Season 2 Episode 8: Where It Stops, No One Knows

Sara Gras: I'm Sara Gras and this is Episode 8 of Season 2 of Hearsay from the Sidelines, a show about the place where law, sports and culture intersect brought to you by Culture in Sports and Seton Hall Law School's Gaming, Hospitality, Entertainment and Sports Law program. This season is focused on the explosive growth of the online sports betting industry as legalization sweeps across the country and how it's impacting our relationships with our favorite past times.

It's taken a while, but you've made it to the last episode of this season – thank you for sticking with me and being patient as I've scrambled to stay on top of this topic. And this season has really only covered the very beginning of the online sports betting story that is constantly shifting and unfolding every day. In the last month, news broke that a multi-year federal investigation into illegal betting had resulted in the indictment of more than 30 people, including an NBA coach and current player.[1] Details are still emerging, so I don't want to spend too much time discussing the accusations without more facts, but I'm fairly certain this won't be the last we hear about it – from the media or from lawmakers. In fact, the Senate Commerce Committee has already requested information from the NBA about how it plans to address the issue, particularly since the NBA had already investigated the player involved earlier in the year but found no violation of league rules.[2] But I want to be clear – I don't think the fact that cheaters exist means the whole industry is corrupt or that sports betting has to go.

Nor, for that matter, do I think that any of the other issues I've raised, including addiction, should doom sports betting. And maybe that's a surprise given my take on many of these issues. But my concerns aren't really about the act of betting on sports – or the fact that many people really enjoy sports betting. Gambling, both traditional land-based gaming and online betting, IS an important source of revenue for states and tribes. It does create new job opportunities for professionals in law, compliance, tech, and other white-collar fields. And sports betting in particular has increased visibility and profitability of women's sports, which may help close the pay gap in professional leagues.[3] This also means a whole

---

[1] Rebecca Beitsch, Zach Schonfeld and Filip Timotija, *NBA Veterans Charged in Betting Schemes Linked to Mafia*, THE HILL (Oct. 23, 2025, at 11:32 AM ET), https://thehill.com/regulation/court-battles/5569573-rozier-billups-jones-arrested-fraud/.

[2] Dominick Mastrangelo, *Senate Wants Answers from NBA Commissioner on Gambling Scandal,* THE HILL (Oct. 28, 2025, at 10:15 AM ET), https://thehill.com/homenews/senate/5576308-nba-gambling-scandal-senate-probe/.

[3] Jen Geoghegan, *WNBA Betting Boom: Can Sports Betting Narrow the Wage Gap?* THE SPORTS GEEK (June 10, 2025, at 6:29 AM ET), https://www.thesportsgeek.com/blog/wnba-betting-salary-gap/.

generation will grow up seeing female athletes celebrated just as much as their male counterparts, helping to drive participation of women and girls in sports at all levels.

But so much of what seems to be happening in terms of legislation and regulation imposing restrictions or responsibilities on operators, like funding addiction treatment and banning prop betting and criminalizing athlete harassment, feels reactive. Like - we let a wild tiger loose in the schoolyard and THEN started trying to keep it from eating the children. Here's another example - as countless commentators have observed, online sports betting is omnipresent – commercials, social media ads, billboards, even embedded into commentary during games. Now, the American Gaming Association would be quick to jump in here with the stats from their commissioned Nielsen study to tell you that sports betting advertising on TV has fallen significantly over the last few years from its peak in 2021. But it's still over 1.5 million units at a cost of more than $650 million. [4] And it's important to remember that this is JUST the public TV advertising – not marketing to users who have already downloaded their apps in the form of push notifications, emails, and other forms of targeted outreach. There have been multiple peer reviewed studies done outside the U.S. on the impact of advertising on sports betting behavior, which, when viewed in aggregate, show advertising is associated with increases in gambling frequency and expenditure.[5] Yet state legislatures have generally not addressed what forms of sports betting advertising will be permissible alongside consideration of legalization.

