AG Watch: Ohio's Prediction Market Preemption Battle

By **Albert Lin and Ethan Garvin** (November 25, 2025)

This article is part of a regular column in which each installment features observations on one state's attorney general enforcement news and trends, and the compliance implications.

Albert Lin

Ethan Garvin

Since the 2018 ruling in Murphy v. NCAA by the U.S. Supreme Court[1] held that Congress could not prohibit sports betting, many jurisdictions have legalized it in some form.[2]

Thirty-nine states, plus Washington, D.C., and Puerto Rico, allow sports betting, and 34 permit doing so online.[3] As technology advances, traditional forms of sports betting are giving way to online avenues of gambling.[4] Legalized gambling has traditionally fallen within states' police power and been subject to state regulation.[5]

However, a new form of wagering via financial instruments threatens to upend traditional notions of gambling regulation.[6] Notably, pending cases before the U.S. Court of Appeals for the Third Circuit and the U.S. District Court for the Southern District of Ohio will likely have notable consequences on sports gambling nationwide, with Ohio Attorney General Dave Yost playing a significant part in both cases.

The Rise of Prediction Markets

The new form of wagering takes place on prediction markets that offer event contracts that pay based on whether a specific future event occurs.[7] Each contract must have parties representing both positions — yes and no — and on prediction market platform KalshiEX LLC, for example, the contracts pay out one dollar to the prevailing side.[8]

While there are no traditional odds listed like a sportsbook, the positions' prices reflect the perceived likelihood of the event occurring.[9] The more people buying a position, the higher that position's price becomes; this lowers the price of the opposite position.[10]

While these markets are gaining popularity for their sports-related contracts, they also offer contracts on a wide variety of subjects, such as the winner of the 2028 presidential election, placements in reality competition shows, and even the severity of climate change.[11] The prediction market industry's growth is so substantial that a September episode of South Park centered on it and emphasized how "[p]eople can make any bet they want."[12]

Notably, these prediction markets are regulated by the U.S. Commodity Futures Trading Commission, not states.[13] The Dodd-Frank Act amended the Commodity Exchange Act, or CEA, to give the CFTC exclusive jurisdiction over "swaps," which includes event contracts.[14]

States, unhappy with this apparent usurping of their regulatory power, have begun to oppose these markets' possible immunity from state regulation.[15]

States Push Back

In a cease-and-desist letter sent earlier this year, New Jersey proposed criminal punishment and severe fines against Kalshi if it continued to purportedly run afoul of state gambling laws.[16]

Kalshi sought a preliminary injunction and argued that the CEA preempted state regulation of CFTC-certified designated contract markets.[17] New Jersey argued against preemption, claiming that the CEA's grant of exclusive jurisdiction was to distinguish the CFTC from the U.S. Securities and Exchange Commission.[18]

On April 28, in KalshiEX LLC v. Flaherty, the U.S. District Court for New Jersey sided with Kalshi.[19] On June 10, New Jersey appealed this decision to the Third Circuit.[20]

After this decision and a similar one in Nevada,[21] 36 state attorneys general formed a bipartisan coalition led in part by Yost.[22] This group filed an amicus brief in New Jersey's pending appeal and briefly reiterated the argument against preemption.[23]

The brief then discussed the traditional role of states in gambling regulation.[24] It traced the evolution of American gambling from European settlers to near prohibition in the 19th century to the current legislation permitting legal gambling around the country.[25]

But this legislation is often accompanied by a multitude of state regulations.[26] These regulations often lay out detailed licensure guidelines,[27] limit the number of permitted establishments and platforms,[28] and provide resources for problem gamblers,[29] among numerous other requirements.

If the CEA does preempt state regulation of prediction markets like Kalshi, the attorneys general say it creates a large — and continuously growing — loophole for unregulated gambling that could have major implications.[30]

Benefits and Drawbacks

States

States have several motivations for regulating prediction markets. First, gambling regulation has always been part of a state's police power.[31] Yost warns that preemption would significantly alter the balance between state and federal power.[32]

Usually, when Congress intends to "effect[] a major change to the existing order," it must speak clearly and does not do so lightly.[33] The attorneys general argue that Congress would not have exempted prediction markets from state legislation through "obscure language within a special rule in the [CEA]."[34] States are loath to cede this regulatory power to the federal government.

