What's On Deck In Tribal Nations' Prediction Markets Litigation

By **Samir Patel and James Meggesto** (January 12, 2026, 5:55 PM EST)

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A fundamental conflict between federal derivatives regulation and long-standing principles of tribal gaming law has emerged as one of the most consequential regulatory disputes now confronting the courts and Congress.

Federally recognized Native American tribes, acting through a broad coalition of national and regional gaming organizations and individual tribal governments, have mounted a coordinated legal response to the expansion of sports-based prediction markets operated by commodity exchanges regulated by the Commodity Futures Trading Commission.

At issue is whether these platforms may offer contracts functionally indistinguishable from sports wagering nationwide, including on tribal lands, without compliance with the Indian Gaming Regulatory Act or state gaming laws, notwithstanding the Commodity Exchange Act's express authorization for the CFTC to prohibit event contracts involving gaming or activity unlawful under state or federal law.[1]

As litigation enters a decisive phase this year, multiple appellate courts are positioned to address whether federal commodities law permits nationwide offering of sports-based event contracts free from state and tribal gaming regulation.

Prediction markets have expanded rapidly, driven by increased retail participation and regulatory mechanisms permitting exchanges to list event contracts tied to future outcomes. These platforms allow users to trade contracts paying out based on sporting event results.

Exchanges characterize these products as derivatives governed by the CEA rather than wagering. Their functional similarity to traditional sports betting, however, places them in direct tension with state and tribal gaming authorities grounded in licensing, exclusivity, and negotiated compacts.

The dispute traces to amendments Congress made to the CEA in 2010 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Congress expanded the CEA's definition of "swap" to include "any agreement, contract, or transaction" that is "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic or commercial consequence."[2]

Simultaneously, Congress granted the CFTC exclusive jurisdiction over swaps while expressly authorizing the commission to prohibit any contract involving "gaming" or activity unlawful under state or federal law.[3]

That authority is implemented through CFTC Rule 40.11, which categorically prohibits event contracts involving gaming.

Prediction-market operators rely on the expanded swap definition to argue sports-based event contracts fall within federal commodities regulation, while regulators and tribal governments contend Congress preserved — rather than displaced — state and tribal authority over sports wagering.

Equally significant is the self-certification mechanism through which derivatives products come to market. Under the CEA, a registered exchange may list a new contract by certifying to the CFTC that it complies with statutory requirements, with trading permitted after a short notice period absent agency action.

Self-certification presupposes meaningful agency oversight and operates against substantive statutory limits — including the CFTC's authority to prohibit gaming-related event contracts. The present litigation — over 20 lawsuits and counting — tests whether self-certification can insulate sports-based contracts from state and tribal gaming regulation.

Against that statutory backdrop, tribal participants have advanced a consistent position: Sports-based event contracts are not financial derivatives within the meaning of the CEA, but instead constitute Class III gaming subject to IGRA's compact-based regulatory framework.

If accepted, the exchanges' theory would permit private entities to displace state and tribal gaming authority through unilateral self-certification — a result tribes contend Congress did not intend.

Federal Preemption and the Limits of the CEA

In March, the New Jersey Division of Gaming Enforcement **issued** a cease-and-desist letter to KalshiEX LLC asserting that its sports-based event contracts constituted unlawful sports wagering. Kalshi filed suit in the U.S. District Court for the District of New Jersey seeking declaratory and injunctive relief.[4]

The district court **agreed and enjoined** New Jersey from enforcing its gaming laws against Kalshi's sports contracts, holding that federal commodities law preempted state regulation.[5]

On appeal in the U.S. Court of Appeals for the Third Circuit, a coalition of tribal gaming organizations and more than 60 federally recognized tribes **filed** amicus briefs contending that the New Jersey district court's preemption analysis, if upheld, would permit sports wagering on tribal lands without compliance with IGRA's tribal-state compact requirements.[6]

Filed in June 2025, the amicus briefs center on IGRA's structure and allocation of regulatory authority. Enacted in 1988, IGRA establishes a comprehensive federal framework governing tribal gaming and recognizes tribes' exclusive authority to regulate gaming on Indian lands.