The First Amendment offers a decent amount of protection to commercial speech, including advertising, so long as it isn't false and misleading. State restriction is constitutional only if it "directly and materially serves" a "substantial" government interest and "is not more extensive than is necessary,"[6] which is a fairly high bar. For example, the U.S. Supreme Court found that the state of Rhode Island's ban on advertising the retail price of alcoholic beverages outside of store price tags failed to meet this standard. First, the state could not show that a ban on price advertising would significantly reduce alcohol consumption, which was the stated purpose of the law. Second, the state couldn't argue that a blanket ban – which is a significant and extensive restriction on speech – was necessary to achieve this purpose. After all, the court pointed out, other regulations, including an increase on alcohol tax, would arguably have the same, if not more significant, effect.[7]

---

[4] *2024 Sports Betting Advertising Trends*, AMERICAN GAMING ASSOCIATION (Apr. 21, 2025), https://www.americangaming.org/resources/2024-sports-betting-advertising-trends/.
[5] Ellen McGrane et al., *What is the Impact of Sports-Related Gambling Advertising on Gambling Behaviour? A Systematic Review*, 120(4) ADDICTION 589 (2025), https://onlinelibrary.wiley.com/doi/10.1111/add.16761.
[6] Central Hudson Gas & Elec. v. Public Svc. Comm'n, 447 U.S. 557, 566 (1980).
[7] 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484 (1996).

But there's a lot of daylight between an outright ban and some reasonable restrictions on time, place, and content, and states can draw upon cases involving alcohol, cigarettes, and legal cannabis advertising to limit sports betting ads. A handful of states with legal sports betting have passed law limiting social media, print, and facility-based marketing of online sports betting to minors.[8] And there has been a fairly decent amount of attention paid to sportsbook advertising that is arguably misleading that has resulted in some changes. Here's Cole Wogoman from NCPG discussing some of their legislative and advocacy work around advertising:

Cole Wogoman: So we started to see states ban sports betting ads on college campuses. I think that's a great idea. Why? Because most of the population is at risk, at high risk, and a lot of the population is underage. So almost every state, not quite, gambling age is 21. And so it doesn't make sense to allow an advertisement on a campus where we know at least half the students are under 21. So that sort of thing, 100%, yeah, we support that.

We ask all the, part of our legislative blueprint is to include a ban on misleading advertising. So we led the charge. I don't know if you remember, there used to be when you watch sports betting ads the term risk free a lot, they would say, yeah, this is a risk free bet. the reason they said that was because, you you'd get, if you bet $500, whatever, you'd get $500 back if you lost. But there was a lot of strings attached that they didn't say. For instance, you had to bet $1,000 to get that $500. You had to bet it within two weeks or you had to, you'd only bet $10 at a time or whatever. And we would also say an addicting activity like gambling is never risk free. So now almost every state, believe, has banned the term. can't say risk free. And most of the operators have voluntarily agreed to stop using it.

Now I've started to see other ways around it that I don't have a position on at the moment, but that we're kind of looking at. One of the operators left to say no sweat first bet. That's better, I think, than risk -free, but still feels like we're getting to the same territory. But anyway, your point was, yes, I do think there are common sense restrictions that fall far short of an all-out ban that make a lot of sense. I think Massachusetts says, I think you can't advertise sports betting to any population where more than 15%…15 % of viewers would be of underage. So that would ban like ads on Nickelodeon. I mean, there are no sports betting ads on Nickelodeon at this time, but you never know, it could happen.

Sara Gras: It could happen – there aren't, in most places, any laws or restrictions that would prevent it. And that's exactly why I have these broader concerns about the power of

---

[8] E.g. Kan. Stat. Ann. § 74-8785 (West), Conn. Gen. Stat. Ann. § 12-863 (West), N.C. Gen. Stat. Ann. § 18C-910; *see generally* VIXIO, *U.S. STATES' ONLINE SPORTS BETTING REGULATIONS* 3 (Nat. Council on Problem Gambling, Sept. 2024), https://www.ncpgambling.org/wp-content/uploads/2024/09/NCPG_Vixio-U.S.-States-Online-Sports-Betting-Regulations.pdf.

profitable industry to reshape culture and influence lawmaking while chasing growth by any means necessary. I've seen online sports betting described as a gold rush – not for bettors obviously – but certainly for operators and other industry stakeholders. And while I think this is accurate characterization, it's certainly not a positive one. During the gold rush, there were some people who got very rich very quickly – but the costs were tremendous. The environment was ravaged and exhausted, tens of thousands of Native Americans were dispossessed of their land, and many unlucky prospectors gave up their families and homes and jobs without ever seeing a return on their sacrifice and labor. The gold rush, which started in 1848 and peaked in 1852, had basically ended by the 1860s. And that's kind of how the entire online sports betting world feels to me – like a get-rich-quick, frenzied grab for every bit of our attention and expendable (or even not expendable) income - and leagues and state legislatures have been opening the gates and rolling out the red carpet to be as hospitable to the prospectors as possible.

