



NOTE

**BAD BETS: EXAMINING THE LEGALITY OF  
SPORTS-RELATED PREDICTION MARKETS**

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*Historically, the Commodity Futures Trading Commission (“CFTC”) employed a strict framework in which only prediction markets for research and academic value were permitted. This framework rejected political event contracts. In September 2024, a ruling from U.S. Court of Appeals for the District of Columbia Circuit as well as recent press releases from the Trump Administration have signaled a paradigm shift in the acceptance and legitimacy of prediction markets. This industry seized the moment and began offering event contracts over a broad swath of events including sports. These commercial platforms say their ability to offer sports-related event contracts are governed by the CFTC. However, the industry’s position has drawn opposition from both state and Tribal Gaming Commissions, who view sports-related event contracts as sports gambling and subject to state law. This has led to an increase in legislation initiated by state and Tribal gaming regulators. This Note argues that sports-related event contracts are gambling and that the Supreme Court’s ruling in *Murphy v. NCAA* prevents federal law from preempting state and Tribal gaming commissions from regulating these contracts.*

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I. INTRODUCTION

States are engaged in an ongoing legal battle over their ability to regulate sports prediction markets. Prediction markets are platforms where “individuals place [bets] on the outcome of [future] events.”<sup>1</sup> In October 2024, the U.S. Court of Appeals for the District of Columbia Circuit issued an order allowing leading prediction market company Kalshi to offer event contracts for the 2024 U.S. elections.<sup>2</sup> The Biden-era Commodity Futures Trading Commission (“CFTC”) appealed the ruling.<sup>3</sup> However, the appeal was voluntarily dismissed by the Trump administration.<sup>4</sup> Since then, prediction market companies have seen a massive growth in their popularity.<sup>5</sup> The explosion in prediction markets led to event contracts based on financials, companies, cryptocurrencies, and—most controversially—sports.<sup>6</sup> Now, state gaming commissions are mounting legal challenges to these unregulated entrants.<sup>7</sup>

This Note proceeds in five parts. Part II provides a background on prediction markets, event contracts, the Commodity Exchange Act,

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1. *Prediction Market*, CFI (June 14, 2021), <https://corporatefinanceinstitute.com/resources/career-map/sell-side/capital-markets/prediction-market/> [https://perma.cc/4UMW-6ACR].

2. See Nicole Thrun, *Kalshi v. CFTC: Effect on the CFTC’s Rulemaking and a New Era for Event Contracts*, DENTONS (Oct. 1, 2024), <https://www.dentons.com/en/insights/alerts/2024/october/1/kalshi-v-cftc-effect-on-the-cftcs-rulemaking-and-a-new-era-for-event-contracts> [https://perma.cc/FT37-MDH3].

3. *Id.*

4. Dan Mangan, *U.S. Commodities Regulator Seeks to Dismiss Appeal of Kalshi Election Bets Offers*, CNBC: POLITICS, <https://www.cnbc.com/2025/05/05/cftc-kalshi-election-betting-commodities.html> [https://perma.cc/7DJP-HT2B staff-uploaded] (last updated May 6, 2025).

5. DJ Hennes et al., *The Current State of Prediction Markets*, KPMG, <https://kpmg.com/us/en/articles/2025/current-state-of-prediction-markets.html> [https://perma.cc/N8KK-7UEQ] (last visited Mar. 25, 2026).

6. *Id.*

7. See Steven Peralta, *Tracking Every Prediction Market Lawsuit Involving Kalshi, Polymarket & Other Operators*, ACTION NETWORK, <https://www.actionnetwork.com/education/tracking-prediction-market-lawsuits> [https://perma.cc/P4KJ-ZZQ3] (last updated Mar. 17, 2026).

and other relevant consumer protection reforms post-Great Financial Crisis. Part III examines the major cases and statutes governing prediction markets beginning with the Tenth Amendment followed by landmark decisions in *Murphy v. NCAA*<sup>8</sup> and *KalshiEX, LLC v. CFTC*.<sup>9</sup> Part IV examines the impact of *KalshiEX, LLC v. CFTC* by tracing current lawsuits and presenting the arguments offered by Kalshi and the Government regarding the legality of sports prediction markets. Finally, Part V analyzes the key argument weighed against prediction markets, discusses the potential negative externalities of the current state of prediction markets, and provides recommendations for a future regulatory framework.

## II. BACKGROUND

Part II of this Note provides an overview of prediction markets, event contracts, and the current federal regulations governing prediction markets. It first traces the history of prediction markets in the United States. Then, it defines event contracts and briefly highlights limitations to the types of event contracts offered. Finally, it examines the laws regulating prediction markets such as the Commodity Exchange Act (“CEA”) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

### A. *What is a Prediction Market?*

Prediction markets leverage the “wisdom of crowds” to produce predictions more accurate than any individual expert or poll.<sup>10</sup> Studies suggest prediction market accuracy is attributed to self-interested market participants “putting their money where their mouth is” and

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8. 138 S. Ct. 1461 (2018).

9. 119 F.4th 58 (D.C. Cir. 2024).

10. See *What are Prediction and Betting Markets?* QUICKNODE: BLOG (Feb. 15, 2025), <https://blog.quicknode.com/what-are-prediction-and-betting-markets/> [https://perma.cc/XL98-MWJ2]. The value of prediction markets are better predictions that are financially consequential and estimated to generate billions in revenue. See Pavel Atanasov et al., *Distilling the Wisdom of Crowds: Prediction Markets vs. Prediction Polls*, in *MGMT. SCIENCE, ARTICLES IN ADVANCE* 1, 2 (2017). The claim that prediction markets can efficiently aggregate information is based on the Efficient Market Hypothesis. See Justin Wolfers & Eric Zitzewitz, *Prediction Markets*, 18 *J. ECON. PERSPS.* 107, 108 (2004).

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the aggregation of dispersed information.<sup>11</sup> For example, political prediction markets,<sup>12</sup> such as the Iowa Electronic Market,<sup>13</sup> are surprisingly accurate when compared to other methods of information aggregation.<sup>14</sup> However, the performance of prediction markets may suffer from weaknesses such as systematic bias, vulnerability to bubbles and information cascades, and market manipulation.<sup>15</sup>

### B. *What is an Event Contract?*

An event contract is a derivative contract that allows investors to speculate on the outcome of a future event, occurrence, or value.<sup>16</sup> Under CFTC Regulation 40.11, prediction markets are prohibited from offering event contracts referencing “terrorism, assassination, war, gaming, or an activity that is unlawful under any state or federal law.” The CFTC also prohibits an “[event] contract [that]. . . involves, relates to, or references an activity . . . the [CFTC] determines, by rule or regulation, to be contrary to the public interest.<sup>17</sup> Despite the language of Regulation 40.11, prediction market companies currently

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11. Rebecca Haw Allensworth, *Prediction Markets and Law: A Skeptical Account*, 122 HARV. L. REV. 1217, 1220 (2009).

12. QUICKNODE: BLOG, *supra* note 10.

13. See Wolfers & Zitzewitz, *supra* note 10, at 110. The Iowa Electronic Market (“IEM”) is a “futures market run for research and teaching purposes” operated by the University of Iowa Tippie College of Business. See *What is the IEM*, IOWA ELEC. MKTS., <https://iemweb.biz.uiowa.edu/about-iem/what-is-the-iem/> [<https://perma.cc/6TJQ-JXPS>] (last visited Mar. 25, 2026).

14. The Iowa Electronic Market (“IEM”) predictions “were within 1.5 percentage points of the actual vote” for presidential elections from 1988 to 2000. See Haw Allensworth, *supra* note 11, at 1220–21. IEM polls were demonstrated to being more stable, less responsive to transient events, and “closer to election outcomes than the average poll when the election was more than one week away.” *Id.* at 1221.

15. *Id.* at 1222–23.

16. *Contracts and Products*, COMMODITY FUTURES TRADING COMM’N, <https://www.cftc.gov/IndustryOversight/ContractsProducts/index.htm> [<https://perma.cc/QBA6-X554> (staff-uploaded)] (last visited Mar. 25, 2026); Nicole Moran, Lauren Samuel & Mariano Palleja, *Event Contracts: A Primer on Growth, Mechanics, and Regulation I*, WESTLAW TODAY (Nov. 6, 2025), <https://www.cornerstone.com/wp-content/uploads/2025/11/Event-Contracts.pdf> [<https://perma.cc/D4Q4-WEVL>].

17. 17 C.F.R. § 40.11 (2025).

allow participants to bet on anything.<sup>18</sup> As stated by Kalshi's CEO, Tarek Mansour, the "long-term vision is to financialize everything and create a tradable asset out of any difference in opinion."<sup>19</sup>

### C. *How do Prediction Markets Work?*

Prediction markets work by offering contracts priced at a fraction of \$1.<sup>20</sup> The price of a contract corresponds to the live probability of an event outcome occurring, as determined by public sentiment.<sup>21</sup> The closer a contract is to \$1, the higher the expected probability of it happening but at the expense of lower potential profits for buyers.<sup>22</sup> Once the outcome is finalized, winning contracts are paid out.<sup>23</sup> A user's profit on each contract is equal to the difference between their "initial payment (plus fees) and the full \$1 received per accurate prediction."<sup>24</sup> Putting it all together, if a user buys 10 contracts for the Boston Red Sox to beat the New York Yankees at \$0.35 a piece, and the Red Sox win, the user will earn a profit of \$0.65 per contract, or \$6.50 in net profit out of their \$10 total return.<sup>25</sup>

CFTC-regulated online platforms like Kalshi and Polymarket dominate the growing industry.<sup>26</sup> The success of these platforms is tied

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18. THE DAILY, *How to Bet on (Literally) Anything* (New York Times, Feb. 4, 2026), <https://www.nytimes.com/2026/02/04/podcasts/the-daily/prediction-markets-betting.html?showTranscript=1> [<https://perma.cc/JPF3-JCZD>].

