

Insights

SPORTS EVENT CONTRACT LITIGATION GENERATES BIZARRE RESULTS

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The multiplying lawsuits being brought to challenge or defend the lawfulness of trading sports event contracts on Commodity Futures Trading Commission (“CFTC”) designated contract markets (“DCMs”) have led to a diversity of results. Some courts have determined that sports event contracts may likely be traded legally on DCMs,[1] while others have found that they are more likely to constitute illegal sports betting thereby violating states’ gambling laws.[2]

In the most recent development, a California district court has ruled that courts do not even have jurisdiction to rule on the matter. In *Blue Lake Rancheria v. KalshiEx Inc.*, three Native American tribes sued Kalshi, a CFTC registered DCM, alleging that Kalshi’s sports event contracts constituted illegal gambling contracts and sought a preliminary injunction to prohibit Kalshi and other defendants from offering those contracts on tribal lands.[3]

In denying the tribes’ motion for a preliminary injunction, the court doubted whether it had the authority to determine whether Kalshi’s sports event contracts comply with the Commodity Exchange Act (“CEA”).[4] Pointing to CEA Section 2(a)(1)(A), which grants the CFTC “exclusive jurisdiction . . . with respect to accounts, agreements . . . and transactions involving swaps . . . traded or executed on a [DCM],”[5] and Section 5c(c)(5)(C)’s provision that the “[CFTC] ‘may determine’ [whether] event contracts are ‘contrary to the public interest,’”[6] the court concluded **only the CFTC** – and **not the federal courts** – can decide if a sports event contract complies with the CEA.[7]

It is unclear how this astonishing conclusion squares with fundamental understandings of the role of the federal courts in the United States since the Supreme Court’s seminal 1803 decision in *Marbury v. Madison* where Justice Marshall noted that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”[8] In case one thought that the question of whether a sports event contract constitutes a “swap” under the CEA is too technical for a court to answer, just last year the Supreme Court declared such thinking too timid an approach for the federal courts:

But even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to

the agency. Congress expects courts to handle technical statutory questions. “[M]any statutory cases” call upon “courts [to] interpret the mass of technical detail that is the ordinary diet of the law”^[9]

Although the CEA may be dauntingly technical, it is still the courts’ responsibility to determine what the CEA means. If Section 2(a)(1)(A)’s grant of “exclusive jurisdiction” to the CFTC creates any question about the authority of the courts, subsection (A)’s concluding sentence puts that question to rest. It plainly states: “Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any state.”^[10]

If you need assistance navigating the technicalities of the CEA, please reach out to us for guidance from our deeply knowledgeable team.

^[1] See *KalshiEx LLC v. Flaherty*, No. 25-cv-02152-ESK-MJS, 2025 WL 1218313 (D.N.J. Apr. 28, 2025) (granting preliminary injunctive relief), *appeal pending*, No. 25-1922 (3d Cir. May 15, 2025); *KalshiEx LLC v. Hendrick*, No. 2:25-cv-00575-APG-BNW, 2025 WL 1073495 (D. Nev. Apr. 9, 2025) (granting preliminary injunctive relief).

^[2] See *KalshiEx LLC v. Martin*, No. 25-cv-1283-ABA, 2025 WL 2194908 (D. Md. Aug. 1, 2025) (denying preliminary injunctive relief), *appeal pending*, No. 25-1892 (4th Cir. Aug. 6, 2025); *N. Am. Derivatives Exch., Inc. v. Nev. Gaming Control Bd.*, No. 2:25-cv-00978-APG-BNW, 2025 WL 2916151 (D. Nev. Oct. 14, 2025).

^[3] See *Blue Lake Rancheria v. Kalshi, Inc.*, No. 25-cv-06162-JSC, 2025 WL 3141202 (N.D. Cal. Nov. 10, 2025).

^[4] See *id.*; see also 7 U.S.C. §§ 1 *et seq.* (2025).

^[5] 7 U.S.C. § 2(a)(1)(A).

^[6] 7 U.S.C. § 7a-2(c)(5)(C).

^[7] *Id.* at *7 (“Plaintiffs have not shown the Court has jurisdiction to decide whether Kalshi’s event contracts violate the Commodity Exchange Act. That decision belongs to the Commodity Futures Trading Commission, which has ‘exclusive jurisdiction’ over its contract markets.”)

^[8] 1 Cranch 137, 177 (1803).

^[9] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 402 (2024) (quoting *Egelhoff v. Egelhoff*, 532 U.S. 141, 161 (2001) (Breyer, J., dissenting)).

^[10] 7 U.S.C. § 2(a)(1)(A)(II).

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