And the scariest thing to me is that we haven't reached the peak – in fact, I don't think we're even close. BetOnline, a large offshore online operator, recently started offering odds on both high school and Pop Warner football.[9] Both BetOnline and Bovada offered odds on the recent Little League World Series, much to the dismay of the league and its coaches.[10] And if you think U.S.-based legal sportsbooks would never offer bets on youth sports, consider the fact that many already have - DraftKings, BetMGM, bet365, Fanatics Sportsbook, and ESPN BET all offered odds on 2024 Summer Olympic events, many of which had competitors under 18, including skateboarding and gymnastics. Operators are always considering how to expand their offerings and grow their customer base - so I think it's naive to say that anything is off limits.

A recent article headline on iGaming Today, an industry-focused news site, asks "Is women's sports betting the next big opportunity?"[11] While some of the focus here is on building women's sports as viable offerings, it's also about attracting women as consumers. A spring piece in The Athletic on women's college basketball noted the sizeable gap between the interest in and the availability of wagers on women's games, and

---

[9] Jay Ginsbach, *How Should We View Sports Betting on the High School and Pee Wee Level?,* FORBES.COM (Dec 13, 2024, 2:05 AM ET), https://www.forbes.com/sites/jayginsbach/2024/12/13/how-should-we-view-sports-betting-on-the-high-school-and-pee-wee-level/.
[10] Associated Press, *Offshore Gambling on the Little League World Series Feels 'Dirty,' Teams Say*, NBC NEWS (Aug. 21, 2025, 8:48 AM ET), https://www.nbcnews.com/sports/sports-gambling/offshore-gambling-little-league-world-series-rcna226258.
[11] *Is Women's Sports Betting the Next Big Opportunity?,* IGAMING TODAY (Sept. 19, 2025), https://www.igamingtoday.com/is-womens-sports-betting-the-next-big-opportunity/.

goes into some of the more technical reasons why.[12] It's likely that increasing these options will require onboarding more women as customers who, the logic goes, are more likely to bet on women's sports. Sports betting has historically been a male-dominated activity, and that hasn't really changed. As many of the individuals I've interviewed have noted, today's sports betters are largely young men. According to NCPG's 2024 National Survey on Gambling Attitudes and Experiences, 52% of men between 18 and 34 reported they had bet on sporting event outcomes at least once in the past year. Only 27% of women in that age group reported the same. And this gap is where the industry sees dollar signs. So I'm anticipating a noticeable increase in marketing aimed at women, particularly young women, with a focus on women's sports.

So if states won't act, what's the solution? Well, to the extent that legislation ever solves problems, one thing that might help is the SAFE Bet Act, which I talked about in the last episode. In addition to prop betting limits, the bill also drastically limits advertising of sports betting.[13] Sports betting broadcast advertising would be prohibited between 8am and 10pm and during live sporting events. Advertisements could not include language designed to induce gambling like "bonus", "no sweat," "bonus bets," or odds boosts, nor could they show viewers how to gamble or how wagers work. Does this cover every form of advertising? No – not even close. But it would certainly muffle some of the sports betting noise while also reducing network dependency on sports betting ad sales. But as I said in the last episode, that bill is probably going nowhere this legislative session. As I'm writing this, the federal government is just emerging from a record-setting government shutdown. But…maybe next session? We are already behind other countries with legal online sports betting who already have federal laws in place very similar to the SAFE Bet Act's restrictions on advertising.[14] So why isn't this a more pressing issue? One answer may be that legalized sports betting has already gotten too big to fail.

