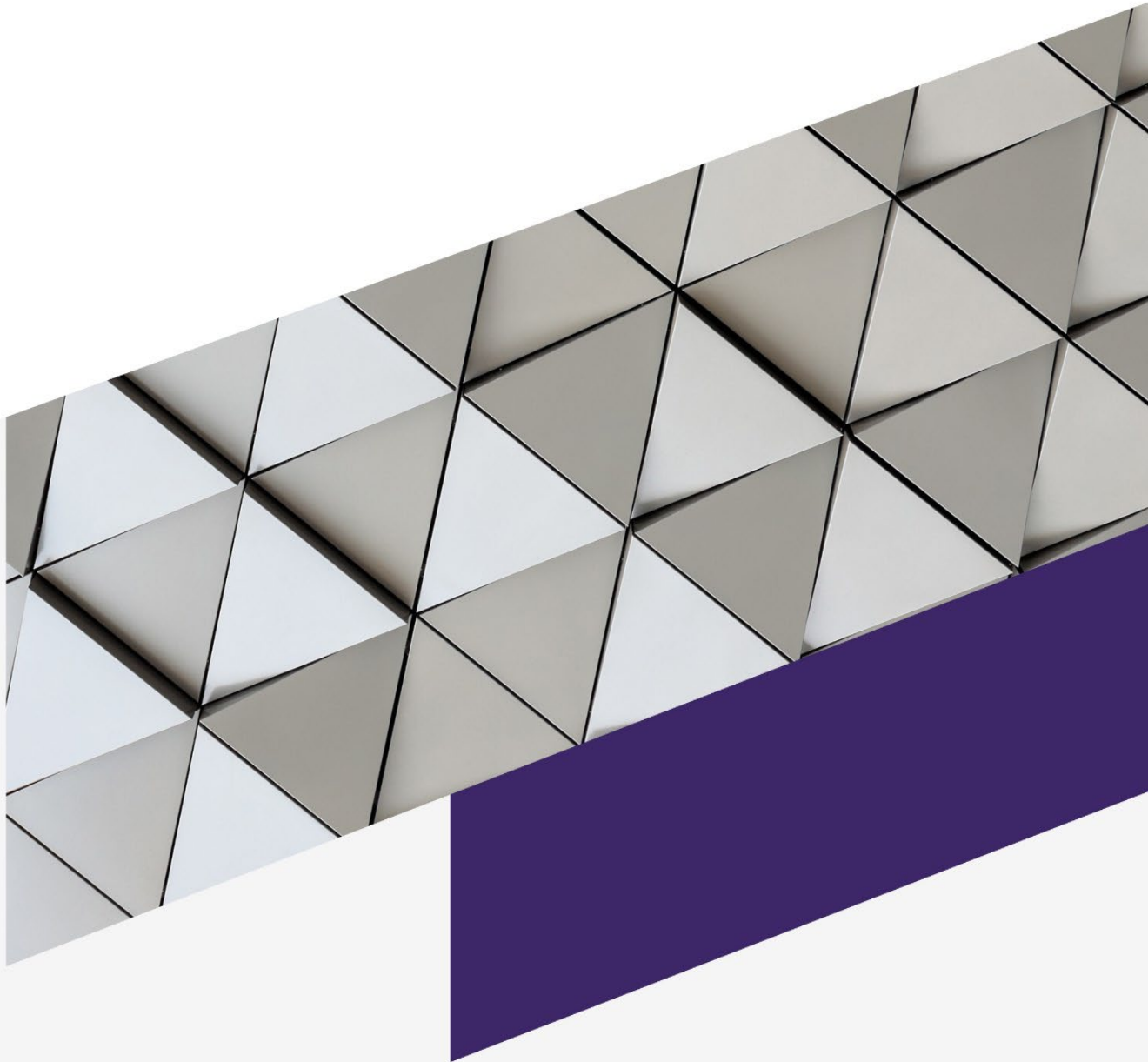

State of Play: Prediction Market Exchanges



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Acknowledgements

We gratefully acknowledge the many attorneys and associates whose dedicated research, drafting, and editorial contributions made this handbook series possible. In particular, we thank Jordan Katz and Bill Yang for their contributions and assistance. The quality and rigor of each volume in this series reflects the collaborative spirit and tireless commitment of every contributor across our practice groups.