Second, the attorneys general emphasize various "societal ills" associated with gambling, like gambling addiction and underage gambling.[35] For instance, Ohio saw an almost doubling of at-risk and problem gamblers in just one year after legalizing sports betting.[36]

Despite state oversight via the Ohio Attorney General's Office, gambling addiction and underage gambling are both still rising.[37] Ohio universities offer resources for sports betting problems,[38] and the state has a campaign targeted at minors to prevent future gambling problems.[39] An unregulated method of wagering could undermine Ohio and other states' ability to deter problem gamblers.

Finally, regulated gambling is a major source of taxable revenue for states. In the first eight months of this year, in-person casinos in Ohio brought in almost $700 million in revenue.[40] Sportsbooks around the country generated $13.7 billion in 2024.[41] States have a strong financial interest in regulating gambling within their borders.

If the Third Circuit reverses the district court, states could address the above concerns and benefit from another form of legalized gambling.

However, there are drawbacks. First, the federal government is better able to regulate financial markets because of its history and expertise in doing so. Second, prediction market contracts are not typical event contracts, which were focused on traditional financial, economic and commercial subjects.[42] States would need to decide which event contracts qualify as gambling and which ones do not, despite all involving wagering.

The CFTC's greater expertise in the area and the impracticality of categorizing event contracts highlight the potential drawbacks of states regulating prediction markets.

Kalshi

Conversely, Kalshi has a compelling argument as to why the CFTC alone should regulate it. Primarily, it points to the CEA's text.[43] Congress granted the CFTC exclusive jurisdiction over designated contract markets.[44]

Congress "[l]eft no room for state regulation of trading on [designated contract markets]."[45] The Dodd-Frank Act added "swaps" to the CFTC's exclusive jurisdiction, which includes event contracts.[46] Kalshi argues that Congress' clear intent was for designated contract markets to be governed by a uniform regulatory framework — the CFTC's — not a patchwork of 50-plus bodies of regulation.[47]

A pro-Kalshi ruling would leave it subject to only one body of regulations, but those regulations might not be sufficient to address issues that gambling may create. Unlike some states, the CFTC lacks voluntary exclusion programs to help recovering gamblers avoid relapse.[48]

Further, prediction markets allow individuals to participate when they are 18 years old rather than 21.[49] Young people, already a demographic susceptible to gambling problems, would have earlier access to a possible vice.[50]

Finally, prediction markets like Kalshi do not pay state taxes, despite generating revenue in ways similar to traditional sportsbooks.[51] Gambling is a significant source of revenue for states, with sportsbooks alone creating tax revenue of $2.8 billion.[52] Considering Kalshi's rapid growth, the impact will compound over time.[53]

Recent Litigation in Ohio

After co-leading the state's amicus brief in the Third Circuit Kalshi case, Yost is now on defense.

On Oct. 7, Kalshi filed a complaint — KalshiEX LLC v. Schuler — in the U.S. District Court for the Southern District of Ohio, seeking injunctive relief against the Ohio Attorney General's Office and the Ohio Casino Control Commission.[54] Kalshi also moved for a preliminary injunction against the defendants.[55]

As in the New Jersey case, Ohio agencies, through a cease-and-desist letter, threatened to punish Kalshi under Ohio gambling laws if it continued its operations in the state.[56] The state also warned that it would take administrative action against those who "decide[] to associate, coordinate, or otherwise partner directly or indirectly with entities offering or facilitating the offering of sporting event contracts in Ohio."[57]

Kalshi again invoked its textualist preemption argument of the CEA. Furthermore, it noted that prior district courts have preempted state law regulations via a preliminary injunction.[58] On Nov. 7, the defendants filed their response in opposition to Kalshi's motion for a preliminary injunction.[59] As of Nov. 25, Kalshi's motion is still pending.

The Future of Gambling Regulations

The state of Ohio and Yost will seek to protect the state's regulatory monopoly over legalized sports betting in the wake of cases like Kalshi. They view Kalshi's preliminary injunctions as attempts to circumvent sports gambling regulations, so they will aggressively enforce those laws in response.

The primary justification will be the protection of citizens, especially young people and problem gamblers. However, as prediction markets proliferate and technology evolves, Ohio and other states will have great difficulty keeping up.

To ease states' concerns and lessen the severity of their enforcement, prediction markets should implement policies that resemble state regulations. Kalshi has voluntary opt-outs from its platform, much like how Ohio and other states have voluntary exclusion lists.[60]

Kalshi also has policies for detecting and reporting suspicious activity like manipulation of outcomes.[61] Internal controls such as these will help to insulate prediction markets from risk. Predictions markets should also engage with the states in which they operate. Attempting to avoid them could cause states to take more drastic measures in response, like civil penalties or criminal punishment.

