CLIENT ALERTS & INSIGHTS

Cashing In On Preemption: Kalshi Lawsuits Preview the Future of Gambling Regulations

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Key Takeaways

- Kalshi, a federally regulated event contract exchange, is challenging state gaming regulators in multiple courts to determine whether it should be governed solely by federal law or also by individual state gambling laws.
- The outcome could reshape the regulatory landscape for event-based trading platforms nationwide, either simplifying compliance under one federal regime or requiring complex, state-by-state licensing-posing significant business risks and operational hurdles for Kalshi and similar companies.
- Companies in this space should closely monitor the ongoing litigation and be prepared to adapt their compliance strategies, as future court decisions-including a possible Supreme Court ruling-will dictate whether federal or state rules apply to their operations.

KalshiEx, LLC ("Kalshi") is betting on its own future. The U.S. exchange company operates as a designated contract market ("DCM") in which users can trade contracts that hinge on the outcome of real-world events like political elections and sports results. The company is embroiled in lawsuits against state gaming regulators in four federal district courts (Nevada, New Jersey, Maryland and Massachusetts), addressing whether the trading giant is subject to federal or state gambling regulations. If Kalshi succeeds, it will be permitted to operate nationwide under a single set of federal regulations. That will open the door for a significant culture shift in enforcement and compliance activities for similar companies. If the states win, Kalshi could operate only in states where sports betting is legal, and its operations would become more complex as they would need to apply for gaming licenses in each state.

The parties' positions raise the question of who regulates DCMs. Kalshi argues that its event contracts are financial derivatives subject to the Commodity Exchange Act ("CEA") and thus falling under the Commodity Future Trading Commission's ("CFTC") regulatory authority and oversight. Kalshi asserts that the CFTC and CEA preempt state gambling regulations. State regulatory agencies insist that sporting-event contracts offered by Kalshi are an unlicensed form of sports betting and should be subject to state laws. The states' argument boils down to: (1) gambling regulation has historically been a core state power, and Congress did not clearly and explicitly intend to strip the states of this authority by passing the CEA; (2) compliance with both state and federal gaming laws, such as the CEA, do not obstruct the intent of Congress; and (3) the district court split illustrates that the issue lacks a one-size-fits-all answer and requires interpretation on a state-by-state basis.

Those questions are filtered through the legal doctrine of preemption. Under that doctrine, a higher level of authority (like a federal regulation) supersedes the laws of a lower authority (here, state gambling regulations). Courts recognize three forms of preemption: express preemption, field preemption, and conflict preemption.

Express preemption involves a clear directive from Congress where a federal law specifically states that it overrides conflicting lower-level laws. Here, the CEA lacks an express-preemption clause. Accordingly, the Kalshi suits contend that field preemption and conflict preemption prevent state gambling regulations from applying to Kalshi's activities.

Field preemption applies when federal law occupies a regulatory field so completely that it leaves no room for state or local laws to operate. Kalshi insists that Congress occupied the field of gambling regulations by granting the CFTC exclusive jurisdiction over transactions involving DCMs. Under this type of preemption, the states cannot add any additional gambling laws or regulations to govern Kalshi's contracts.

Conflict preemption arises when a state or local law conflicts with a federal law, rendering it impossible for a party to comply with both. The CEA requires a DCM to offer impartial access across the country, which conflicts with the plethora of varying state regulations. Kalshi argues that it is impossible to comply with both federal and state gambling regulations.

Inconsistent outcomes at the district court level have complicated Kalshi's quest to buck state oversight.

- The Nevada District Court granted Kalshi's Motion for Preliminary Injunction against the Nevada Gaming Commission on April 9, 2025, based on field preemption. The court found that Kalshi was likely to succeed on its argument that the CEA's plain language grants the CFTC exclusive jurisdiction over transactions on DCMs. Even though the CEA's text does not expressly preempt state laws, the court concluded that Congress intended for the CFTC to occupy the field of regulating transactions on CFTC-designated exchanges. But the court also rejected the argument that outcome-based event contracts are swaps (the key predicate of Kalshi's position), which suggests that Kalshi's victory may be vulnerable on appeal to the Ninth Circuit.
- The New Jersey District Court followed Nevada in granting Kalshi's Motion for Preliminary Injunction against the New Jersey Division of Gaming Enforcement on April 28, 2025. The court reasoned that Kalshi's sports-related event contracts fall within the CFTC's exclusive jurisdiction (field preemption). The New Jersey Division of Gambling Enforcement is appealing the decision to the U.S. Court of Appeals for the Third Circuit.
- Maryland, in contrast with Nevada and New Jersey, ruled against Kalshi's field preemption argument. Kalshi claimed that the Dodd-Frank Act gave the CFTC exclusive jurisdiction over all things traded on DCMs. The Maryland court ruled that Kalshi failed to demonstrate that Congress "clearly and manifestly intended to strip states of their authority to regulate gambling." The court also rejected Kalshi's conflict preemption argument, reasoning that complying with both federal and Maryland's state gambling regulations is possible and that Kalshi could obtain a Maryland gaming license while still providing impartial access to its DCM, as the CEA requires. Kalshi appealed this decision to the U.S. Court of Appeals for the Fourth Circuit.
- The Massachusetts Gambling Recovery LLC and Commonwealth of Massachusetts took an offensive stance, suing Kalshi in state court before Kalshi could seek a declaratory judgment in federal court. Plaintiffs asserted claims of unlicensed sports wagering. Although Kalshi attempted to have the case removed from state to federal court, the Massachusetts District Court held that Kalshi "failed to show clear Congressional intent to displace the state regulations" and remanded the case back to the Suffolk County Superior Court.

As the national debate progresses, we anticipate similar splits at the appellate level, which will set the table for SCOTUS to resolve the preemption issue within the next few years. In the pending appeals, interested parties-including former members of Congress and Native American tribes-have submitted amicus briefs. That is unsurprising, as the outcomes of the Kalshi cases may determine whether states retain authority to regulate gambling activities even when those activities are conducted on federally regulated derivative exchanges.

If, by chance, appellate courts align to support Kalshi's position, other market participants may feel sufficient comfort to move forward with similar enterprises, even before the matter reaches SCOTUS. But if the appellate courts reach differing conclusions, then similarly situated companies may wait for more certainty before entering the field. Ultimately, Kalshi seeks to create precedent that will have a direct and lasting impact on the national sports betting and gambling industries.

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