19. UP FIRST, *Bet on Anything, Everywhere, All at Once* at 08:49 (NPR, Mar. 1, 2026), <https://www.npr.org/transcripts/nx-si-5718399> [<https://perma.cc/74XF-5WEA>].

20. Dan Bernstein, *What Are Sports Prediction Markets? Key Questions Answered*, SPORTICO (Jan. 27, 2026, at 12:30 ET), <https://www.sportico.com/business/sports-betting/2026/prediction-markets-sports-kalshi-robinhood-polymarket-1234858418/> [<https://perma.cc/VDW9-N8A6>].

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Rob Lenihan, *Prediction Markets like Kalshi are Monetizing Reality and the Gaming Industry is Pushing Back*, THESTREET (Jan. 20, 2026, at 15:33 ET), <https://www.thestreet.com/economy/prediction-markets-like-kalshi-are-monetizing-reality-the-gaming-industry-is-pushing-back> [<https://perma.cc/2APP-ERNA> (staff-uploaded)].

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to their accessibility, creativity and ready access for everyone with a hunch.<sup>27</sup> Coupled with “real-time analytics, automated market-making, and easy to understand graphics,”<sup>28</sup> these factors, along with the breadth of betting options on various topics, has fueled trading volume growth, consistently exceeding \$150 million per week since March 2025.<sup>29</sup> Now, Kalshi and Polymarket look ready to catapult prediction markets into the next trillion dollar asset class.<sup>30</sup>

### D. Federal Regulatory Framework of Prediction Markets

Currently, derivative markets are regulated by the CFTC under the CEA.<sup>31</sup> Event contracts are regulated under this act.<sup>32</sup> Only designated contract markets (“DCMs”) may offer contracts to retail customers.<sup>33</sup> In 2010, the CEA’s regulatory oversight was expanded

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27. See UP FIRST, *supra* note 19.

28. Victoria Liu & Djavaneh Bierwirth, *A Primer Prediction Markets*, WHARTON: BLOG (Jan. 23, 2025), <https://wifpr.wharton.upenn.edu/blog/a-primer-on-prediction-markets/> [<https://perma.cc/U97X-FX4Z>].

29. *Id.*

30. Contessa Brewer, *Prediction Markets Could Hit a Trillion Dollars in Trading Volume by the End of this Decade, New Report Says*, CNBC, <https://www.cnbc.com/2025/12/17/prediction-markets-trillion-dollar-trading-volume-ek-report.html> [<https://perma.cc/6QTB-CWJV>] (last updated Dec. 17, 2025, at 15:32 ET).

31. Renato Mariotti et al., *Prediction Markets: An Emerging Opportunity*, PAUL HASTINGS (Jan. 21, 2026), <https://www.paulhastings.com/insights/derivatives-download/prediction-markets-an-emerging-opportunity> [<https://perma.cc/UUW4-GDZK>].

32. *Id.*

33. DCMs are exchanges that operate under the regulatory oversight of the CFTC pursuant to the CEA. *Designated Contract Markets (DCMs)*, COMMODITY FUTURES TRADING COMM’N, <https://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm> [<https://perma.cc/2FD2-WJPQ> (staff-uploaded)] (last visited Mar. 25, 2026). They may offer for trading futures or option contracts based on all types of commodities and may allow all types of traders to use their exchanges. *Id.*; *Trading Organizations*, COMMODITY FUTURES TRADING COMM’N, <https://www.cftc.gov/IndustryOversight/TradingOrganizations/index.htm> [<https://perma.cc/H96P-ZWNA> (staff-uploaded)] (last visited Mar. 25, 2026).

through the Dodd-Frank Act to include “swaps.”<sup>34</sup> Historically, the CFTC prohibited election-related contracts for the practical concern that “large-scale speculation on elections could result in market manipulation or election interference.”<sup>35</sup> This changed in the fall of 2024, when a federal court rejected the CFTC’s decision to bar Kalshi-listed political event contracts.<sup>36</sup> Emboldened by the order, Kalshi and its peers now choose to “self-certify numerous event contracts” ranging from elections to sports.<sup>37</sup>

#### E. Overview of State and Tribal Gaming Regulatory Frameworks

The governance of sports gambling in the United States is a tripartite relationship among the federal, state, and tribal governments.<sup>38</sup> In general, “state governments have historically had the power to determine which activities are allowed within their jurisdictions.”<sup>39</sup> The states’ ability to choose the type of “permissible gambling”<sup>40</sup> that was allowed within their borders was hindered with the passage of the Professional and Amateur Sports Protection Act (“PASPA”) in 1992.<sup>41</sup> This was constitutionally problematic and later struck down by the Supreme Court.<sup>42</sup> In its wake, the gambling

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34. Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 4820817 (Aug. 13, 2012) (codified at C.F.R. pts. 1, 230, 240–41); 7 U.S.C. § 1a(47)(a)(ii) (2025).

35. Mariotti, *supra* note 31.

36. Thrun, *supra* note 2.

37. *Id.* Under CFTC Regulation 40.2, DCMs may list products without prior CFTC approval by filing a written self-certification with the CFTC. 17 C.F.R. § 40.2 (2025); *Listing Procedures*, COMMODITY FUTURES TRADING COMM’N, <https://www.cftc.gov/IndustryOversight/ContractsProducts/ListingProcedures/index.htm> [<https://perma.cc/TH78-GZEV> (staff-uploaded)] (last visited Apr. 17, 2026).

38. John T. Holden & Marc Edelman, *A Short Treatise on Sports Gambling and the Law: How America Regulates Its Most Lucrative Vice*, 2020 WIS. L. REV. 907, 942.

39. *Id.*

40. *See id.* at 943.

41. 28 U.S.C. § 3701 (2025).

42. *See* Murphy v. Nat’l Collegiate Athletic Ass’n, 138 S. Ct. 1461, 1484–85 (2018).

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landscape returned to state-level regulation.<sup>43</sup> However, the issue is more nuanced in states with a tribal gaming presence.<sup>44</sup>

In 1988, Congress passed the Indian Gaming Regulatory Act (“IGRA”)<sup>45</sup> following the Supreme Court’s decision in *California v. Cabazon Band of Mission Indians*.<sup>46</sup> The federal law “governs how states and tribal governments negotiate the specific permissible types of gaming.”<sup>47</sup> This compromise grants Tribes the power to regulate gaming activity on tribal lands as long as that activity is not prohibited by the federal government and is lawful in the state in which the tribal lands are located.<sup>48</sup> IGRA divides gaming activities into three categories, of which sports betting falls into Class III.<sup>49</sup> To offer Class III games, IGRA requires the “games to be permitted within the state” and the Tribe to enter into a “gaming compact with the state.”<sup>50</sup>

### III. MAJOR CASES AND STATUTES

Part III provides an overview of sports prediction markets, Kalshi’s arguments that the CFTC governs sports event contracts, and a legal analysis of arguments against Kalshi’s legal stance. First, it recaps the Tenth Amendment, the Supremacy Clause, and the Anti-Commandeering Doctrine. Then, Part III reviews the landmark nationwide sports betting case, *Murphy v. NCAA*, and concludes with a review of *KalshiEX LLC v. CFTC*.

#### A. Tenth Amendment: Defining the Boundary between State Autonomy and the Supremacy of Federal Law

The Tenth Amendment to the United States Constitution provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”<sup>51</sup> Simply restated, the Tenth

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43. Holden & Edelman, *supra* note 38, at 943–44.

44. *Id.* at 944.

45. 25 U.S.C. §§ 2701–2721 (2025).

46. 480 U.S. 202 (1987).

47. Holden & Edelman, *supra* note 38, at 944.

48. 25 U.S.C. § 2701(5) (2025).

49. Holden & Edelman, *supra* note 38, at 945.

50. *Id.*

51. U.S. CONST. amend. X.

Amendment “makes clear that institutions of the federal government exercise only limited and enumerated powers.”<sup>52</sup> Nonetheless, a number of Supreme Court Tenth Amendment decisions related to the Supremacy Clause and the Anti-Commandeering doctrine will likely influence any analysis of the legality of sports-related prediction markets.<sup>53</sup>

Any application of the Tenth Amendment must balance with the Supremacy Clause of the United States Constitution.<sup>54</sup> The Supremacy Clause provides the clear rule that the “supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”<sup>55</sup> In practice, this means Congress has the “power to preempt state law.”<sup>56</sup> The Supreme Court has recognized three types of federal preemption: express preemption, field preemption, and conflict preemption.<sup>57</sup>

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52. Gary Lawson, *The Tenth Amendment: A Truism with Teeth*, NAT’L CONST. CTR., <https://constitutioncenter.org/the-constitution/amendments/amendment-x/interpretations/129> [https://perma.cc/3AW2-MBF9] (last visited Mar. 25, 2026).

53. See *infra* Part IV.A.

54. The Supremacy Clause states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

U.S. CONST. art. VI, para. 2.

55. *Id.*

56. *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000).