Conclusion

The Third Circuit's decision will have significant consequences for both states and prediction markets. A ruling in states' favor would, from their perspective, preserve state gambling regulations and permit greater local control over an offshoot of the sports betting industry.

However, a reversal would take the regulatory power away from a federal body with expertise and experience in regulating these types of contracts. States would then have to distinguish between regulable and nonregulable event contracts. This is challenging, as all event contracts involve predictions on a future event.

A ruling in Kalshi's favor would avoid those problems, subjecting it to a single regulatory authority. But the CFTC's regulations do not address everything state gambling regulations do. This could affect those consumers vulnerable to gambling issues. It would also exempt a growing industry from taxation while other similar platforms are taxed at relatively high rates.

The conflict between state governments and prediction markets shows no signs of lessening. Kalshi's recent lawsuit against Ohio is just the latest in a growing string of court battles regarding which regulations govern prediction markets.

The 36 attorneys general who joined the amicus brief are all potential future targets of litigation. This makes the outcome of the Third Circuit case even more consequential — it could set the tone for future litigation throughout the country.

Albert Lin is a partner at BakerHostetler. He previously served as general counsel to the Ohio attorney general.

Ethan Garvin is an associate at BakerHostetler.

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[1] Murphy v. NCAA, 584 U.S. 453.

[2] American Gaming Association, "State of Play," https://www.americangaming.org/research/state-of-play-map/.

[3] Id.

[4] See American Gaming Association, "Commercial Gaming Revenue Tracker," https://www.americangaming.org/resources/commercial-gaming-revenue-tracker/.

[5] Brief of Appellant at 28, KalshiEX LLC v. Flaherty, No. 25-01922 (3rd Cir. June 10, 2025).

[6] KalshiEX LLC v. Flaherty, No. 25-cv-02152-ESK-MJS, 2025 WL 1218313, at *2 (D.N.J. Apr. 28, 2025).

[7] Id.

[8] Hill Kerby, "What Is Kalshi and How Does It Work?," Las Vegas Optic (May 30, 2025), https://www.lasvegasoptic.com/prediction_markets/what-is-kalshi-and-how-does-it-work/article_5eadb236-500c-4659-aa2c-53468eb37085.html.

[9] Id.

[10] Id.

[11] Kalshi, https://kalshi.com/?category=all.

[12] Michael J. de la Merced, "Kalshi, a Prediction Market, Raises Funds and Expands Overseas," The New York Times (Oct. 10, 2025), https://www.nytimes.com/2025/10/10/business/dealbook/ kalshi-prediction-market-fundraising.html; South Park: Conflict of Interest (Comedy Central broadcast Sept. 24, 2025).

[13] South Park: Conflict of Interest (Comedy Central broadcast Sept. 24, 2025); KalshiEX

LLC, 2025 WL 1218313, at *2.

[14] Brief of Appellee at 10, KalshiEX LLC v. Flaherty, No. 25-01992 (3rd Cir. July 24, 2025).

[15] Brief of Appellant at 11, KalshiEX LLC v. Flaherty, No. 25-01922 (3rd Cir. June 10, 2025); KalshiEX LLC v. Hendrick, No. 2:25-cv-00575-APG-BNW, 2025 WL 1073495, at *1 (D. Nev. Apr. 9, 2025).

[16] Brief of Appellee at 10, KalshiEX LLC v. Flaherty, No. 25-01992 (3rd Cir. July 24, 2025).

[17] Id. at 17.

[18] KalshiEX LLC, 2025 WL 1218313, at *4.

[19] Id. at *7.

[20] See generally Brief of Appellant at 28, KalshiEX LLC v. Flaherty, No. 25-01922 (3rd Cir. June 10, 2025).

[21] KalshiEX LLC, 2025 WL 1073495, at *8.

[22] Ohio Attorney General Dave Yost, supra note 2; see also Brief for Nevada, et al., as Amici Curiae Supporting Appellants, KalshiEX LLC v. Flaherty, No. 25-01922 (3rd Cir. June 17, 2025).

[23] Brief for Nevada et al. as Amici Curiae Supporting Appellants at 6-8, KalshiEX LLC v. Flaherty, No. 25-01922 (3rd Cir. June 17, 2025).

[24] Id. at 9-11.

[25] Id. (citing George G. Fenich, "A Chronology of (Legal) Gaming in the U.S.," 3 UNLV Gaming Rsch. & Rev. J. 65, 66 (1996) and Murphy, 584 U.S. at 458).