The desire to protect the legal sports betting market is exactly why there has been such a flurry of litigation recently involving the industry's latest threat – prediction markets and event contracts. One of my colleagues, business law professor, Ilya Beylin, presented a work in progress in early 2024, which was published in the University of Chicago Business

---

[12] Ben Pickman, *Women's College Basketball is Growing So Why Isn't the Gambling Industry Betting On It?*, THE ATHLETIC (Mar. 18, 2025), https://www.nytimes.com/athletic/6211017/2025/03/18/womens-college-basketball-gambling-betting/.
[13] SAFE Bet Act of 2025 S. 1033 and H.R. 2087, 119th Congress (2025), https://www.congress.gov/bill/119th-congress/senate-bill/1033 and https://www.congress.gov/bill/119th-congress/house-bill/2087.
[14] CANADIAN CENTRE ON SUBSTANCE USE AND ADDICTION, GAMBLING AVAILABILITY AND ADVERTISING IN CANADA 14 (2024), https://www.ccsa.ca/sites/default/files/2024-06/Gambling-Availability-and-Advertising-in-Canada-en.pdf.

Law Review earlier this year.[15] At that time, mainstream media wasn't really discussing event contracts and this was my first introduction to this particular financial product. My initial reaction was - wait, this is gambling - isn't it? Of course, that has become the billion dollar question since shortly before Super Bowl 61 when the CFTC, the Commodity Futures Trading Commission, asked online brokerage, Robinhood, to suspend its Super Bowl contracts.[16] But since then, sports-related event contracts have continued to grow in popularity and are being marketed as being the equivalent of betting on sports. In fact, I saw an online ad this week calling Kalshi's sporting event contracts, "sports betting that is legal in all 50 states." Prof. Beylin and I sat down right around the time of the Super Bowl to talk about event contracts and their relationship to sports betting.

Ilya Beylin: First of all, what is an event contract? An event contract in the language of finance is a binary option that settles based on whether or not a specified event happens. In the context of sports, let's say we take the Super Bowl. An event contract can be, do the Eagles win? This contract, whoever holds it, if the Eagles win, it pays $10. The exchange pays the contract holder $10. If the Eagles don't win, that contract pays $0. So from the perspective of somebody who is potentially buying this contract on an exchange, you probably wouldn't pay more than your expectation of the Eagles victory times $10. So if you think that the Eagles have a 60 % chance of winning, you'd pay six bucks for the contract.

That's what an event contract is. But you could have the same exact event contract on whether interest rates go below 4%, whether the Fed sets interest rates below 4 % by the end of 2025. That's another binary option. That's another event contract.

Sara Gras: Event contracts evolved from something far less likely to gain popularity as a form of entertainment – agricultural futures markets.

Ilya Beylin: Futures are instruments that transfer price risk. They transfer future price risk. For example, a farmer can transfer the risk associated with their harvest because the harvest is still maybe in the ground. It hasn't been sold. And they're not sure what prices will look like, say, in October, November when the grain goes to market. And at the same time, if I'm baker, or wholesaler of grain, I may be seeking to fill an inventory, but again, uncertain of what prices will be come October, November, and so forth. So futures contracts are a type of derivative that enables market participants to shift the risk that prices move in the future.

---

[15] Ilya Beylin, *Event Contracts Are a Step Too Far for Derivatives Regulation*, 4 U. CHI. BUS. L. REV. *77* (2025), *available at* https://chicagounbound.uchicago.edu/ucblr/vol4/iss1/3.
[16] Lene Powell, *Super Bowl Kicks Off Event Market Turmoil Under New CFTC*, STRATEGIC PERSPECTIVES (Feb. 6, 2025), https://business.cch.com/srd/SP_LP-Super-Bowl_event-contracts_CFTC_02-06-2025_locked.pdf.

That's how they were developed. And they developed fairly naturally from pre-derivative contracts, from what we call cash market contracts, which were simply contracts for an exchange of some commodity, say grain, in exchange for a payment.

Sara Gras: So the reason that works, right, is that you have two sort of groups that have diametrically opposed interests in the price of the commodity, right? So bakers and everybody that uses flour wants the price to be lower, whereas the farmer wants the price to be higher, right? So that's why this at its core works.

Ilya Beylin: Yes, exactly right. Exactly right. And just to put a little bit more flesh on what we were talking about, futures contracts are contracts. They're standardized contracts that an exchange will develop and provide trading in. And to give you a crisper sense of how they work, imagine that a contract provides as follows. One party, call it the short, will deliver to the other party, call it the long, a certain number of bushels of a type of wheat upon a certain date at a grain depot neighboring the exchange. And then at that point, the long will pay to the short contemporaneously with delivery an amount based on the price of grain at execution. So what I want you to notice, the long pays at that future time of delivery some amount based on the price of grain at execution.