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Introduction

The meteoric rise of prediction market exchanges (“PMEs” or “Operators”) like Polymarket, Kalshi, and Crypto.com has generated immense public interest and debate. These markets generated more than \$60 billion in volume last year, a 300% increase from 2024—and they show no sign of slowing in 2026. On Super Bowl Sunday alone, it is estimated that \$1.6 billion—a 2700% increase versus the prior Super Bowl—flowed through these exchanges. Though, as their name suggests, prediction markets offer more than a platform for sports-related contracts. In several notable political elections, the prediction markets captured shifts in support that traditional polling only reflected weeks or months later, perhaps reflecting the efficient-market hypothesis that has been widely accepted for traditional financial markets for decades. The utility and popularity of prediction markets have affected politics, sports, and even world affairs. And that impact has led to various state and federal bodies jockeying for influence over this nascent industry, as well as a litany of civil lawsuits filed by private plaintiffs.

The current litigation landscape involving PME is as diverse and dynamic as the markets they operate. As of April 2026, PMEs are suing ten states, being sued or charged with crimes by six others (plus two Indian Tribes), facing various consumer class actions, and are even the target of a coordinated set of lawsuits—supported by a financier—brought under an 18th century gambling law. The legal issues at the center of this litigation are on course for review at the Supreme Court of the United States (“SCOTUS”). The Third Circuit recently became the first United States appellate court to weigh in when it affirmed the preliminary injunction in favor of a PME and against New Jersey. The Ninth Circuit is poised to issue the next opinion on the subject. An opinion that diverges from the Third Circuit’s would create a circuit split and fast-track the issues to SCOTUS.

State and federal lawmakers, as well as regulators, are also engaged. Eleven states have proposed legislation to regulate prediction markets, and Congress has introduced several bills. The Commodity Futures Trading Commission (“CFTC”), in particular, claims regulatory primacy over PMEs. The CFTC has advised states that they have no jurisdiction, served as *amicus curiae* to that effect, announced a rulemaking session regarding PMEs, and filed suit against three states¹ attempting to regulate these markets. CFTC Commissioner Selig’s message to any state that attempts to regulate the prediction markets could not be clearer: “See you in court.”²

This article will explore each of these issues. Much has been written about these subjects, but the articles tend to be siloed—focusing on a small part of the much larger, complex PME landscape. Practitioners would benefit from a comprehensive discussion, which this article aims to do.

¹ *United States et al. v. Illinois*, 1:26-cv-03659 (N.D. Ill.); *United States et al. v. Connecticut*, 3:26-cv-0049 (D. Conn.); *United States et al. v. Arizona*, 2:26-cv-02246 (D. Ariz.).

² Ben Miller, *CFTC Jockeys With Congress, States for Prediction Market Primacy*, BLOOMBERG (Mar. 13, 2026), <https://news.bloomberglaw.com/securities-law/cftc-jockeys-with-congress-states-for-prediction-market-primacy>.

I. Litigation

PMEs are involved in a diverse—and growing—mix of lawsuits that each allege a similar set of issues, though with different aims. Underlying these lawsuits is whether PMEs are gambling or derivative exchanges. A brief discussion of the tension between these concepts as applied to PMEs follows. Gambling, on the one hand, needs no introduction. Its regulation has long been “a matter reserved to the states within the meaning of the Tenth Amendment to the United States Constitution” as stated by the Nevada Supreme Court in 1977³ and consistently upheld by federal courts since then.⁴ Even the federal gambling statute defines gambling by reference to state law.⁵

Derivative exchanges, on the other hand, are markets for financial contracts such as futures, options, and swaps, which serve as tools for allocating and hedging financial risks. In other words, derivative contracts are a way to speculate on the future price of something. Congress passed the Commodities Exchange Act (“CEA”) and created the CFTC to regulate, among other things, derivative contracts; and it granted the CFTC exclusive jurisdiction to do so. Neither gambling nor derivative contracts are new. The litigation issue is in which category PMEs belong.

PMEs have emphasized their status as derivative contracts and distinguished themselves from gambling by arguing, among other things, there is no “house.” Positions and prices are not set by the Operators. They are set by the investing audience, similar to derivative contracts. The states and several private plaintiffs refute that characterization. This article does not attempt to resolve the issue, but it is at the core of each lawsuit this article addresses. The PMEs, various states, and the CFTC are litigating this issue head-on. The consumer class actions and litigation funded lawsuits take opposite sides of the debate over derivative contracts versus gambling. This article will address each in turn.