57. *KalshiEX LLC v. John A. Martin*, No. 1:25-cv-01283, slip op. at 1 (D. Md. Aug. 1, 2025), <https://law.justia.com/cases/federal/district-courts/maryland/mddce/1:2025cv01283/581016/70/> [https://perma.cc/VJ5C-G9UE (staff-uploaded)]. Express preemption is where Congress explicitly enacts a statute superseding any state law. *Id.* at 9. Field preemption is where a federal statute or regulation governs a particular field leaving no room for

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The Anti-Commandeering doctrine, announced in *New York v. United States*,<sup>58</sup> prohibits Congress from compelling states to enact, administer, or enforce a federal regulatory program.<sup>59</sup> In *Printz v. United States*,<sup>60</sup> the Anti-Commandeering doctrine was expanded to prohibit Congress from compelling state executives from enacting or enforcing a federal regulatory program.<sup>61</sup> This created an “uneasy tension” between the extent of state autonomy and the supremacy of federal law in regards to Tenth Amendment issues.<sup>62</sup> The tension was resolved in the Supreme Court’s holding in *Murphy v. NCAA*.<sup>63</sup>

### B. *Murphy v. NCAA: The Ultimate Authority on Gambling*

In 1992, Congress enacted PASPA.<sup>64</sup> This act prohibited all state-sanctioned or state-run sports gambling schemes but exempted any states that allowed or operated a sports betting scheme at any time between 1976 and 1990.<sup>65</sup> Congress’s legislative intent in enacting PASPA was: “(1) stop the spread of state-sanctioned or state-ran sports gambling (2) maintain sport’s integrity, and (3) reduce the promotion of sports gambling among America’s youth.”<sup>66</sup> However, PASPA’s effectiveness in achieving these goals was consistently called into

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“supplementary state legislation.” *Id.* at 10. Conflict preemption is when a federal law overrides a conflicting state law. *Id.* at 25.

58. 505 U.S. 144 (1992).

59. *Id.* at 188.

60. 521 U.S. 898, 935 (1997).

61. *Id.*

62. See generally Edward A. Hartnett, *Distinguishing Permissible Preemption from Unconstitutional Commandeering*, 96 NOTRE DAME L. REV. 351 (2020) (comparing the conventional distinction between preemption and commandeering to the framework adopted by the Supreme Court in *Murphy v. NCAA*).

63. See *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

64. 28 U.S.C. §§ 3701–04 (1992). Also known as the Bradley Act.

65. Eric Meer, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for States*, 2 UNLV GAMING L.J. 281, 287 (2011). PASPA resulted in Nevada being fully exempted and Oregon, Delaware, and Montana being partially exempted. The other forty-six states (including New Jersey) were completely prohibited from sanctioning or operating sports betting schemes. *Id.* at 288.

66. *Id.* at 293.

question.<sup>67</sup> This led New Jersey, who initially declined to legalize sports gambling, to reverse course to permit such activity.<sup>68</sup>

Following a protracted lawsuit,<sup>69</sup> the Supreme Court held that PASPA violated the Anti-Commandeering doctrine because prohibiting state authorization of sports gambling is a “direct command to the States” and exactly what the doctrine forbids.<sup>70</sup> The Court also held that PASPA did not preempt state law because every form of preemption regulates the conduct of private actors, not the states.<sup>71</sup> Therefore, PASPA prohibiting state authorization of gambling cannot be construed as a preemption provision because it lacks the critical element of regulating private actors.<sup>72</sup> Thus, states have the ultimate authority to legalize gambling and sports betting within their borders.

### C. *The Kalshi Decision*

In June 2023, Kalshi sought to offer political event contracts concerning which political party would control each chamber of Congress.<sup>73</sup> The CFTC determined that the contracts likely involved activities prohibited by CFTC Regulation 40.11.<sup>74</sup> The Commission then filed an order stating such contracts were akin to “gaming.”<sup>75</sup> Kalshi challenged this decision citing that the CFTC had exceeded its

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67. *See id.* at 293–97.

68. Comment, *Murphy v. National Collegiate Athletic Association*, 132 HARV. L. REV. 387, 388 (2018).

69. In response, Professional sports leagues and the National Collegiate Athletic Association sued New Jersey in violation of PASPA; New Jersey countered, claiming PASPA violated the anticommandeering doctrine of the Tenth Amendment. The district court held PASPA did not commandeer New Jersey. The Third Circuit affirmed the lower court, stating only affirmative commands which force States to take action would constitute an anticommandeering violation. *Id.* at 388–89.

70. *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1465, 1481 (2018).

71. *See id.*

72. *Id.*

73. Thrun, *supra* note 2.

74. *Id.*

75. *Id.* The CFTC defined ‘gaming’ broadly to encompass traditional notions of playing a game as well as any “betting or wagering on elections.” *KalshiEX LLC v. Commodity Futures Trading Comm’n*, 119 F.4th 58, 63 (D.C. Cir. 2024).

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authority and acted arbitrarily.<sup>76</sup> On September 6, 2024, the District Court for the District of Columbia, adhering to *Loper Bright*,<sup>77</sup> sided with Kalshi and held that the CFTC's broader interpretation of "gaming" reached too far and swept in every event contract imaginable.<sup>78</sup> The district court found, consistent with Kalshi's argument, that "gaming" referred to playing games and granted summary judgment for Kalshi.<sup>79</sup>

### IV. IMPACT OF *KALSHI V. CFTC*

The district court's decision in *Kalshi v. CFTC* proved a massive boost for the legality of prediction market platforms.<sup>80</sup> Kalshi began offering sports-related event contracts through the CFTC's self-certification process soon after the ruling.<sup>81</sup> The CFTC took no meaningful action to prevent Kalshi and its peers from offering sports-related event contracts.<sup>82</sup> Several states responded by sending cease and desist letters to Kalshi claiming the company violated their respective gaming regulations.<sup>83</sup> Kalshi, in turn, filed lawsuits seeking declaratory judgments and preliminary injunctions against various

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76. Thrun, *supra* note 2.

77. 606 U.S. 369 (2024).

78. William Moschella, Greg Bower & John LaLime, *Kalshi v. CFTC Challenges Contracts on Political Events*, BROWNSTEIN (Jan. 24, 2025), <https://www.bhfs.com/insight/kalshi-v-cftc-challenges-contracts-on-political-events/> [https://perma.cc/7PS7-TL57]. Notably, Kalshi asserted during oral arguments that "sports betting constitutes 'gaming' because "a football game is a game."

79. Thrun, *supra* note 2.

80. *Id.* See generally *KalshiEX LLC v. Commodity Futures Trading Comm'n*, 119 F.4th 58 (D.C. Cir. 2024) (denying the emergency motion for stay pending appeal and immediate interim relief).

81. Jacob Sharifi, *Betting on the Future: A Legal Evaluation of Prediction Markets*, VAND. L. SCH. (Jan. 21, 2026, at 12:50 ET), [https://law.vanderbilt.edu/betting-on-the-future-a-legal-evaluation-of-prediction-markets/#\\_ftn15](https://law.vanderbilt.edu/betting-on-the-future-a-legal-evaluation-of-prediction-markets/#_ftn15) [https://perma.cc/D9FW-8Q8N].

82. Alex J. Gunning & Brett A. Shanks, *Sportsbooks or Commodity Exchanges? The Rising Legal Tensions Between Sports Betting and Prediction Markets*, STINSON (Nov. 13, 2025), <https://www.stinson.com/newsroom-publications-sportsbooks-or-commodity-exchanges-the-rising-legal-tensions-between-sports-betting-and-prediction-markets> [https://perma.cc/QP68-9MDR].

83. *Id.*

state gaming regulators from attempting to block its ability to offer event contracts.<sup>84</sup>

Kalshi's lawsuits and associated legal arguments are experiencing varying degrees of success.<sup>85</sup> District courts in Nevada<sup>86</sup> and New Jersey<sup>87</sup> granted Kalshi preliminary injunctions finding the CFTC has exclusive jurisdiction over transactions on DCMs under the CEA.<sup>88</sup> In contrast, the district court in Maryland<sup>89</sup> stated Kalshi could comply with federal and state gambling regulations and failed to see where Congress stripped states of their authority to regulate gambling.<sup>90</sup> Finally, in Massachusetts district court,<sup>91</sup> the presiding federal judge disagreed with Kalshi's argument that Congress intended to displace state regulations.<sup>92</sup> The court remanded the case to state court, where

84. *Id.*

85. Kevin B. Frankel et al., *Cashing in on Preemption: Kalshi Lawsuits Preview the Future of Gambling Regulations*, BENESCH (Nov. 6, 2025), <https://www.beneschlaw.com/resources/cashing-in-on-preemption-kalshi-lawsuits-preview-the-future-of-gambling-regulations.html> [https://perma.cc/Z8KP-SRPR].

86. See Order on Motion for TRO at 1, *KalshiEX LLC v. Hendrick*, No. 2:25-cv-00575 (D. Nev. Apr. 09, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.nvd.173903/gov.uscourts.nvd.173903.45.o\\_1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.nvd.173903/gov.uscourts.nvd.173903.45.o_1.pdf) [https://perma.cc/L9DD-LRYF].

87. See Order at 1, *KalshiEX LLC v. Mary Jo Flaherty*, No. 1:25-cv-02152 (D.N.J. Apr. 28, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.njd.564738/gov.uscourts.njd.564738.22.o\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.njd.564738/gov.uscourts.njd.564738.22.o_2.pdf) [https://perma.cc/SCX9-CJNV].

88. New Jersey appealed the decision to the Third Circuit. Kalshi is likely to appeal the decision to the Ninth Circuit. Frankel et al., *supra* note 85.

89. See *KalshiEX LLC v. John A. Martin*, No. 1:25-cv-01283, slip op. at 1 (D. Md. Aug. 1, 2025), <https://law.justia.com/cases/federal/district-courts/maryland/mddce/1:2025cv01283/581016/70/> [https://perma.cc/VJ5C-G9UE (staff-uploaded)].

90. Kalshi appealed the decision to the Fourth Circuit. Frankel et al., *supra* note 85.

91. Jessica Welman, *Massachusetts Keeps Kalshi Lawsuit in the State Court*, SBC AMERICAS (Oct. 29, 2025), <https://sbcamericas.com/2025/10/29/kalshi-massachusetts-state-remand/> [https://perma.cc/QV4T-DD4L (staff-uploaded)].