As result, appreciation in the grain goes in favor of the long and depreciation in the grain would go in favor of the short. So that's how these contracts were designed. They're standardized by the exchange that offers them. Standardization enables when two parties enter into a futures contract and one party wants to change its position under that futures contract, it can contract with a third party to either increase by buying more of the same position or decrease by selling its position. And what this does again is because the contracts are fungible, because the contracts are standardized, it becomes much easier to change positions without the difficulties of amending the prior contract by getting the initial counterparty on board. So this was in some ways a very simple but a revolutionary change in contractual technology that exchanges around the world developed. I think the earliest was in Japan. In the US, we started having it after the Civil War in, I believe the 1860s, 1870s at the Chicago Board of Trade, the CBOT.

Sara Gras: Ok so hopefully this makes sense – essentially a commodity futures contract is an agreement to buy or sell a specific quantity of a commodity at a predetermined price on a specified date in the future. Both parties agree on a price they can live with – let’s say $5 a bushel - and each assumes some risk, in other words - hedging their bets. The farmer risks lost profits if the price of grain shoots up to $7 a bushel and the baker risks spending more than is necessary if the price of grain falls to $4 a bushel. But so long as they can ultimately both live with the price, it’s certain, it’s predictable, and it helps facilitate the flow of goods in the market. This all makes sense to me – but the piece I just really didn't understand was how anyone makes a profit off this arrangement.

Ilya Beylin: There are a few different approaches to intermediation. The one I'm going to focus on is you have market makers. And in the context of futures, as in the context of other financial products like stocks and bonds, a market maker, also called the dealer, will generally have an inventory. And they will buy into that inventory seeking a low price. And they will sell from that inventory seeking a high price. In other words, the market maker makes money off the spread by buying low and selling high. And essentially the market maker through that spread gets compensated for providing liquidity to the market. In other words, because the market maker is a dependable source of liquidity, a dependable counterparty with whom that those transactions can be entered into, it gets to charge something to market participants for use of its liquidity services.

Sara Gras: These intermediaries acquire various contracts with the intention of selling them in the future, eliminating the need for sellers seeking to make a specific price to match with buyers seeking to pay a specific price – they temporarily hold the risk. Then their brokers do the work of supplying the contracts at the price buyers are willing to pay. This is where the money gets made. So then how do you make the leap from grain to football? Event contracts are something that evolved over the last few decades, as Ilya's article lays out, becoming increasingly detached from any hedging of risk tied to the price of commodities.[17]

Ilya Beylin: A number of exchanges had event contracts, we also sometimes call them prediction products for reasons you will see, on the November election. So for example, who would win office? Would it be Trump or Harris? And a classic way of structuring these is as follows. Imagine the exchange initially both selling bundles of contracts and then supporting trading in individual contracts.

And the bundles of contracts that it sells are- let's say two contracts in each bundle. One pays $10 if Trump wins. The other pays $10 if Harris wins. So in total, the bundle will pay out 10 because those two events are mutually exclusive. And when selling the bundle, it also collects a transaction fee. So necessarily it gets more than it will have to pay out.

And also there's the interest on the cash that it keeps before the event actually occurs. But we can forget about that. And then what happens? It sells these bundles of contracts. The trader that bought the contract now thinks about things. There's going be some sort of market price. There going to be bids and offers. People are going to be buying and selling those contracts at various prices. And the trader is going to have her own view as to

[17] Beylin, *supra* note 15 at 113-127.

Trump's likelihood of victory and Harris's likelihood of victory. And let's say that she thinks that Trump has a 40 % chance of winning. And again, the contract pays $10 if Trump wins. If she can sell that contract for five bucks, six bucks, that's a good deal for her.

If on the other hand, the market is buying those contracts for $3, just going to hang on to the contract because she thinks that this contract is worth four bucks. In other words, there's a 40 % chance that she'll get $10 when Trump wins. Similarly for Harris, you understand how it would be reciprocal. So as traders holding these bundles of contracts or individual contracts, base market prices- what they're doing through the transactions is expressing their own likelihood, their own internal probabilities of the outcomes they see in the election.

Sara Gras: So the price can change, right? It's like the line moving.