A. State Litigation

In response to a wave of cease-and-desist letters—characterizing PMEs as unlicensed gambling and demanding the Operators halt activities in their respective states—issued by state attorneys general, the Operators took the offensive. They filed suit in ten states where such letters had been issued.⁶ In these offensive suits, the PMEs are seeking declaratory and injunctive relief preventing the states from acting against them and declaring state gambling laws preempted by the CEA. According to the PMEs, they offer derivative contracts, not gambling services, and the CFTC therefore has exclusive jurisdiction.

The results have been mixed so far. Federal courts in New Jersey and Tennessee sided with the Operators and granted preliminary injunctions that prevent state regulators from taking action

³ *State v. Rosenthal*, 559 P.2d 830 (Nev. 1977).

⁴ *See Valley Broad. Co. v. United States*, 820 F. Supp. 519, 525 (D. Nev. 1993), *aff'd*, 107 F.3d 1328 (9th Cir. 1997); *Casino Ventures v. Stewart*, 183 F.3d 307, 308 (4th Cir. 1999); *see also Murphy v. NCAA*, 584 U.S. 453 (2018) (sports gambling).

⁵ 18 U.S.C. § 1955(b)(i) (defining an illegal gambling business as one that violates “the law of a State or political subdivision in which it is conducted”).

⁶ The Operators brought these suits against Arizona, New Jersey, Maryland, Nevada, Ohio, New York, Connecticut, Tennessee, Utah, and Iowa.

against the Operators until the lawsuit is resolved. Federal courts in Maryland, Nevada, and Ohio, however, refused to similarly enjoin state regulators and therefore denied the preliminary injunction motions. The Operators have appealed each denial. In sum, federal appeals are pending in the Fourth, Sixth, and Ninth Circuit Courts. An appeal was pending in the Third Circuit, but a PME just received a very favorable decision on April 6, 2026.

Specifically, the Third Circuit affirmed the preliminary injunction against New Jersey.⁷ It held that Kalshi's sports-related contracts are "swaps" under the CEA and rooted its decision in the statute's text. The court explained that the CEA defines swaps to include any event or occurrence "associated with a potential financial, economic, or commercial consequence."⁸ Even the dissent conceded that "Kalshi's sports-event contracts fit comfortably within the statutory definition,"⁹ though it argued that an exception applied.¹⁰ Therefore, as swaps falling under the purview of the CFTC, New Jersey's claims are preempted.

The Ninth Circuit has scheduled oral argument for April 16, 2026 in the consolidated appeal of four cases challenging various decisions in lower courts.¹¹ In one of these cases,¹² the CFTC took the rare step of filing an amicus brief, and it did so in favor of the PME. The brief is noteworthy because, since 2000, the CFTC has served as amicus curiae in only seven other disputes. The SEC, on the other hand, routinely files such briefs.¹³ The CFTC's brief previewed arguments that it eventually included in its own lawsuits against Illinois, Connecticut, and Arizona, which it filed on April 2, 2026. Those lawsuits and the CFTC's arguments are discussed below.

As for the substance of the CFTC's amicus brief, it set forth three core arguments. First, it raised a textual argument concerning the CEA's broad reach as it applies to event contracts. In fact, this is the same approach that the Third Circuit adopted in *KalshiEX, LLC v. Flaherty* as discussed above.¹⁴ Second, it argued that the structure of the CEA reflected Congressional intent for preemption. Third, it discussed the policy implications should the Ninth Circuit hold that the CEA does not preempt state gambling laws; absent preemption, an unworkable and commercially deleterious patchwork of laws would emerge extending far beyond sports-related contracts.

⁷ *KalshiEX, LLC v. Flaherty*, No. 25-1922, 2026 WL 924004 (3d Cir. Apr. 6, 2026).

⁸ *See id.* at *3.

⁹ *Id.*

¹⁰ *Id.* at *11.

¹¹ *N. Am. Derivatives Exch., Inc. v. Nevada*, 25-7187 (9th Cir.) (PME appealing the district court's order denying its motion for preliminary injunction against Nevada); *KalshiEX, LLC v. Assad*, 25-7516 (9th Cir.) (PME appealing the district court's order dissolving a preliminary injunction in the PME's favor); *Robinhood Derivatives, LLC v. Dreitzer*, 25-7831 (9th Cir.) (PME appealing the district court's order denying its motion for preliminary injunction against Nevada); *Nevada v. KalshiEX, LLC*, 26-1304 (9th Cir.) (PME's appeal from the district court's order remanding the action to state court).