[26] See, e.g., Ohio Rev. Code §§ 3755.01-3755.99; Ohio Admin. Code 3755; Nev. Rev. Stat. §§ 462-467; Nev. Admin Code § 22.

[27] See, e.g., Ohio Rev. Code §§ 3775.03-3775.091.

[28] See, e.g., Ohio Rev. Code § 3775.04.

[29] See, e.g., Ohio Rev. Code §3775.02(B)(11) (directing the Ohio Casino Control Commission to adopt rules creating a voluntary exclusion program from sports betting); Ohio Admin. Code 3775-12.

[30] Ohio Attorney General Dave Yost, supra note 2.

[31] Brief for Nevada, et al., as Amici Curiae Supporting Appellants at 8-9, KalshiEX LLC v. Flaherty, No. 25-01922 (3rd Cir. June 17, 2025) (citing Bond v. U.S., 472 U.S. 844, 854 (2014)).

[32] Id. at 6-8.

[33] Id.

[34] Id. at 2.

[35] Id. (citing Rousso v. State, 170 Wash. 2d 70, 82 (2010)).

[36] Ohio Casino Control Comm'n, "2022 Ohio Gambling Survey Highlights" (Oct. 31, 2023).

[37] Ohio Casino Control Comm'n, supra note 39.

[38] See, e.g., "Sports Betting and Gambling Resources," The Ohio State University Student Wellness Center: Wellness Education and Resources, https://swc.osu.edu/wellness-education-and-resources/college-sports-betting/sports-betting-and-gambling-resources; "Gambling," University of Cincinnati Student Wellness Center: Education, https://www.uc.edu/campus-life/wellness/topic-areas/Gambling0.html.

[39] "About Us," Change the Game, https://changethegameohio.org/about-us/.

[40] Ohio Casino Control Comm'n, "2025 Ohio Casino Revenue Report" (2025).

[41] Brandon Gustafson, "2024: A Year of Growth for Sports Betting Revenue," CBS Sports (Mar. 28, 2025), https://www.cbssports.com/betting/news/2024-a-year-of-growth-for-sports-betting-revenue/.

[42] Reply Brief of Appellant at 6, KalshiEX LLC v. Flaherty, No. 25-01922 (3rd Cir. Aug. 14, 2025).

[43] Brief of Appellee at 22-30, KalshiEX LLC v. Flaherty, No. 25-01992 (3rd Cir. July 24, 2025).

[44] Id. at 22.

[45] Id. at 23.

[46] Id.

[47] Id. at 18-19.

[48] Brief for Nevada, et al., as Amici Curiae Supporting Appellants at 24, KalshiEX LLC v. Flaherty, No. 25-01922 (3rd Cir. June 17, 2025).

[49] Id. at 21.

[50] See Ohio Casino Control Comm'n, "2022 Ohio Gambling Survey Highlights" (Oct. 31, 2023); "About Us," Change the Game, https://changethegameohio.org/about-us/ (last accessed Sept. 29, 2025).

[51] Amy Calistri, "Kalshi Takes on Ohio in Latest Prediction Market Legal Battle," Yahoo! Finance (Oct. 8, 2025), https://finance.yahoo.com/news/kalshi-takes-ohio-latest-prediction-172100369.html.

[52] Gustafson, supra note 44.

[53] de la Merced, supra note 16.

[54] Complaint at 1-2, KalshiEX LLC v. Schuler, No. 2:25-cv-01165-SDM-CMV (S.D. Ohio Oct. 7, 2025).

[55] See generally Plaintiff's Motion and Memorandum of Points and Authorities in Support of a Preliminary Injunction at 8, KalshiEX LLC v. Schuler, No. 2:25-cv-01165-SDM-CMV (S.D. Ohio Oct. 7, 2025).

[56] Id. at 8.

[57] Id. at 8-9.

[58] See, e.g., id. at 11 (citing Hendrick, 2025 WL 1073495, at *6; Flaherty, 2025 WL 1218313, at *6).

[59] See generally Defendants' Combined Response in Opposition to Plaintiff KalshiEX LLC's Motion for Preliminary Injunction, KalshiEX LLC v. Schuler, No. 2:25-cv-01165-SDM-CMV (S.D. Ohio Oct. 7, 2025).

[60] Brief of Appellee at 59, KalshiEX LLC v. Flaherty, No. 25-01992 (3rd Cir. July 24, 2025).

[61] Id.