The statute classifies "any sports betting" as Class III gaming, lawful only where conducted pursuant to a tribal ordinance, in a permitting state, and under an approved tribal-state compact.[7] The amici argued that sports-based event contracts allowing participants to wager on sporting event outcomes fall squarely within IGRA's core domain.

The classification of sports-based event contracts as "swaps" presents a threshold issue. The CEA defines swaps as agreements dependent on an event associated with a potential financial, economic or commercial consequence.

Sporting events, the amici argued, do not possess inherent economic significance; their outcomes acquire financial meaning only because participants choose to wager on them. That distinction places such contracts outside the statute's intended scope.[8]

If sports-based event contracts are not deemed swaps, the CEA itself restricts any claim of federal preemption. Under its Special Rule, the CFTC may bar event contracts that involve gaming or violate state or federal law — an authority the agency has exercised through regulations.[9]

As the amici argue, contracts that would violate IGRA on tribal lands cannot simultaneously preempt the very statutory framework they would contravene.

The litigation also implicates constitutional limits on regulatory delegation. Under Kalshi's theory, a private market participant may preempt sovereign regulatory authority simply by certifying compliance and commencing trading.

The amici argue that allowing private self-certification to carry such dispositive legal effect raises serious nondelegation concerns, particularly where the agency disclaims responsibility for regulating gambling.[10]

Statutory Coherence and Congressional Intent

In April 2025, the Maryland Lottery and Gaming Control Agency notified Kalshi that its sports-based event contracts constituted unlawful sports wagering under Maryland law. Kalshi filed suit in the U.S. District Court for the District of Maryland.[11]

The district court denied Kalshi's request for a preliminary injunction, concluding Kalshi had failed to demonstrate a likelihood of success on its federal preemption claims.[12] Kalshi appealed, and tribal organizations **filed** an amici brief in the U.S. Court of Appeals for the Fourth Circuit expanding on statutory and constitutional objections raised in related proceedings.[13]

Filed in December 2025, the tribal amici emphasize the canon against implied repeal, arguing that Congress did not intend for later amendments to the CEA to silently override IGRA. If the CEA amendments enacted in 2010 silently displaced IGRA's core provisions — vesting exclusive authority over sports wagering in the CFTC, including on tribal lands — Congress would have effected a sweeping alteration of Indian gaming law without a single reference to tribes, IGRA or Indian lands. Such repeals are strongly disfavored, particularly where Indian-specific legislation is concerned.[14]

The amici further invoke the major questions doctrine. Kalshi's position would mean Congress legalized sports betting nationwide in 2010, despite contemporaneous federal prohibitions and years before the U.S. Supreme Court invalidated the Professional and Amateur Sports Protection Act. When the court decided Murphy v. NCAA, it emphasized that the legalization of sports gambling entails a significant policy judgment reserved to Congress or the states. Nothing in the CEA suggests Congress made that judgment

indirectly through a derivatives statute.[15]

California Tribes Test UIGEA's Scope in Direct Enforcement Action

Three California tribes — Blue Lake Rancheria, Chicken Ranch Rancheria and Picayune Rancheria — sued Kalshi directly, alleging unauthorized Class III gaming on tribal lands violating IGRA's compact requirements.

Unlike the Third and Fourth Circuit cases where states challenged Kalshi under state gaming laws raising CEA preemption issues, the tribes argued IGRA specifically governs gaming on tribal lands.[16]

In November, the U.S. District Court for the Northern District of California denied preliminary relief, distinguishing this from state enforcement actions by finding that the Unlawful Internet Gaming Enforcement Act, not IGRA, governs internet gambling crossing jurisdictional boundaries.

The court reasoned that IGRA, enacted in 1988 before the internet, covers gaming "exclusively within Tribal lands," while UIGEA specifically addresses interstate internet gambling. Since Kalshi operates nationwide — not exclusively within tribal boundaries — UIGEA applies. Crucially, because Kalshi is a CEA-registered entity, its contracts fall within UIGEA's exemption for commodity exchange transactions, creating a potential loophole.[17]

The tribes appealed, challenging this interpretation in the U.S. Court of Appeals for the Ninth Circuit, and arguing UIGEA's exemption presupposes valid CEA coverage.