92. Frankel et al., *supra* note 85; Nate Raymond, *Kalshi Cannot Operate Sports-Prediction Market in Massachusetts, Judge Rules*, REUTERS (Jan. 20, 2026, at 16:41 ET), <https://www.reuters.com/world/kalshi-cannot-operate-sports->

*footnote continued on next page*

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the superior court judge issued a preliminary injunction barring Kalshi from continuing to offer Massachusetts residents sports-related event contracts.<sup>93</sup> Thus, given the divergent outcomes in federal and state courts,<sup>94</sup> Part IV will explore the main arguments made by Kalshi and the counterarguments made by state and federal governments.

### A. *Kalshi Believes Only Federal Regulations Govern Sports Event Contracts*

Kalshi argues that any state regulation of its event contracts would infringe upon the federal government's exclusive authority to regulate derivative trading.<sup>95</sup> Kalshi points to the text, purpose, and history of the CEA to support its position.<sup>96</sup> Specifically, Kalshi bases its argument on three key areas: (1) Congress delegated the power to regulate future contracts to the CFTC<sup>97</sup> and the CEA "leaves no room for state regulation of trading on DCMs" (field preemption)<sup>98</sup>; (2) complying with applicable state laws would conflict with fulfilling the CEA's purpose (conflict preemption)<sup>99</sup>; and (3) the CFTC declining

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prediction-market-massachusetts-judge-rules-2026-01-20/  
[<https://perma.cc/XUG7-A695> (staff-uploaded)].

93. *Id.*

94. See Johnny P. ElHachem, *Prediction Markets at a Crossroads: The Continued Jurisdictional Battle Over Event Contracts*, HOLLAND & KNIGHT (Feb. 20, 2026), <https://www.hklaw.com/en/insights/publications/2026/02/prediction-markets-at-a-crossroads-the-continued-jurisdictional-battle> [<https://perma.cc/XVR7-7MWQ>].

95. See Complaint at 1, *KalshiEX LLC v. Mary Jo Flaherty*, No. 1:25-cv-02152 (D.N.J. Mar. 29, 2025), <https://www.courthousenews.com/wp-content/uploads/2026/04/kalshi-v-new-jersey-gaming-enforcement-complaint-usdc-nj.pdf>. [<https://perma.cc/23YZ-RRR9>].

96. *Id.* at 2, 7–10.

97. *Id.* at 25.

98. See *id.* at 7.

99. Opening Brief for Appellant at 35, *KalshiEX LLC v. John A. Martin*, No.1:25-cv-01283 (Oct. 15, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.ca4.179613/gov.uscourts.ca4.179613.16.0\\_3.pdf](https://storage.courtlistener.com/recap/gov.uscourts.ca4.179613/gov.uscourts.ca4.179613.16.0_3.pdf). [<https://perma.cc/V86F-KCBU>].

to take action<sup>100</sup> on Kalshi's sports-related contracts is tacit consent of their practices.<sup>101</sup>

1. *The CFTC Has Congressional Authority to Preempt State Gaming Laws*

Kalshi's principal argument is based on field preemption theory.<sup>102</sup> The platform argues that the federal government has regulated futures contracts since the mid-1930s, with the CFTC overseeing CEA-regulated exchanges since the mid-1970s.<sup>103</sup> According to the Supreme Court in *CSX Transportation, Inc. v. Easterwood*,<sup>104</sup> evidence of the CFTC's preemptive purpose can be found in the "text and structure" of the statute in question.<sup>105</sup> First, the "plain wording" of Section 2(a) grants the CFTC "exclusive jurisdiction" over any transaction involving "swaps or future delivery contracts" that are "traded or executed" on DCMs.<sup>106</sup> Kalshi argues that its plain meaning interpretation of "exclusive" denies jurisdiction to "other entities not named in the provision" and complies with Supreme Court precedent.<sup>107</sup> This argument demonstrates Kalshi's belief that sports-related event contracts are "swaps" that can be regulated only by the CFTC.<sup>108</sup>

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**100.** Before the confirmation of new CFTC head Michael Selig, the agency "had largely abstained from commenting on an issue that has ignited litigation nationwide, with states and tribal groups believing federal sports prediction markets are illegal." Dan Bernstein, *The CFTC Isn't Deferring on Prediction Markets Anymore*, SPORTICO (Jan. 29, 2026, at 16:16 ET), <https://www.sportico.com/business/sports-betting/2026/cftc-prediction-markets-michael-selig-kalshi-1234882936/> [<https://perma.cc/9BPE-SJJL> (staff-uploaded)].

**101.** See Flaherty, *supra* note 95, at 11.

**102.** *KalshiEX LLC v. John A. Martin*, No. 1:25-cv-01283, slip op. 9–10, (D. Md. Aug. 1, 2025), <https://law.justia.com/cases/federal/district-courts/maryland/mddce/1:2025cv01283/581016/70/> [<https://perma.cc/KJU5-GSDE>].

**103.** Flaherty, *supra* note 95, at 7.

**104.** 507 U.S. 658, 664 (1993).

**105.** See Martin, *supra* note 99, at 25.

**106.** *Id.*; see 7 U.S.C. § 2(a)(1)(A) (2025).

**107.** Martin, *supra* note 99, at 26.

**108.** *Id.*

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Second, the purpose of the 1974 amendments to the CEA was not to “impair any State law applicable to any transaction regulated by statute.”<sup>109</sup> Rather, the amendments were intended to clarify the CFTC’s exclusive jurisdiction over regulating trade on DCMs.<sup>110</sup> This argument was supported by later-enacted provisions, which further clarified the states’ role was not to “supersede or preempt” the CFTC’s exclusive right to regulate trading on DCMs.<sup>111</sup> Moreover, precedent further reinforces this conclusion.<sup>112</sup> For example, multiple courts of appeals have “repeatedly and uniformly agreed that the CEA’s jurisdiction over DCMs preempts other regulation.”<sup>113</sup> This holding also found support in district courts and state courts of last resorts.<sup>114</sup>

Third, the legislative history of the 1974 Act supports the CFTC’s exclusive power to regulate futures markets.<sup>115</sup> Proponents of the 1974 Act believed that state regulations of futures markets would lead to total “chaos.”<sup>116</sup> By housing all exchanges and personnel in the industry under the same set of rules and guidance, the federal government could proactively avert any undesired outcomes based on “conflicting regulatory demands.”<sup>117</sup> Therefore, prediction platforms like Kalshi are not required to comply with state gaming laws under the CEA’s expanded definition covering swaps traded on DCMs.<sup>118</sup>

### 2. *Complying with State Laws Conflicts with the CEA*

Alternatively, Kalshi argued conflict preemption doctrine should apply because state gaming laws so “thoroughly conflict” with the CEA.<sup>119</sup> Assessed under a two-prong analysis, conflict preemption is determined by “ascertaining the construction” of the statutes and

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109. *Id.* at 27.

110. *Id.* at 28.

111. *See id.* at 28–29.

112. *Id.* at 29.

113. *Id.* at 30.

114. *Id.*

115. Flaherty, *supra* note 95, at 7.

116. *Id.*

117. *Id.*

118. *KalshiEX LLC v. John A. Martin*, No. 1:25-cv-01283, slip op. 9–10 (D. Md. Aug. 1, 2025), 2025cv01283/581016/70/ [https://perma.cc/KJU5-GSDE].

119. *Id.* at 10.

determining whether the statutes are in conflict.<sup>120</sup> Kalshi argued that state gaming laws, like Maryland's gaming laws, are conflict-preempted because they are an obstacle to the "accomplishment and execution" of the CEA's purpose and undermine the CEA's framework for regulating DCMs.<sup>121</sup>

3. *The CFTC's Inaction is Tacit Consent of Kalshi's Business Practices*

Following the Trump Administration's voluntary dismissal of the *KalshiEX* appeal, the CFTC "declined to review" Kalshi's sports-related contracts.<sup>122</sup> Kalshi interpreted the government's lack of action as wholeheartedly endorsing its business practices and contracts as beneficial to the public.<sup>123</sup> On the contrary, the CFTC took action against other federally regulated exchanges that began listing sports-related contracts around the same time period as Kalshi.<sup>124</sup> For example, the CFTC suspended NADEX/crypto.com from offering sports-related event contracts for ninety days.<sup>125</sup> The lack of a similar request suggests Kalshi is authorized and in full compliance with CFTC's rules and regulations.<sup>126</sup>

B. *Government Arguments*

1. *The CFTC Does Not Preempt State Gaming Laws*

The purpose for expanding the CEA under the Dodd-Frank Act was not to have the "effect of field-preempting" the regulation of sports event contracts traded on DCMs.<sup>127</sup> According to the United States Court for the District of Maryland, there is some force to Kalshi's argument that Congress intended for the CFTC to have field preemption over swaps.<sup>128</sup> Congress conveyed an intent to displace some state laws when it amended the CEA in 1974 to include the

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120. *Id.* at 26.

121. *Id.* (quoting ECF No. 2 at 15).

122. Flaherty, *supra* note 95, at 11.

123. *See id.*

124. *See id.*

125. *Id.*

126. *See id.*

127. *KalshiEX LLC v. Martin*, 793 F. Supp. 3d 667, 684 (D. Md. 2025).

128. *See id.* 678–79.