¹² *N. Am. Derivatives Exch., Inc. v. Nevada*, 25-7187, Dkt. 37.2 (9th Cir.).

¹³ *See Amicus / Friend of the Court Briefs*, U.S. Sec. & Exch. Comm'n, <https://www.sec.gov/enforcement-litigation/amicus-friend-court-briefs> (last visited Apr. 7, 2026).

¹⁴ 2026 WL 924004.

Meanwhile, the Operators are civil defendants in Michigan,¹⁵ Nevada,¹⁶ Massachusetts,¹⁷ Illinois,¹⁸ and Washington.¹⁹ These states seek their own injunctions to prevent the PMEs from operating in their respective states. Notably, Michigan also alleges that PMEs are a public nuisance.²⁰ PMEs have been less successful thus far in suits brought against them by states. Nevada and Massachusetts have each been granted preliminary injunctions, preventing PMEs from operating in those states at the moment.

Arizona has gone even further. Four days after Kalshi filed its civil suit against the state seeking declaratory relief that the state’s gambling laws were preempted, the state filed a criminal complaint against it. The state alleges twenty misdemeanors in total: three violations of election wagering laws and seventeen violations of betting and wagering laws.

Ironically, one of the most hotly contested issues in cases brought by the states thus far has been venue—do they belong in state or federal court? The Operators argue that federal courts have jurisdiction on two grounds. First, the Operators contend that federal courts have federal officer jurisdiction. The Operators argue that they “act under” a federal officer—the CFTC—within the meaning of 28 U.S.C. § 1442 because they exercise delegated authority from the CFTC. Second, the Operators claim that federal courts have federal question jurisdiction even when there are no federal causes of action in the complaints. The Operators argue that these cases belong in federal court because the claims turn on disputed and substantial questions of federal law. In most cases challenging venue, the judges have remanded the cases back to state court. The Court in *Nevada v. Blockratize, Inc.*, for instance, held that it lacked federal officer jurisdiction because PMEs were merely complying with CFTC regulations as opposed to acting under delegated authority. It also held that it lacked federal question jurisdiction because the state pleaded only state law claims.

In addition to bilateral suits between various states and PMEs, the CFTC, together with the DOJ, has recently filed its own trio of suits against Illinois,²¹ Connecticut,²² and Arizona.²³ These suits mark the CFTC’s first attempts at affirmative litigation to defend what the agency characterizes as its exclusive federal jurisdiction over prediction markets. The actions respond to those states’ cease-and-desist letters as well as Arizona’s criminal prosecution of Kalshi.

The CFTC’s complaints argue that the CEA, as amended by the Dodd-Frank Act, grants the CFTC “exclusive jurisdiction” over futures, options, and swaps traded on federally regulated exchanges and that event contracts offered by PMEs on CFTC-registered Designated Contract Markets are swaps within that statutory framework rather than bets subject to state gambling laws. The CFTC

¹⁵ *Nessel v. KalshiEX LLC*, 26-001087-CZ (Mich. Cir. Ct.).

¹⁶ *Nevada v. Blockratize Inc.*, 3:26-cv-00089 (D. Nev.); *Nevada v. KalshiEX, LLC*, 2:26-cv-00406 (D. Nev.)

¹⁷ *Massachusetts v. KalshiEX, LLC*, 2584CV02525 (Mass. Sup. Ct.).

¹⁸ *Illinois v. North American Derivatives Exchange Inc.*, 1:25-cv-10815 (N.D. Ill.).

¹⁹ *Washington v. KalshiEX, LLC*, 2:26-cv-01062 (W.D. Wash.).

²⁰ A similar theory of liability has recently been alleged against processed food manufacturers and, infamously, big tobacco.

²¹ *United States et al. v. Illinois*, 1:26-cv-03659 (N.D. Ill.).

²² *United States et al. v. Connecticut*, 3:26-cv-0049 (D. Conn.).

²³ *United States et al. v. Arizona*, 2:26-cv-02246 (D. Ariz.).

contends that each state’s gaming statutes are preempted under the Supremacy Clause and argue that compliance with both state licensing requirements and federal regulations is impossible because state-by-state prohibitions would frustrate the federal regulatory scheme. Notably, the CFTC referred to its recently announced Advanced Notice of Proposed Rulemaking as support for its primacy in this space. In the lawsuits, the CFTC is seeking permanent injunctive relief barring each state from enforcing its gambling laws against PME’s and announces that it plans to pursue expedited summary judgment in the Illinois and Connecticut cases and a preliminary injunction in the Arizona matter to halt Kalshi’s criminal prosecution.