Ilya Beylin: Yeah, yeah, definitely. Price changes over time.

Sara Gras: And the cost shifts based on the number of contracts sold or the general consensus on which side is more likely to pay out or a combination of both.

Ilya Beylin: Ultimately, the price for the contracts is a function of supply and demand. At any given price, how many people will buy a contract, say on Trump? How many people will buy a contract on Harris? That's all it's a function of, just supply and demand. But those prices, because we expect people not to want to lose money, reflect expectations throughout the market. And as a result, theoretically, the price represents a prediction.

Sara Gras: So instead of trading the price of grain, the parties are trading the probability of an event. Going back to the sports example – let's say that 2 weeks before the Super Bowl, the price on a contract for the Eagles to win was $.70 – a 70% chance they'd win. But then a key player gets injured and others who own that $.70 contract start selling it. The price drops to $.50. If you think the Eagles can win anyway and you buy 1000 contracts at $.50, you can make money one of two ways – first, you can wait for the game and get paid out when the Eagles win. But of course, there's more risk there. You could also wait to see if the price goes back up – let's say the injured player shows back up in practice and the injury doesn't appear to be impacting him negatively - and you sell when the price hits $.60. You've then made a $.10 profit on each contract – certainly less than you would make if the Eagles actually won the game, but without the same level of risk.

It's ok if this doesn't all make perfect sense to everyone listening, I just want to give the broad strokes. And hopefully the picture that is starting to emerge of event contracts as something that feels similar to, but also different from, placing bets on a game. What's also really important to know is that unlike legal gambling, which is heavily regulated by state administrative agencies, the futures market is regulated by a relatively small federal agency called the Commodity Futures Trading Commission which was created by statute in 1974.[18] Event contracts do still require CFTC approval according to the Commodity Exchange Act. And CFTC regulations provide for a review and approval process for contracts which may involve a statutorily prohibited activity – specifically contracts that involve terrorism, assassination, war, gaming, and activities that are unlawful under any federal or state laws.[19] Yet – event contracts on sports have been offered since December of 2024. And if you're wondering how that's possible – yeah me too.

Ilya Beylin: Back in 2000, there was a big, big act at the very end of 2000. was called the Commodity Futures Modernization Act. And It changed the process through which exchanges submit new products, products that they want to list, products they want to support trading in, because derivatives are different from securities and bonds. When you have a security or bond, it's going to be some company out there, some firm, it's issuing these securities or bonds. And then the exchanges act as facilities where these things are traded, but it's not NYSC products that are traded on the NYSC. It's Apple shares and IBM shares and Caterpillar, you name it. They're traded on NYC. For derivatives, the product is actually being developed by the exchange. So there's a question of what process does the CFTC use when an exchange submits a new product? And that process got changed in 2000 at the tail end of 2000, early 2001 under the Commodity Futures Modernization Act.

And what that act did is it allowed exchanges to self-certify products and gave the CFTC 10 business days to review the self-certifications to confirm whether or not the product was consistent with all the various requirements of the Commodity Exchange Act. Now, there were some people at the CFTC at the time. And the facial reason is that they were pro-innovation. They wanted to protect exchanges of information. But basically in that balance that needs to be stricken one way or the other between sort of experimentation and product innovation, allowing new things to emerge and being really careful and thoughtful and assuring that harmful products won't enter the market. In that balance, the 2001 CFTC put a very, very strong finger on the side of markets as opposed to consumer protection. And what a few folks at the CFTC did is through rulemaking, they shortened the 10 business days, so that's a two week period. They shortened that two week business period to one day. And they said the CFTC can't challenge a product unless the commission approves the challenge of the product and the commission is the four commissioners and the chair, the highest people at the CFTC. Those are political people. They're super busy people. They're later on in their life. They're exhausted. They're distracted. And the poor staff who are reviewing these product submissions have to think really hard. Are we going to bother the

---

[18] *CFTC History in the 1970's*, CFTC, https://www.cftc.gov/About/HistoryoftheCFTC/history_1970s.html (last visited Nov. 7, 2025).

[19] 17 CFR § 40.11 (2025).

five most important people in the world we live in and hope that they agree with us that this product really does pose a concern or do we just let this product sail on and they have one day to make this decision.