2026 Outlook

In the Third Circuit, merits briefing is complete and oral argument is expected during the first half of the year. Because the appeal follows entry of injunctive relief, the court is likely to confront the statutory preemption question directly, including the interaction between the CEA, CFTC Rule 40.11, and IGRA's compact-based framework. A decision would immediately shape parallel proceedings nationwide.

The Fourth Circuit appeal proceeds on a similar timetable. Although it arises from the denial of preliminary relief, the issues overlap substantially with those before the Third Circuit. Any divergence in reasoning would materially increase the likelihood of further

appellate review.

Meanwhile, in Ninth Circuit, the appeal from Blue Lake Rancheria v. Kalshi, Inc. is in its early stages. That appeal presents a distinct question concerning the interaction between IGRA and UIGEA, including whether UIGEA's CEA exemption presupposes valid coverage under the CEA itself.

The prospect of Supreme Court review cannot be discounted. With multiple circuits considering closely related questions of federal preemption, statutory coherence and constitutional structure, the litigation presents the type of conflict that historically attracts further review, particularly where federal authority would displace long-standing state and tribal regulatory regimes.

The CFTC itself may also shape the regulatory landscape. The commission retains authority to clarify that the CEA does not preempt state gambling laws, a position that would align with the tribal amici's reading of the statute's "Special Rule" and eliminate the predicate for Kalshi's preemption claims.

Separately, the new CFTC chair's pro-cryptocurrency orientation may shift the commission's focus toward prediction markets' use of digital assets and the broader integration of cryptocurrency within commodities markets. If the agency prioritizes expanding its role in regulating blockchain technology and digital asset trading, it may prove willing to relinquish oversight of sports prediction markets to state and tribal gaming regulators — a reallocation of regulatory authority that would effectively resolve the preemption question without judicial intervention.

Finally, Congress can the amend the CEA or enact related legislation that clarifies the issue. Stakeholders from various industries have dramatically increased lobbying activity in this space and various bills pending in Congress regarding cryptocurrencies and blockchain technology offer opportunities for additional legislative language clarifying the legality of these sports event contract exchanges.

Until clarity emerges, operators, regulators and tribal governments will navigate a fragmented legal landscape. The decisions issued this year are likely to define not only the future of sports prediction markets, but also the boundaries of federal, state and tribal authority in this evolving area.

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[1] 7 U.S.C. § 7a-2(c)(5)(C); 17 C.F.R. § 40.11(a)(1).

[2] 7 U.S.C. § 1a(47)(A)(ii).

[3] 7 U.S.C. § 7a-2(c)(5)(C); 17 C.F.R. § 40.11(a)(1).

[4] KalshiEX LLC v. Flaherty, No. 25-CV-02152-ESK-MJS, 2025 WL 1218313, at 3-8 (D.N.J. Apr. 28, 2025).

[5] Id.

[6] Brief for Indian Gaming Association et al. as Amici Curiae at 2-4, KalshiEX LLC v. Flaherty, No. 25-1922 (3d Cir. filed May 15, 2025).

[7] 25 U.S.C. §§ 2701–2721; 25 C.F.R. § 502.4(c).

[8] Brief of Indian Gaming Association et al. as Amici Curiae at 8–10, Flaherty, No. 25-1922 (3d Cir. May 15, 2025).

[9] 7 U.S.C. § 7a-2(c)(5)(C); 17 C.F.R. § 40.11(a)(1).

[10] See Carter v. Carter Coal Co., 298 U.S. 238 (1936).

[11] KalshiEX LLC v. Martin, 793 F. Supp. 3d 667 (D. Md. 2025).

[12] Id.

[13] Brief of Indian Gaming Association et al. as Amici Curiae at 3-6, KalshiEX LLC v. Martin,

No. 25-1892 (4th Cir. filed December 22, 2025).

[14] Morton v. Mancari, 417 U.S. 535 (1974).

[15] Murphy v. Nat'l Collegiate Athletic Ass'n, 584 U.S. 453 (2018).

[16] Blue Lake Rancheria v. Kalshi Inc., No. 25-CV-06162-JSC, 2025 WL 3141202 (N.D. Cal. Nov. 10, 2025).

[17] Id.