The legal status of PME’s across these states as the cases progress remains unclear. At present, consumers appear to have access in New Jersey, Tennessee, and Utah, but may not have access in Nevada, Ohio, Michigan, Illinois, Louisiana, and Arizona. In other states—Maryland, Massachusetts, New York, Connecticut, and Iowa—regulators have either agreed to pause enforcement of their cease-and-desist letters or motions for preliminary injunctions remain pending. It is important to check on the status of PME’s operations in any given state regularly and often, as uncertainty persists at this time.

B. Consumer Class Actions

While state and federal regulatory litigation persists, PME’s also face a private litigation front, including consumer class actions. At the time of this publication, seven such putative class actions have been filed against PME’s across five jurisdictions,²⁴ all sharing the same central allegation as the states’ theory above. They allege that the Operators run unlicensed sports gambling enterprises that are merely “disguised” as prediction markets. The complaints claim that the platforms’ “event contracts” are functionally indistinguishable from the wagers offered by traditional casinos and sportsbooks. They also allege that the Operators employ institutional “market makers” that act as de facto bookmakers, providing liquidity and ensuring that individual users are effectively “betting against the house.” On this basis, the complaints invoke a range of state anti-gambling statutes—including loss-recovery provisions—as well as state consumer protection and deceptive trade practices laws. Essentially, these lawsuits claim that PME’s falsely represented their services as legal and legitimate.

The Operators refute those claims and have moved to compel arbitration. For example, in *In re Kalshi Sports Prediction Market Litigation*,²⁵ Kalshi moved to compel arbitration on January 20, 2026. The motion remains pending following consolidation of that case with several others.²⁶ Succeeding on motions to compel would be a major victory for PME’s. Requiring consumer-

²⁴ *Diego v. Blockratize, Inc.*, 1:26-cv-00973 (S.D.N.Y.); *In re Kalshi Sports Prediction Mkt. Litig.*, 1:25-cv-8585 (S.D.N.Y.); *Yoon v. Blockratize Inc.*, 1:26-cv-01160 (S.D.N.Y.); *Josephson v. KalshiEX, LLC*, 1:26-cv-00220 (N.D. Ill.); *Kaiserman v. Kalshi Inc.*, 1:26-cv-01525 (N.D. Ga.); *Keohohou v. N. Am. Derivatives Exch.*, 1:26-cv-20996 (S.D. Fla.); *Reynolds v. Kalshi Inc.*, 3:26-cv-00336 (D. Or.).

²⁵ Dkt. 29–30, 1:26-cv-00220 (N.D. Ill.).

²⁶ *Id.* Dkt. 47 (consolidated complaint of 1:25-cv-08585, 25-cv-09913, 26-cv-00317, and 26-cv-01924).

plaintiffs to arbitrate would significantly narrow the scope of class-wide litigation and channel individual claims into bilateral arbitration proceedings governed by Kalshi’s terms of use.

In addition to moving to compel arbitration, the Operators’ motions also signal their readiness to litigate by including substantive arguments about why dismissal under Federal Rules of Civil Procedure 12(b)(1) and/or 12(b)(6) is appropriate. For example, in the Southern District of New York, Kalshi attacks a complaint on a host of grounds including Article III standing, preemption, and failure to state a claim.²⁷ First, on standing grounds, Kalshi argues that the plaintiff has not alleged that he ever traded on any of the contracts subject to his lawsuit; and if he has never traded these contracts, then he cannot establish the requisite injury in fact that Article III standing demands. Second, Kalshi argues that the CEA preempts all of plaintiff’s state-law claims because Kalshi is a CFTC-registered designated contract market and the CEA grants the CFTC “exclusive jurisdiction” over swap transactions executed on such exchanges. In other words, a state statute that purports to declare those transactions unlawful is preempted. And third, Kalshi attacks all seven of the claims on their individual merits and argues that none state a claim for relief under Federal Rule of Civil Procedure 12(b)(6).

Another putative class action merits attention for its novel theory of liability. In *Kaiserman v. Kalshi Inc.*,²⁸ the plaintiff alleges that the Kalshi defendants—including the company’s CEO, COO, and CCO in their individual capacities—violated the CEA by listing and clearing sporting event contracts that constitute prohibited “gaming” activity under CFTC Rule 40.11. The complaint invokes 7 U.S.C. § 25(b), which provides a private right of action against designated contract markets, derivatives clearing organizations, and their officers for violations of CEA-mandated rules, including the prohibition on gaming-related contracts. This is a very new case, so the pleadings are not developed yet.