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phrase “exclusive jurisdiction.”<sup>129</sup> However, some courts have ruled that *some* field preemptive effect does not mean Congress “clearly and manifestly intended to preempt state sports-betting laws.”<sup>130</sup>

First, the plain text of CFTC Regulation 40.11 demonstrates Congress’s “affirmative intent to *preserve* state laws governing regardless of whether particular conduct is lawful or unlawful.”<sup>131</sup> This severely weakens Kalshi’s argument that Congress intended to displace all state laws that fall within the scope of CEA.<sup>132</sup> Therefore, “a federal statute expressly incorporat[ing] state law,” does not require a preemption analysis.<sup>133</sup>

Second, the express preemption clauses in the CEA does not suggest Congressional intent to preempt state gaming laws.<sup>134</sup> In 7 U.S.C. § 16(e)(2) and (h), Congress limited the scope of preemption related to gaming to electronic trading facilities and cross-referenced provisions in section 2(c).<sup>135</sup> This strongly indicates that if Congress wanted to expressly preempt state gaming law for all transactions, it would have done so by not narrowly tailoring the CEA to apply to certain transactions.<sup>136</sup>

Third, the Supreme Court has long recognized the states’ right to regulate gambling.<sup>137</sup> This right means two things: There is a presumption against preemption applying to this topic, and it is highly unlikely that Congress would have quietly overridden state gambling laws without an indication in the text or legislative history.<sup>138</sup> Otherwise, the Court in *Murphy* would have ruled in favor of the NCAA and the Department of Justice because Congress had vested

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129. *Id.* at 678.

130. *Id.* at 678–79.

131. *Id.* at 680.

132. *Id.*

133. *Id.*

134. *Id.*

135. 7 U.S.C. § 16(e)(2), (h) (2010).

136. *See Martin*, 793 F. Supp. 3d at 680–81.

137. *See Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 486 (2018).

138. *See Martin*, 793 F. Supp. 3d at 681–82.

the CFTC with exclusive jurisdiction to regulate sports betting on DCMs.<sup>139</sup>

## 2. *Kalshi's Activities and Implications for Tribal Sovereignty*

Kalshi's asserts its noncompliance with state or Tribal gaming laws is protected by the CEA's expanded definition of "swap" under the Dodd-Frank Act.<sup>140</sup> Prediction market operators rely on this expanded definition to argue sports-related event contracts fall within federal commodities regulation.<sup>141</sup> This cannot be correct for three reasons. First, the CEA neither preempts nor conflicts with IGRA.<sup>142</sup> CFTC Regulation 40.11 expressly prohibits event contracts from referencing gaming or any activity unlawful under state or federal law.<sup>143</sup> Because Kalshi's sports-related event contracts involve gaming and prohibited activity under state and federal law, they likely violate Regulation 40.11 and fall outside the scope of the CFTC.<sup>144</sup> This implies only IGRA governs sports-related event contracts on Indian lands.<sup>145</sup>

Second, Kalshi's sports-related event contracts are not "swaps" under the CFTC's exclusive jurisdiction.<sup>146</sup> Kalshi's contracts do not satisfy the CFTC's definition of "swaps" because they depend on the outcome of a sports event rather than an event's occurrence or nonoccurrence.<sup>147</sup> In other words, Kalshi's outcome-focused contracts

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139. See Daniel Wallach, *Kalshi's Nevada Court Win may be Short-Lived Due to Federal Wire Act ban on Sports Betting*, FORBES (Apr. 15, 2025), <https://www.forbes.com/sites/danielwallach/2025/04/15/kalshis-nevada-court-win-may-be-short-lived-due-to-federal-wire-act-ban-on-sports-betting/> [<https://perma.cc/WQG8-6AH9> (staff-uploaded, dark-archive)] (last updated May 27, 2025).

140. Samir Patel & James Meggesto, *What's on Deck in Tribal Nations' Prediction Markets Litigation*, HOLLAND & KNIGHT 1, 1–2 (Jan. 12, 2026, at 17:55 ET), [https://www.hklaw.com/-/media/files/insights/publications/2026/01/patel\\_\\_meggesto\\_law360article.pdf](https://www.hklaw.com/-/media/files/insights/publications/2026/01/patel__meggesto_law360article.pdf) [<https://perma.cc/4PG9-2F24> (staff-uploaded)].

141. *Id.* at 2.

142. Amicus Brief on the Merits on Behalf of Indian Gaming Association et al. in support of Appellant at 14, *KalshiEX LLC v. Flaherty*, No. 25–1922 (3rd Cir. June 17, 2025); 25 U.S.C. §§ 2701–21 (2025).

143. *Id.* at 16; COMMODITY FUTURES TRADING COMM'N, *supra* note 16.

144. See Indian Gaming Ass'n, *supra* note 142, at 16–20.

145. See *id.* at 20.

146. *Id.*

147. *Id.*

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are “simply speculative sports bets.”<sup>148</sup> This suggests Kalshi’s sports-related event contracts are not financial derivatives within the meaning of the CEA, but instead Class III gaming subject to IGRA’s regulatory framework.<sup>149</sup>

Third, Kalshi tramples on tribal sovereignty by offering sports-related event contracts on Indian lands.<sup>150</sup> The Supreme Court has a long-standing belief that Tribes are sovereign over their members and territory.<sup>151</sup> Congress expressly declared in IGRA a Tribe’s exclusive right to “regulate gaming activity” that is not specifically prohibited by federal law and is conducted within a state that does not, “as a matter of criminal law and public policy, prohibit such gaming activity.”<sup>152</sup> Kalshi’s continued operation on Indian lands in violation of IGRA “usurps” the rights of Tribal gaming regulators, undermines any protections for consumers baked into Tribal-state gaming compacts, and siphons needed revenue for Tribal governments.<sup>153</sup>

### 3. *Sports-Related Event Contracts May Violate the Wire Act*

The Wire Act prohibits “any expansion of sports betting beyond the boundaries of a state.”<sup>154</sup> Specifically, the Wire Act prohibits individuals from “knowingly using a wire communication facility” to transmit interstate or foreign commerce for bets or wagers on “any sporting event or contest.”<sup>155</sup> The U.S. Courts of Appeals and the U.S. Department of Justice interpreted the statute to ban online sports betting even if “the bettor and the sportsbook’s computer servers are in the same state.”<sup>156</sup> Given the fact Kalshi’s platform is entirely

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148. *Id.* at 21.

149. Patel & Meggesto, *supra* 140, at 2; see 25 U.S.C. §§ 2701–21 (2025).

150. See Indian Gaming Ass’n, *supra* 142, at 30–34.

151. *Id.* at 30 (internal quotation omitted) (quoting *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987)).

152. See *id.* at 32; 25 U.S.C. § 2701(4), (5) (2025).

153. See Indian Gaming Ass’n, *supra* 142, at 32–33.

154. Keith C. Miller, *Sports Betting Integrity at Risk: The Role of the Wire Act*, 61 SANTA CLARA L. REV. 247, 249 (2020).

155. Letter from W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe, to Caroline Pham, Acting Chairperson, COMMODITY FUTURES TRADING COMM’N 1, 12 (Feb. 21, 2025), <https://www.cftc.gov/PressRoom/Events/CommentsPredictionMarketsRoundtable> [<https://perma.cc/Q8ZR-2P46> (staff-uploaded)].

156. Miller, *supra* note 154, at 249.

internet-based, available to users nationwide, and traders on either side of a contract are often from different states, the Wire Act looks highly applicable to Kalshi's sports-related event contracts.<sup>157</sup>

Kalshi's contracts could likely be found to satisfy the federal definition of a "bet or wager." Under federal law, a "bet or wager" is the "staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance . . . ."<sup>158</sup> This means, that by their own admission, that its event contracts are based on the outcome of sporting events, Kalshi violates the Wire Act.<sup>159</sup>

#### 4. *Kalshi Itself Recognized that Congress Disfavored Sports Betting*

Lastly, Kalshi has previously argued to the District Court for the District of Columbia that Congress never intended for sports betting to be conducted on derivatives markets.<sup>160</sup> On appeal to the Court of Appeals for the D.C. Circuit, Kalshi expounded on this argument by stating that election-related contracts were not games or game adjacent, and therefore should be permitted.<sup>161</sup> Moreover, Kalshi clearly stated that election-related contracts were not "for entertainment, diversion, or sport."<sup>162</sup>

This fact is compounded by Kalshi's previous marketing campaigns, which referred to its sport-related contract products as gambling.<sup>163</sup> Kalshi advertised heavily across social media as "The First Nationwide Legal Sports Betting Platform" and "Sports Betting Legal in all 50 States on Kalshi."<sup>164</sup> Despite its many denials that it is a "financial exchange," the company's actions and the broader sports

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157. *Id.*

158. 31 U.S.C. § 5362(1)(A) (2025).

159. See Indian Gaming Ass'n, *supra* 142, at 12.

160. Brief of Appellee at 41, *KalshiEX LLC v. Commodity Futures Trading Comm'n*, No. 24-05205 (D.C. Cir. Nov. 15, 2024), <https://storage.courtlistener.com/recap/gov.uscourts.cadc.41256/gov.uscourts.cadc.41256.1208681410.o.pdf> [<https://perma.cc/U8VQ-566Q>].

161. *Id.*

162. *Id.*

163. Dustin Gouker, *Ten Times Kalshi Said People Could Bet on Things*, EVENT HORIZON (Aug. 3, 2025), <https://nexteventhorizon.substack.com/p/ten-times-kalshi-said-people-could> [<https://perma.cc/WHK2-TUJ8>].

164. *Id.*

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prediction market operators certainly conduct themselves as online casinos.

