed by the U.S. Commodity Futures Trading Commission (CFTC), counter that the products are regulated federally and are derivatives traded on designated contract markets (DCMs), placing them under the Commodity Exchange Act's (CEA) grant of exclusive CFTC jurisdiction. The CFTC appeared as *amicus* supporting the operators before the Ninth Circuit. Kalshi markets itself as "the first app for legal sports betting in all 50 states," with over 90% of its 2025 trades, and 95% of its revenue, relating to sports. Nevada's Gaming Control Board issued a cease-and-desist letter treating the products as an unlicensed sports pool.

The Ninth Circuit's Holding

The court rejected Kalshi's broad reading of "swap." Although CEA §2(a)(1)(A) expressly preempts state regulation of swaps traded on a DCM, the panel held Kalshi's sports contracts are likely not swaps under § 1a(47)(A)(ii) because they do not involve an "event or contingency associated with a potential financial, economic, or commercial consequence." The court explained that an "event" under the swap definition is distinct from the outcome of that event—the Super Bowl is an event, but who wins it, or by how many points, is merely an outcome—and that treating every outcome with a conceivable downstream financial consequence as a swap would make the statutory definition limitless. On Kalshi's reading, ordinary wagers on legal sportsbooks could themselves become unlawful off-exchange swaps. Notably, the panel's ruling addressed only sports event contracts; it did not reach event contracts referencing elections, which the panel remanded to the district court.[1]

The Circuit Split

The decision squarely conflicts with the Third Circuit's April 2026 ruling, which held 2-1 that Kalshi was likely to prevail on the merits. The Third Circuit reasoned that sports event contracts are swaps traded on CFTC-designated markets and thus within the agency's exclusive jurisdiction, and it upheld a preliminary injunction against New Jersey regulators. New Jersey is expected to seek Supreme Court review, potentially as early as this week, now bolstered by an established circuit split.

Takeaways

With the Third and Ninth Circuits now split—and lower courts divided across the country—the likelihood of eventual Supreme Court review has increased substantially. Immediate review, however, is not guaranteed. The interlocutory posture of the cases and the presence of additional unresolved issues, including the treatment of election contracts, may weigh against Supreme Court intervention at this stage. In the meantime, the Ninth Circuit's ruling is a significant setback for the theory that CFTC regulation places sports event contracts beyond state reach, but the question is far from settled. Clients operating in or entering the prediction-market space should monitor the developing case law and consider the regulatory posture in each state in which they operate.

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[1] The panel separately concluded that CFTC Regulation 40.11 prohibits a DCM from listing contracts that involve, relate to, or reference gaming, and stated the CFTC's recent proposal to amend that rule reinforces the panel's reading of the regulation as currently written. The panel also cited a brief Kalshi filed in a different case in which Kalshi stated that "a contract on the outcome of a sporting event" would be prohibited under Rule 40.11 because, Kalshi stated, "as the legislative history directly confirms, Congress did not want sports betting to be conducted on derivatives markets."

Related Professionals

- **Kevin Abikoff**
  Partner
- **Joshua A. Apfelroth**
  Partner
- **Dylan R. Conn**
  Partner
- **Jonathan (JD) DeSantis**
  Partner
- **Boris Dolgonos**
  Partner
- **Michael E. Ellis**
  Partner
- **Jonathan B. Guest**
  Associate
- **Stephen Hibbard**
  Partner
- **Joshua M. Newville**
  Partner
- **Robert Pommer**
  Partner
- **Louis Rambo**
  Partner
- **Nathan R. Schuur**

Partner

- **Johnny Skumpija**
  Partner
- **Elanit Snow**
  Senior Counsel
- **Hadassa Waxman**
  Partner
- **Frank Zarb**
  Partner