C. *Litigation-Funded Lawsuits*

Legal financiers—who have themselves been the source of much debate—have also targeted PMEs with their own theories. Beginning in June of 2025, a coordinated wave of civil lawsuits was filed against several Operators in six states: Illinois, Ohio, South Carolina, Georgia, Massachusetts, and Kentucky.²⁹ The legal theory underpinning these complaints rests on each state’s version of a centuries-old gambling-loss recovery statute modeled after a 1710 British law—the so-called “Statute of Anne.”³⁰ Under these statutes, gambling debts above a designated amount are considered void, permitting the “losers” to sue for recovery within a prescribed period.

²⁷ *In re Kalshi Sports Prediction Mkt. Litig.*, Dkt. 30, 1:25-cv-8585 (S.D.N.Y.).

²⁸ 1:26-cv-01525 (N.D. Ga.) (filed Mar. 20, 2026).

²⁹ *Illinois Gambling Recovery LLC v. Kalshi Inc.*, 1:25-cv-11374 (N.D. Ill.); *Ohio Gambling Recovery LLC v. Kalshi Inc.*, 4:25-cv-01573 (N.D. Ohio); *South Carolina Gambling Recovery LLC v. Kalshi Inc.*, 8:25-cv-12859 (D.S.C.); *Georgia Gambling Recovery LLC v. Kalshi Inc.*, 4:25-cv-00310 (M.D. Ga.); *Massachusetts Gambling Recovery LLC v. Kalshi Inc.*, 1:25-cv-12705 (D. Mass.); *Kentucky Gambling Recovery LLC v. Kalshi Inc.*, 3:25-cv-00054 (E.D. Ky.).

³⁰ The Statute of Anne was an anti-gambling law originally enacted by British Parliament in 1710 under Queen Anne.

When these “losers” fail to do so, a third party may bring suit against the “winner” to claw back those losses, often with the prospect of treble damages.

Notably, each of these lawsuits is brought by a state-specific, single-purpose entity organized for the express purpose of enforcing that state’s gambling-loss recovery laws. All six plaintiff LLCs were formed under the laws of Delaware on the same date and share a common mailing address in Florida. The “Authorized Person” for each entity is Maximillian Amster, the Chief Executive Officer of Veridis Management LLC, a litigation finance firm. All six complaints are represented by the same counsel and follow a virtually identical template, leading the defendant Operators to characterize them as “copycat” cases.

As with the state-party litigation discussed above, the early disputes in the Statute of Anne cases concern forum. Each case was filed in state court; the PME’s have removed them to federal court in their respective states. Thereafter, the plaintiffs predictably moved to remand them back to state court. Of the three motions decided thus far, courts have remanded two of the cases (Ohio and Kentucky)³¹ and denied plaintiff’s motion to remand in the third (Georgia).³²

D. Tribal Suits Against Operators

Operators have also been sued by several federally recognized Indian Tribes. These Tribes—the Blue Lake Rancheria, the Chicken Ranch Rancheria of Me-Wuk Indians, the Picayune Rancheria of the Chukchansi Indians, and the Ho-Chunk Nation—have brought two substantially similar lawsuits that are consistent with the states’ core allegations addressed above.³³ However, they differ in several important respects. For instance, the Tribes bring federal common law claims alleging that the Operators infringed on tribal sovereignty and interfered with tribal self-governance. The Tribes also included a civil RICO claim in their complaints. They claim that the Operators participated in a “Gaming Racket,” which included wire fraud and the operation of an illegal gambling business.

The most notable distinction, however, is that some of the Tribes’ claims arise from their position as a competitor to the PME’s.³⁴ This is most apparent in the Tribes’ claim under the Indian Gaming Regulatory Act (“IGRA”). The IGRA criminally prohibits any wagering or gambling on Indian lands unless it is conducted by federally recognized Indian Tribes. It also can be seen in the Tribes’ Lanham Act claim, in which the Tribes allege that the Operators made false and misleading statements in commercial advertising about the nature and legality of their platforms, causing the Tribes to lose profits and damage to their business goodwill and reputation.

³¹ *Ohio Gambling Recovery LLC v. Kalshi Inc.*, 4:25-cv-01573 (N.D. Ohio); *Kentucky Gambling Recovery LLC v. Kalshi Inc.*, 3:25-cv-00054 (E.D. Ky.).