### V. CIRCUMVENTING STATE SOVEREIGNTY AND NEGATIVE EXTERNALITIES

Kalshi and its peer prediction market platforms viewed *KalshiEX LLC v. CFTC* as a pivotal case in the fight to prove their legitimacy and economic viability. The platforms have experienced explosive growth and adoption by the general public since the ruling.<sup>165</sup> A key pillar to this growth has been the platforms willingness to seek injunctions to estop state and Tribal gaming regulators from blocking citizens in those jurisdictions from accessing prediction market platforms.<sup>166</sup> This tactic has drawn the ire of gaming associations, state regulators, and Tribal governments alike.<sup>167</sup>

The prediction markets' arguments have their limits and will likely fail if appealed to the Supreme Court.<sup>168</sup> This is because sports-related event contracts are another form of sports betting and the CFTC's exclusive jurisdiction over sports prediction markets clashes with Congress's intent for the CEA.<sup>169</sup> This Part analyzes the key arguments that weigh against prediction platforms, highlights the negative externalities of permitting prediction markets to continue to operate without guardrails, and suggests a potential regulatory remedy.

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165. Ben Horney, *Prediction Markets Exploded in 2025. What Comes Next?*, FRONT OFFICE SPORTS, <https://frontofficesports.com/prediction-markets-exploded-in-2025-what-comes-next/> [https://perma.cc/L42Q-VZQH] (last updated Dec. 31, 2025).

166. See Matthew H. Benson, *Litigation Between Gaming Associations and Predictive Sports Markets? You Bet.*, SYRACUSE L. REV. (Sep. 11, 2025), <https://lawreview.syr.edu/litigation-between-gaming-associations-and-predictive-sports-markets-you-bet/> [https://perma.cc/R62J-SZH5].

167. *Id.*

168. *Id.*

169. See *id.*

A. *Prediction Markets Circumvent the Tenth Amendment, Thereby Limiting States Ability to Regulate Gambling*

The continued operation of sports prediction market platforms is a direct attack against state and Tribal sovereignty.<sup>170</sup> The Tenth Amendment’s language emphasizes the federal government is one of “limited and enumerated powers.”<sup>171</sup> Importantly, the Tenth Amendment protects Americans from federal encroachment.<sup>172</sup> The regulation of gambling is a long-established power reserved to the states.<sup>173</sup>

The CFTC’s actions and proclamations of exclusive jurisdiction<sup>174</sup> clashes with the Supreme Court’s preemption doctrines and Congress’s intent.<sup>175</sup> The Supreme Court has held federal law can preempt state law either expressly or impliedly.<sup>176</sup> But, the federal government may not “preempt traditional State powers that are the exclusive domain of States to regulate . . . .”<sup>177</sup> This fact coupled with Kalshi’s own admission that Congress never intended for sports

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170. *Indian Gaming Association Leads National Opposition to Illegal Prediction Markets Threatening Tribal Sovereignty at Western Indian Gaming Conference*, INDIAN GAMING ASS’N (Feb. 26, 2026), <https://indiangaming.org/indian-gaming-association-leads-national-opposition-to-illegal-prediction-markets-threatening-tribal-sovereignty-at-western-indian-gaming-conference/> [https://perma.cc/9KRP-38KU].

171. Gray Lawson & Robert Schapiro, *Common Interpretation*, NAT’L CONST. CT., <https://constitutioncenter.org/the-constitution/amendments/amendment-x/interpretations/129> [https://perma.cc/T78V-HE7B].

172. Dissenting Statement from Commissioner Caroline D. Pham on Event Contracts Proposal to the Commodity Futures Trading Comm’n (May 10, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatemen1051024b> [https://perma.cc/8HGF-UMMX (staff-uploaded)].

173. Tim Lynch, *Gambling Regulation Belongs to the States*, CATO INST. (July 23, 1998), <https://www.cato.org/commentary/gambling-regulation-belongs-states> [https://perma.cc/H8BT-UDFQ].

174. See Press Release, Commodity Futures Trading Comm’n, CFTC Reaffirms Exclusive Jurisdiction Over Prediction Markets in U.S. Circuit Court Filing (Feb. 17, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9183-26> [https://perma.cc/WA67-HLA5 (staff-uploaded)].

175. See discussion *supra* Part IV.B.

176. Pham, *supra* note 172.

177. *Id.*

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betting to be conducted on derivatives markets suggests the CFTC's "exclusive jurisdiction" has clear limitations.<sup>178</sup>

Without proper congressional approval, Tribal consent, and state authorization, prediction platforms are attempting to sidestep hard fought and carefully negotiated legal frameworks.<sup>179</sup> The use of the CFTC to carry out such an act is a prime example of federal overreach and will likely have damaging long-lasting effects on the country.<sup>180</sup> Simply put, gambling via sports-related event contracts is likely against the law and far beyond anything the CFTC was designed or intended to authorize.<sup>181</sup>

### B. Negative Externalities of Prediction Markets

The unchecked growth of prediction markets increasingly benefits a small number of private actors<sup>182</sup> and diverges from what is socially optimal.<sup>183</sup> The rise in prediction markets raises a number of questions concerning the integrity of mainstream media, professional sports, and financial markets.<sup>184</sup> For instance, critics argue the recent integration of prediction markets into everyday mainstream news

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178. See Brief of Appellee, *supra* note 160, at 31.

179. INDIAN GAMING ASS'N, *supra* note 170.

180. *Id.*

181. "Prediction Markets," *Gambling, The CFTC & Regulation: Facts, Fiction & the Law*, BETTER MKTS. (Mar. 10, 2026), <https://bettermarkets.org/analysis/prediction-markets-gambling-the-cftc-regulation-facts-fiction-the-law/> [https://perma.cc/VBB9-6NPH].

182. Alicia Park, *Why Billionaires Are Piling into Prediction Markets*, FORBES, <https://www.forbes.com/sites/aliciapark/2025/09/15/why-billionaires-are-piling-into-prediction-markets/> [https://perma.cc/2VSW-SFVS (staff-uploaded, dark archive)] (last updated Feb. 18, 2026).

183. See Jill R. Dorson, *Study: Only 3% of Americans Use Prediction Markets; 52% Think Online Sports Betting Is 'Bad For Society'*, YAHOO NEWS (Mar. 18, 2026, at 15:30 ET), <https://www.yahoo.com/news/articles/study-only-3-americans-prediction-19300681.html> [https://perma.cc/TRG8-J27Z].

184. See Megan McCarty Carino, *Federal Regulators Might Actually Make Rules for Prediction Markets*, MARKETPLACE (Mar. 13, 2026), <https://www.marketplace.org/story/2026/03/13/cftc-considers-regulating-prediction-markets-like-kalshi> [https://perma.cc/S5WJ-5MXR, (staff-uploaded)].

coverage<sup>185</sup> unduly influences public perception by shaping beliefs and narratives.<sup>186</sup> Accordingly, politicians, mainstream media, and regulators are exploring the negative effects of prediction markets on society.<sup>187</sup> The following subsections explore some of the negative externalities<sup>188</sup> of loosely regulated prediction markets on society.

1. *Prediction Markets are Susceptible to Insider Trading*

Despite many prediction market platforms expressly prohibiting users from trading on material nonpublic information,<sup>189</sup> a number of instances suggest prediction market platforms' internal controls are

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185. See Sara Fischer, *Exclusive: CNN Strikes Prediction Data Partnership with Kalshi*, AXIOS (Dec. 2, 2025), <https://www.axios.com/2025/12/02/cnn-kalshi-prediction-market-data> [https://perma.cc/26A7-6WSZ (staff-uploaded)]; Vlad Schepkov, *CNBC Partners with Kalshi to Integrate Prediction Market Data*, INVESTING.COM (Dec. 4, 2025, at 13:13 ET), <https://www.investing.com/news/company-news/cnbc-partners-with-kalshi-to-integrate-prediction-market-data-93CH-4391720> [https://perma.cc/6EED-8PH8 (staff-uploaded)].

186. Sarah Barbour & Ethan Fox, *Trading on Uncertainty: How Prediction Markets are Reshaping Corporate Risk and Reputation*, APCO (Mar. 5, 2026), <https://apcoworldwide.com/blog/trading-on-uncertainty-how-prediction-markets-are-reshaping-corporate-risk-and-reputation/> [https://perma.cc/C5HX-25FK]; see also Niya Patel, *Prediction Markets in the News are a Dangerous Gamble*, THE VERGE (Mar. 5, 2026, at 10:00 ET), <https://www.theverge.com/podcast/889177/prediction-markets-news-gambling-polymarket-kalshi-iran-war-regulation> [https://perma.cc/BJ8T-P2PQ (staff-uploaded, dark archive)] (discussing the aggressive push of prediction markets into media as a broader plan to be perceived as a reputable news source).

187. See generally 1A, *The Problems with Prediction Markets*, NPR (Feb. 19, 2026), <https://www.npr.org/2026/02/19/nx-s1-5719312/the-problems-with-prediction-markets> [https://perma.cc/426B-98AH (staff-uploaded)] (discussing prediction markets, the CTFC's claim as the sole regulator of prediction markets, and whether prediction markets should be considered gambling).

188. Negative externalities are “negative consequence[s] of an economic activity experienced by an unrelated third party.” *Externality*, CFI (Nov. 26, 2019), <https://corporatefinanceinstitute.com/resources/economics/externality/> [https://perma.cc/8VAE-8CRZ].

189. Joshua M. Newville et al., *Do Your Insider Trading Policies Cover the Prediction Markets? Should They?*, PROSKAUER (Mar. 12, 2026), <https://www.regulatoryandcompliance.com/2026/03/do-your-insider-trading-policies-cover-the-prediction-markets-should-they/> [https://perma.cc/YMK3-YGP6].