Sara Gras: In 2024, the CFTC published a Notice of Proposed Rulemaking in the Federal Register that would, among other things, define the term "gaming" in a way that would make it crystal clear that virtually all event contracts related to sporting events would be prohibited.[20] But no final rule ever materialized. Without a definition, self-certifying entities can continue to take advantage of a grey area, roll the dice, offer the contracts, and wait to see if anyone stops them. And except for that brief moment of uncertainty around the Super Bowl, they've been pretty lucky. While Robinhood withdrew their Super Bowl contracts, Kalshi and Crypto.com moved forward with them. The current CFTC has been silent on the issue until a little over a month ago on September 30th when they issued an advisory letter on sports-related event contracts.[21] But the letter just acknowledged the existence of these contracts and warned that entities should be prepared to deal with "termination of sports-related event contract positions" resulting from litigation without taking a position for or against their continuation. Mike Selig, who was recently nominated to chair the CFTC, previously co-authored a letter on behalf of a client, VC fund Paradigm Operations, a Kalshi investor, arguing that prediction markets should be allowed to offer sports-related contracts.[22] As former general counsel for the CFTC, Rob Schwartz posted on X, "If the comment letter reflects his own views, the CFTC will never act against sports contracts."[23]

Once these products are offered through a derivatives exchange, state law is preempted as to those products. Since they aren't subject to state regulation or taxation, what's to stop operators from shifting their businesses over to prediction markets, allowing them to evade state gaming regulations and costing those states who have already legalized sports betting billions in tax revenue? The answer is nothing – in fact DraftKings has already announced their intention to enter the predictions market. The company recently

---

[20] Event Contracts, 89 Fed. Reg. 48968 (proposed June 10, 2024) - "The Commission proposes to define 'gaming' in new § 40.11(b)(1) as the staking or risking by any person of something of value upon: (i) the outcome of a contest of others; (ii) the outcome of a game involving skill or chance; (iii) the performance of one or more competitors in one or more contests or games; or (iv) any other occurrence or non-occurrence in connection with one or more contests or games."
[21] CFTC, Rel. No. 9137-25 (Sept. 30, 2025), CFTC Staff Issues Advisory on Certain Contract Markets, https://www.cftc.gov/PressRoom/PressReleases/9137-25 (last visited Nov. 12, 2025).
[22] Daniel O'Boyle, *Trump CFTC Pick Michael Selig Worked On '24 Letter Backing Sports Event Contracts*, INGAME (Oct. 31, 2025), https://www.ingame.com/cftc-pick-selig-letter-backing-sports-contracts/?utm_source=substack&utm_medium=email.
[23] Rob Schwartz (@FormerCFTCGC), X (Oct. 30, 2025, at 2:16 PM), https://x.com/FormerCFTCGC/status/1983961222111166878 (on file with author).

announced its acquisition of Railbird Technologies and its subsidiary, Railbird Exchange, which is a federally licensed exchange.[24] This acquisition will support the launch of a mobile app called DraftKings Predictions focused on trading regulated event contracts across "finance, culture, and entertainment," which, although it doesn't specifically mention sports, likely would include sporting events so long as they're permitted.

Faced with a real threat to their industry and their authority, state gaming regulators in six states, Nevada, New Jersey, Maryland, Montana, Illinois, and Ohio, issued cease and desist letters to prediction markets in an assertion of jurisdiction over event contracts. Kalshi fought back and filed federal suits seeking temporary restraining orders to block any enforcement actions, alleging the states are preempted from regulating derivatives markets.[25] While the federal court in Maryland was not persuaded that a TRO was warranted, district courts in Nevada and New Jersey came down in Kalshi's favor, prompting Robinhood to file suit preemptively in both these jurisdictions.[26] Massachusetts has taken a slightly different approach - the state AG filed a civil suit against Kalshi in state court, characterizing sports-related event contracts as illegal gambling in violation of state law.[27] Robinhood, who offers Kalshi contracts, then sued Massachusetts in federal court seeking a judgement barring the state from regulating the offerings of a designated contracts market or DCM.[28] Andrew Kim, a partner at the law firm, Goodwin Procter, writes and speaks extensively on prediction markets. He has a great piece on all the litigation that I'd recommend to anyone interested in the specific details since I'm really just providing the broad strokes.[29]

At this point, nothing is final and the litigation is going to take some time to play out. If there ends up being a circuit split, it's entirely possible this issue will make it to the Supreme Court. And I don't really have any strong feelings about how this plays out, although I do think sports-related event contracts raise concerns with regard to consumers who might be

---

[24] *DraftKings Acquires Railbird to Advance Future Growth in Prediction Markets*, DRAFTKINGS.COM (Oct. 21, 2025), https://www.draftkings.com/draftkings-acquires-railbird-to-advance-future-growth-in-prediction-markets.