³² *Georgia Gambling Recovery LLC v. Kalshi Inc.*, 4:25-cv-00310 (M.D. Ga.).

³³ See *supra* nn. 6–8.

³⁴ Patrice H. Kunesh, *The Prediction Market Boom Is Posing an Existential Threat to American Indian Gaming*, BROOKINGS INST. (Jan. 20, 2026), <https://www.brookings.edu/articles/the-prediction-market-boom-is-posing-an-existential-threat-to-american-indian-gaming/>.

The Tribes seek declaratory and injunctive relief as well as treble damages, costs, and attorney’s fees under RICO and disgorgement under the Lanham Act.

II. Proposed Legislation

In addition to the array of litigation involving PME, both federal and state lawmakers are proposing legislation to regulate them. Several bills have been introduced in the United States Congress proposing, in some instances, antithetical approaches. Some of these bills propose insider trading regulations as well as restrictions on the sort of events for which PMEs may offer contracts, but one of them would upend the CFTC’s stated position by amending the CEA to prevent preemption of state gambling laws.

In the states, lawmakers are pursuing far more comprehensive regulatory structures. The proposed state legislation in eleven states not only would prohibit certain contracts, but it also nominally achieves what these states are actively pursuing in court: to subject sports-related contracts to state gambling laws. But even if these state bills are passed, courts nonetheless may hold that the CEA preempts them.³⁵

A. Federal Legislation

Two federal bills have been introduced that target insider trading: the Preventing Real-time Exploitation and Deceptive Insider Congressional Trading (“PREDICT”) Act and the Prediction Markets Security and Integrity Act (“PMSIA”). The PREDICT Act is a bipartisan bill co-sponsored by Representatives Budzinski (D-Ill.) and Smith (R-Neb.). The text is not yet public, but it will apparently propose banning members of Congress from participating in contracts concerning political events or policy decisions. Plus, it would require offenders to disgorge their profits and pay a penalty equal to 10% of the transaction.

PMSIA—sponsored by Senator Blumenthal (D-Conn.)—would require age verification while also banning political insider trading. However, Senator Blumenthal’s bill also would amend the CEA to prevent preemption of state gambling laws by the CEA, clearing the way for states to regulate PMEs as they do gambling.

Four other bills propose banning certain categories of contracts altogether. The Prediction Markets are Gambling Act, the End Prediction Market Corruption Act, the STOP Corrupt Bets Act, and the Discouraging Exploitative Assassination, Tragedy and Harm Betting in Event Trading Systems (“DEATH BETS”) Act aim to ban contracts concerning sports, politics, and/or terrorism or war entirely. These bills would limit the CFTC’s stated authority to regulate these markets and impose a total ban.

Some of these bills, if passed, would reshape the industry by banning some of the most popular contracts PMEs offer, i.e., sports and politics. Others would be duplicative of some Operators’ self-imposed platform rules. For example, Polymarket recently updated its rule book to explicitly ban insider trading on both its U.S.-regulated exchange and its offshore DeFi platform, prohibiting trades based on stolen confidential information, illegal tips, or by persons who can influence the

³⁵ See *Flaherty*, 2026 WL 924004 (affirming the district court’s order enjoining the state of New Jersey and holding that the CEA preempts state law).

outcome of a prediction market event. Its recent partnership with Major League Baseball reflects their attention to this area. Under the agreement, Polymarket “will be establishing a comprehensive integrity framework, which includes working together to restrict markets that present an integrity risk to MLB, such as individual pitches, manager decisions, and umpire performance, among others.”³⁶

In any case, it will be important to watch Congress’s actions closely as this is an ever-changing area.

B. State Legislation

Presently, eleven state legislatures have proposed bills targeting PME: California,³⁷ Illinois,³⁸ New York,³⁹ Hawaii,⁴⁰ Iowa,⁴¹ Minnesota,⁴² New Jersey,⁴³ Tennessee,⁴⁴ Utah,⁴⁵ Wisconsin,⁴⁶ and Vermont.⁴⁷

There are several recurring themes across the bills. One of the most common aims among these laws is the prohibition of death and catastrophe markets as well as insider trading. Age restrictions and mandatory features for self-imposed usage limits, e.g., how much a user can bet during a given period of time, are also common.

Whether a state’s proposed legislation bans sports-related contracts, given the popularity of those contracts, is the significant commercial distinction among the states. Such contracts would be

³⁶ MLB, *MLB Names Polymarket Exclusive Prediction Market Exchange Partner and Signs Agreement With CFTC to Establish Integrity Framework* (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> (last visited Apr. 8, 2026).