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failing.<sup>190</sup> A deeper examination of these issues suggests factors, such as loose regulation and anonymity, contribute to prediction markets' susceptibility to insider trading.<sup>191</sup> First, prediction markets operate in a legal grey area with respect to insider trading. Under SEC Rule 10b-5, individuals are prohibited from defrauding or deceiving someone through misrepresentation of material information with respect to the sale or purchase of a security.<sup>192</sup> Rule 10b-5 covers corporate insiders or executives who use material nonpublic information to influence share price.<sup>193</sup> The Supreme Court extended Rule 10b-5 to cover instances of insider trading based on tips in *Dirks v. Securities Exchange Commission*.<sup>194</sup> However, prediction markets do not involve securities and mainly operate outside of these rules.<sup>195</sup> The direct consequence of being loosely regulated is that insiders use prediction markets to profit handsomely on political uncertainty, economic volatility, and geopolitical instability.<sup>196</sup>

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190. See Bobby Allyn, *Prediction Market Trader 'Magamyman' Made \$553,000 on Death of Iran's Supreme Leader*, NPR (Mar. 1, 2026), <https://www.npr.org/2026/03/01/nx-si-5731568/polymarket-trade-iran-supreme-leader-killing> [<https://perma.cc/4U7G-UH2X>]; Danielle Kaye & Natalie Sherman, *Anonymous Crypto Gambler Made \$436,000 on Maduro Capture*, BBC (Jan. 5, 2026), <https://www.bbc.com/news/articles/cx2gn93292do> [<https://perma.cc/4BC9-B5F5>].

191. See Alexandra Thornton, *Congress Must Stop Prediction Market Corruption*, CTR. FOR AM. PROGRESS (Mar. 11, 2026), <https://www.americanprogress.org/article/congress-must-stop-prediction-market-corruption/> [<https://perma.cc/2SSE-JAWC> (staff-uploaded, dark archive)].

192. *The Guide to Securities Fraud Elements and SEC Rule 10b-5*, BROWN NERI SMITH & KHAN LLP, <https://bnsklaw.com/the-guide-to-securities-fraud-elements-and-sec-rule-10b-5/> [<https://perma.cc/K8YJ-VUTW>].

193. *Id.*

194. 463 U.S. 646 (1983); *Insider Trading*, CONGRESS (Nov. 9, 2021), [https://www.congress.gov/crs\\_external\\_products/IF/HTML/IF11966.web.html](https://www.congress.gov/crs_external_products/IF/HTML/IF11966.web.html) [<https://perma.cc/9AY7-WKZP> (staff-uploaded, dark archive)].

195. *Prediction Markets and the Law of Insider Trading: A Practical Guide*, MORRISON FOERSTER (Mar. 3, 2026), <https://www.mofo.com/resources/insights/260303-prediction-markets-and-the-law-of-insider> [<https://perma.cc/2NY6-STFF>].

196. Kyla Scanlon, *The Dangerous Power of Prediction Markets*, N.Y. TIMES (Jan. 23, 2026), <https://www.nytimes.com/2026/01/23/opinion/prediction-markets-reality-democracy.html> [<https://perma.cc/S78H-AJLW> (staff-uploaded, dark archive)].

Second, anonymity built into certain prediction platforms makes regulating the technology difficult.<sup>197</sup> Anonymous platforms, like Polymarket, do not require most customers to provide their names when creating accounts, and work by using cryptocurrency to obfuscate a user's identity.<sup>198</sup> This creates the perfect environment for insider trading.<sup>199</sup> To illustrate, twelve suspicious accounts made a number of unusually large and well timed bets before the February 28, 2026, United States attack on Iran, for a combined profit of \$330,000.<sup>200</sup> The bets and their associated profits highlight a key national security risk.<sup>201</sup> Congress must crackdown on these bets to remove the "unmistakable stench of corruption."<sup>202</sup>

2. *The Rise of Prediction Markets Have Led to a Loss of Trust in Media, Financial Markets, and Professional Sports*

The rapid growth of sports-related event contracts captured the attention of professional sports and the NCAA.<sup>203</sup> But the adoption of prediction markets has been unequal.<sup>204</sup> The NHL, MLB, and MLS have multiyear partnership agreements with prediction market

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197. See Chris Cook et al., *Polymarket Users Won Big with Unusual Bets on US Attack on Iran*, FIN. TIMES (Mar. 3, 2026), <https://www.ft.com/content/2883d3d4-aea2-4984-b994-4640593eed55> [https://perma.cc/2ADF-LDG7 (staff-uploaded, dark-archive)].

198. *Id.*

199. *See id.*

200. *Id.*

201. See Ephrat Livni, *Betting on Ayatollah's Ouster Ignites Ire over Prediction Markets*, N.Y. TIMES (Mar. 18, 2026), <https://www.nytimes.com/2026/03/18/world/middleeast/ayatollah-ouster-bets-death.html> [https://perma.cc/5EBG-B8B4 (staff-uploaded, dark-archive)].

202. *Id.*

203. Jay Cohen, *Prediction Markets Love Sports, But the Feeling Isn't Exactly Mutual*, ASSOCIATED PRESS (Feb. 13, 2026), <https://apnews.com/article/kalshipolymarket-nfl-nba-mlb-nhl-663ec7f5da78aecd7d7c145bb9cb65ca> [https://perma.cc/5HA3-EA62].

204. *Id.*

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platforms.<sup>205</sup> The NFL has expressed openness to prediction markets.<sup>206</sup> Likewise, the NCAA is awaiting a suitable regulatory framework that protects sports integrity before considering partnerships with industry participants.<sup>207</sup>

On the other hand, the NBA views the industry as the same as sports betting but has no official league-level deal.<sup>208</sup> This has not stopped NBA superstar Giannis Antetokounmpo from joining Kalshi as a shareholder.<sup>209</sup> Although the NBA allows players to make de minimis investments,<sup>210</sup> those associated with gambling are drawing ire due to an ongoing NBA betting scandal.<sup>211</sup> Ultimately, this matters

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205. *NHL Announces Landmark Multiyear Partnerships with Kalshi, Polymarket*, NHL (Oct. 22, 2025), <https://www.nhl.com/news/nhl-announces-landmark-multiyear-partnerships-with-kalshi-polymarket> [<https://perma.cc/6DZ3-5WAJ>]; *MLB Names Polymarket Exclusive Prediction Market Exchange Partner and Signs Agreement with CFTC to Establish Integrity Framework*, MLB (Mar. 19, 2026), <https://www.mlb.com/press-release/press-release-mlb-names-polymarket-exclusive-prediction-market-exchange-partner-and-signs-agreement-with-cftc-to-establish-integrity-framework> [<https://perma.cc/44CL-82QZ> (staff-uploaded)]; *MLS Enters Multi-year Partnership with Polymarket*, MLS (Jan. 26, 2026), <https://www.mlssoccer.com/news/mls-enters-multi-year-partnership-with-polymarket> [<https://perma.cc/J8ZZ-LKH8>].
206. Ben Horney, *NFL Signals Eventual Openness to Prediction Markets*, FRONT OFF. SPORTS <https://frontofficesports.com/nfl-signals-eventual-openness-to-prediction-markets/> [<https://perma.cc/FDR3-2KEG>] (last updated Feb. 6, 2026).
207. Ben Horney, *Prediction Markets Leverage March Madness Despite NCAA Opposition*, FRONT OFF. SPORTS (Mar. 17, 2026, at 12:52 ET), <https://frontofficesports.com/prediction-markets-leverage-march-madness-despite-ncaa-opposition/> [<https://perma.cc/MGF7-THC6>].
208. Daniel Roberts & Alex Schiffer, *NBA Views Prediction Markets as the Same as Sports Betting*, FRONT OFF. SPORTS, <https://frontofficesports.com/adam-silver-nba-sees-prediction-markets-same-as-sports-betting/> [<https://perma.cc/L295-YLQA>] (last updated Feb. 15, 2026).
209. Owen Lewis, *'We All on Kalshi Now': Giannis Antetokounmpo and The Quiet Collapse of Sporting Trust*, GUARDIAN (Feb. 8, 2026, at 08:00 ET), <https://www.theguardian.com/sport/2026/feb/08/giannis-antetokounmpo-kalshi-prediction-markets-nba> [<https://perma.cc/A4MJ-6GK2>].
210. Roberts & Schiffer, *supra* note 208.
211. Joe Vardon & Mike Vorkunov, *The NBA Players, Coaches, and Gamblers at the Center of a Federal Betting Investigation*, ATHLETIC, <https://www.nytimes.com/athletic/6788069/2025/11/25/nba-players-coaches-gamblers-betting-investigation/> [<https://perma.cc/L295-YLQA> (staff-uploaded, dark archive)] (last updated Nov. 26, 2025).

because fans will not buy jerseys, watch games, or buy tickets if they think a match is “rigged.”<sup>212</sup>

### 3. *Prediction Markets Siphons Tax Revenues from States*

Since the Supreme Court struck down PASPA in May 2018, sports betting has become an indispensable revenue source for a majority of states.<sup>213</sup> This revenue funds “public schools, roads, highways, law enforcement, and gambling addiction treatment.”<sup>214</sup> Recent studies found that sports betting generated \$2.71 billion in state tax revenue.<sup>215</sup> The continued growth of prediction markets threatens this financial lifeline.<sup>216</sup>

For instance, in states with no income tax, prediction market platforms “essentially pay no state taxes on their income.”<sup>217</sup> In North Carolina, platforms would be subjected to only the 2.25% corporate income tax rate.<sup>218</sup> This favorable tax situation illustrates why sportsbooks, like FanDuel and DraftKings, launched their own prediction market platforms.<sup>219</sup> This shift by sportsbooks to shield a

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212. Doug Greenberg & Shwetha Surendran, *Scandals, Prediction Markets: Is 2025 a Turning Point for Sports Betting?*, ESPN (Dec. 19, 2025), [https://www.espn.com/espn/betting/story/\\_/id/47337056/scandals-prediction-markets-2025-turning-point-sports-betting](https://www.espn.com/espn/betting/story/_/id/47337056/scandals-prediction-markets-2025-turning-point-sports-betting) [https://perma.cc/NTL9-2SLK].