³⁷ A.B. 2617, 2025–2026 Reg. Sess. (Cal. 2026),

<https://legiscan.com/CA/text/AB2617/id/3395998>.

³⁸ H.B. 5059, 104th Gen. Assemb. (Ill. 2026), <https://legiscan.com/IL/bill/HB5059/2025>.

³⁹ S.B. S9414, 2025–2026 Leg. Sess. (N.Y. 2026),

<https://www.nysenate.gov/legislation/bills/2025/S9414>.

⁴⁰ H.B. 2198, 33d Leg. (Haw. 2026),

https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=HB&billnumber=2198&year=2026.

⁴¹ S.F. 2470 (Iowa 2026), <https://www.legis.iowa.gov/legislation/BillBook?ga=91&ba=SF2470>.

⁴² S.F. 4511, 94th Leg. 2025-2026 (Minn. 2026),

<https://www.revisor.mn.gov/bills/94/2026/0/SF/4511/versions/latest/>.

⁴³ S. 3692, 222d Leg. (N.J. 2026), https://pub.njleg.gov/Bills/2026/S4000/3692_I1.HTM.

⁴⁴ S.B. 1992, 114th Gen. Ass. (2025–2026) (Tenn. 2026),

<https://wapp.capitol.tn.gov/apps/BillInfo/Default?BillNumber=SB1992&ga=114>.

⁴⁵ H.B. 243, 2026 Gen. Sess. (Utah 2026), <https://le.utah.gov/~2026/bills/static/HB0243.html>.

⁴⁶ A.B. 601 (Wis. 2026), <https://docs.legis.wisconsin.gov/2025/proposals/ab601>.

⁴⁷ H. 913 (Vt. 2026), <https://legislature.vermont.gov/bill/status/2026/H.913>.

permitted under the proposed legislation of New Jersey, Iowa, and Pennsylvania, but prohibited in New York, Illinois and Minnesota.

The upshot of a state patchwork regulation is the risk of inconsistent regulatory and taxation frameworks. This is the same risk that the CFTC and Operators acknowledge in the ongoing legal battles. But, as noted above, PMEs have taken steps to regulate their own platforms that would be consistent with proposed state legislation, e.g., PMEs like Polymarket already prohibit insider trading, and all major PMEs prohibit underage trading.

III. CFTC Proposed Rulemaking

On March 12, 2026, the CFTC issued an Advance Notice of Proposed Rulemaking (“ANPR”) and began soliciting public comments on how the CEA and existing CFTC regulations should apply to prediction markets.⁴⁸ The ANPR is sweeping in scope: it seeks input on the framework for public interest determinations under Section 5c(c)(5)(C) of the CEA, including:

- Critical definitional questions around what constitutes “gaming,” “unlawful activity,” “terrorism,” and “war,”
- The proper classification of event contracts as swaps, futures, or commodity options,
- The application of insider trading principles and anti-manipulation provisions, and
- The potential for margin-based trading, among other topics.

Comments are due by April 30, 2026.⁴⁹

The ANPR is timely considering the ongoing jurisdictional conflict. For market participants—PMEs, intermediaries, and end users alike—the ANPR represents more than a procedural checkpoint; it is the clearest signal yet that the CFTC intends to construct a comprehensive, principles-based federal regulatory architecture for prediction markets.

The outcome of this rulemaking will shape the CFTC’s jurisdictional boundaries and fundamental terms on which prediction markets operate in the United States for years to come, or until the Supreme Court enters the fray.

IV. Conclusion

The future of this conflict is uncertain except for the complexity facing market participants, which seems likely to only increase. Lawmakers and regulators, at the state and federal levels, show no sign of backing down from their claim to shape the prediction markets.

⁴⁸ Commodity Futures Trading Comm’n, *CFTC Seeks Public Comment on Advanced Notice of Proposed Rulemaking Relating to Prediction Markets*, Release No. 9194-26 (Mar. 12, 2026), <https://www.cftc.gov/PressRoom/PressReleases/9194-26>.

⁴⁹ 91 Fed. Reg. 12516-12524, 2026-05105 (Mar. 16, 2026), <https://www.cftc.gov/LawRegulation/FederalRegister/proposedrules/2026-05105.html>.

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Experts at Willkie Farr & Gallagher LLP follow all PME developments and are happy to assist you if you have any questions.