213. Rob Simon, *Quarterly Summary of State and Local Tax Revenue Shows Nationwide Surge in Sports Betting Revenue*, U.S. CENSUS BUREAU (Dec. 10, 2025), <https://www.census.gov/library/stories/2025/12/sports-betting.html> [https://perma.cc/H3CB-3FE4].

214. *Id.*

215. *How Much Revenue Does Sports Betting Generate*, USAFACTS (Feb. 4, 2026), <https://usafacts.org/articles/how-much-revenue-does-sports-betting-generate> [https://perma.cc/5DMD-QLRK].

216. See Nathan Goldman & Christina Lewellen, *Prediction Markets vs. States: Tax Gaps and Legal Battles*, POOLE THOUGHT LEADERSHIP (Mar. 2, 2026), <https://poole.ncsu.edu/thought-leadership/article/prediction-markets-vs-states-tax-gaps-and-legal-battles/> [https://perma.cc/7C44-NMNN].

217. *Id.*

218. *Id.*

219. *FanDuel and CME Group Launch FanDuel Predicts to Give Customers the Power to Trade on Tomorrow's Headlines*, FANDUEL (Dec. 22, 2025), <https://www.prnewswire.com/news-releases/fanduel-and-cme-group-launch-fanduel-predicts-to-give-customers-the-power-to-trade-on-tomorrows-headlines-302648096.html> [https://perma.cc/B5D9-TGQU]; *DraftKings Debuts Predictions App, Entering Prediction Markets*, DRAFTKINGS

*footnote continued on next page*

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portion of profits from higher tax rates and the continued existence of prediction markets will have significant consequences in state budgets across the United States.<sup>220</sup> Moreover, it highlights the importance of clearly defining the legal status of prediction markets.<sup>221</sup>

### 4. *Sports Prediction Markets and Public Health*

Sports-related event contracts are a growing public health crisis. This health crisis is attributed to the ongoing epidemic of sports gambling addiction in America.<sup>222</sup> The rise in sports-related event contracts has exacerbated this crisis.<sup>223</sup> Unlike state-regulated gaming, sports-related event contracts lack age restrictions, addiction resources, limits on exposure, and minimal restrictions on marketing practices.<sup>224</sup> The lack of any suitable safeguards allows prediction market platforms to offer the “same experience as sportsbooks” without any guardrails.<sup>225</sup> This lack of differentiation illustrates why public sentiment believes prediction markets are closer to gambling.<sup>226</sup>

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(Dec. 19, 2025), <https://www.draftkings.com/draftkings-debuts-predictions-app-entering-prediction-markets> [<https://perma.cc/2TBA-3BKQ>].

220. See Bill King, *SBJ Betting: It's Everywhere, and It's Not Taxed*, SPORTS BUS. J. (Mar. 6, 2026), <https://www.sportsbusinessjournal.com/sb-blogs/newsletter-betting/2026/03/06/> [<https://perma.cc/WSW5-CPCJ>].

221. See Goldman & Lewellen, *supra* note 216.

222. See Benjamin Schiffrin, *Sports Betting Scandals Show the Perils of Prediction Markets*, BETTER MARKETS (Nov. 20, 2025) <https://bettermarkets.org/analysis/sports-betting-scandals-show-the-perils-of-prediction-markets/> [<https://perma.cc/VS9J-QSKJ>]; see also Jordan Smith, *Is Gambling Becoming a Public Health Crisis?*, HARV. MAG. (Feb. 10, 2025) <https://www.harvardmagazine.com/2025/03/harvard-research-gambling-public-health-crisis> [<https://perma.cc/7TBT-SZMW>] (reporting on the link between the proliferation of mobile gambling and its looming public health implications).

223. Schiffrin, *supra* note 222.

224. *Id.*

225. *Id.*

226. Nathan Bomey, *Prediction Markets More Like Gambling than Investing*, AMERICANS SAY, AXIOS (Mar. 17, 2026), <https://www.axios.com/2026/03/17/kalshipolymarket-sports-betting> [<https://perma.cc/D25L-29WN> (staff-uploaded)].

Young men are particularly susceptible to gambling on sports-related event contracts.<sup>227</sup> The ease of placing bets on smartphone apps from anywhere in the world makes prediction markets highly addictive.<sup>228</sup> The rise in addiction is supported by early data from problem-gambling helplines and state prevalence surveys.<sup>229</sup> Health care providers are witnessing a rise in sports-related event contract gambling addictions.<sup>230</sup> America must deploy all of its treatment options in order to address this problem.<sup>231</sup>

### C. Congress Should Pass the Prediction Markets Security and Integrity Act

Senator Richard Blumenthal introduced the Prediction Markets Security and Integrity Act to prevent abuse and fraud in prediction markets.<sup>232</sup> Specifically, the proposed legislation establishes three

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227. See Oyin Adedoyin, *Meet the Young Men Rushing into Betting Markets*, WALL ST. J. (Feb. 1, 2026, at 10:00 ET), <https://www.wsj.com/business/media/meet-the-young-men-rushing-into-betting-markets-f135de39> [https://perma.cc/X52Y-QLZH (staff-uploaded, dark archive)].

228. See Jennifer L. Gaskin, *'If It Quacks Like a Duck': Prediction Markets, Sports Betting & Insider Trading*, CORP. COMPLIANCE INSIGHTS (Jan. 14, 2026), <https://www.corporatecomplianceinsights.com/prediction-markets-sports-betting-insider-trading/> [https://perma.cc/QJC9-TP8Y]; see also Nora Volkow, *Gambling Disorder the Age of Mobile Sports Betting*, NAT'L INST. OF DRUG ABUSE (Nov. 14, 2025), <https://nida.nih.gov/about-nida/noras-blog/2025/11/gambling-disorder-in-the-age-of-mobile-sports-betting> [https://perma.cc/7HEK-NST8] ("24/7 mobile platforms exposes vulnerable people to a potent combination of continuous betting opportunities, data-driven promotions, and real-time micro-rewards.").

229. *Id.*; see also Michelle Crouch, *As Sports Betting Booms in North Carolina, So Do Gambling Problems*, NC HEALTH NEWS, (Mar. 18, 2026), <https://www.northcarolinahealthnews.org/2026/03/18/as-sports-betting-booms-so-do-gambling-problems/> [https://perma.cc/X5PZ-TR5J] (reporting new-record attendance at Gamblers Anonymous meetings across North Carolina).

230. *Id.*

231. Treatment options include support groups, call centers and referral networks, youth prevention programs, and physician led treatment. *Id.*

232. Press Release, Sen. Blumenthal, Blumenthal Introduces New Legislation to Regulate Prediction Markets (Mar. 11, 2026), <https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-introduces-new-legislation-to-regulate-prediction-markets> [https://perma.cc/WXJ5-8PRS].

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distinct safeguards.<sup>233</sup> First, the bill prevents prediction markets from operating in states without approval, bans addictive features, and clarifies that prediction markets are not exempt from state and tribal oversight.<sup>234</sup> Second, the bill prevents underage use by implementing age and location verification checks to prevent individuals under the age of twenty-one from gambling.<sup>235</sup> Third, the bill prevents fraud and manipulation in prediction markets by barring the use of material nonpublic information in bets and prohibiting events susceptible to fraud, war, death, or matters that would violate state or federal law.<sup>236</sup> Implementing the bill is a step in the right direction to close the regulatory gaps and loopholes where corruption and exploitation currently thrive, especially if the Supreme Court denies certiorari to the slew of federal lawsuits involving prediction market platforms.<sup>237</sup>

## VI. CONCLUSION

Prediction markets are having their moment in the sun. The rapid growth of these new “financial instruments” highlights deep concerns about legalized gambling in America’s financial markets. Congress created the CFTC to ensure America’s derivative markets worked for the American public, free from any undue influence. Over several decades, Congress made multiple amendments to the CEA to accomplish that aspirational goal. Recent decisions by courts and a change in administration aim to knock down the firewall that protects American derivative markets from becoming de facto casinos.

To stop this trend, the courts and Congress must support the sovereignty of states and Tribes by recognizing that the CEA does not

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233. Richard Blumenthal & Andy Kim, *The Prediction Markets Security and Integrity Act of 2026*, (Mar. 11, 2026), [https://www.blumenthal.senate.gov/imo/media/doc/prediction\\_markets\\_security\\_and\\_integrity\\_act\\_of\\_2026\\_\\_one\\_pager.pdf](https://www.blumenthal.senate.gov/imo/media/doc/prediction_markets_security_and_integrity_act_of_2026__one_pager.pdf) [https://perma.cc/7ZMH-Y3NB].

234. *Id.*

235. *Id.*

236. *Id.*

237. See Bobby Allyn, *Kalshi in Court Over 19 Federal Lawsuits. What’s the Future of Prediction Markets?*, KERA NEWS (Jan. 30, 2026), <https://www.keranews.org/2026-01-30/kalshi-in-court-over-19-federal-lawsuits-whats-the-future-of-prediction-markets> [https://perma.cc/9R2S-87XA].

completely preempt states from regulating gambling, adhere to the holding in *Murphy* which recognized states' strong interest in regulating gambling, recognize that the CEA does not preempt IGRA, and find that prediction market operators are openly infringing on the rights of Tribes by offering sports-related event contracts on Indian lands against the wishes of Tribes. Without an immediate change that clearly finds sports-related prediction markets illegal, America could face a growing generation of young individuals addicted to gambling, a loss of trust in its financial system, and an ever-present undue influence on its most sacred institutions and sports.