[25] KalshiEx v. Hendrick, No. 2:25-cv-575 (D. Nev.); KalshiEx v. Flaherty, No. 1:25-cv-2152 (D.N.J.); Andrew Kim and John Servidio, On the Line: The Legality of Sports Prediction Markets Will Soon Be Tested, N.Y.L.J. (Apr. 8, 2025), https://www.goodwinlaw.com/-/media/files/news-and-events/press-posts/new-york-law-journal-andrew-kim-john-servidio_41025.pdf?rev=71be1276b0774caba0c1466786acc3e7.

[26] Robinhood Derivatives v. Dreitzer, No. 2:25-cv-01541 (D. Nev.); Robinhood Derivatives v. Flaherty, No. 1:25-cv-14723 (D.N.J.).

[27] MA. OFF. ATT'Y GEN., AG CAMPBELL SUES ONLINE PREDICTION MARKET FOR ILLEGAL AND UNSAFE SPORTS WAGERING OPERATIONS (Sept. 19, 2025), https://www.mass.gov/news/ag-campbell-sues-online-prediction-market-for-illegal-and-unsafe-sports-wagering-operations.

[28] Robinhood v. Campbell, No. 1:25-cv-12578 (D. Ma. Sep. 15, 2025).

[29] Andrew Kim, *The Hitchhiker's Guide To Prediction Markets Litigation*, EVENT HORIZON (Sept. 8, 2025), https://nexteventhorizon.substack.com/p/the-hitchhikers-guide-to-prediction-markets.

attracted to the market as an alternative to sports betting, which Ilya mentioned when we spoke:

Ilya Beylin: The Commodity Exchange Act was designed for wholesale risk transfer. In other words, businesses to transfer risk, not designed for the most part to protect retail traders. Retail traders were seen as a source of liquidity, their protection. There are some protections for retail traders, but…less so than in the securities markets where you expect retail investors. And again, just as with credit cards, we're okay with the folks that probably are the more vulnerable subsidizing the rest of us as we get points, et cetera, from them not paying balances on time in securities and derivatives markets those retail traders that really shouldn't be in there and are losing money, they're providing liquidity to other market participants. And we generally say, God bless, let's not regulate. But what happens if the products being offered in those markets as appears to be happening, at least with event contracts in the derivative market? What happens if they don't serve a legitimate purpose as stocks and bonds and traditional risk transfer derivatives do? What happens if they don't serve a traditional purpose to the market participants? In other words, what if they're entertainment vehicles? And do we still feel comfortable with that subsidy from those who know less to either the offerors of the products, the exchanges, or the participants that know more? How do we feel about that subsidy?

Sara Gras: While integrity is a huge focus of the legal sports betting industry, the CFTC and the exchanges don't really have mechanisms in place to address the potential for outcome manipulation or insider information. And as Ilya pointed out:

Ilya Beylin: In terms of trading on insider information in the context of event contracts, don't know that, maybe I'm wrong. Maybe somebody's already thought through this, but I don't know what that would look like. Because part of the goal of event contracts is to elicit information. Like the very point is to trade on information. What is insider information? What is information that it is inappropriate to trade on as opposed to information that it is okay to trade on? I don't know where that line is.

Sara Gras: So…potentially not great if you have concerns about how financial incentives can negatively impact what we have traditionally thought of as the pure nature of athletic competition. And why am I even raising this at this final hour in the closing moments of this season, perhaps after you've figured out where you fall on the online sports betting opinion spectrum? I think it's because, even after more than a year of researching and interviewing and tracking legislation and thinking about these issues, the only thing I'm certain about is this:

Sports-related event contracts are just the current manifestation of the reality that if there's money to be made on an activity, ingenious individuals will always be working on an end-run around any rules you put in place to control it. Which is not to say we shouldn't have rules – we need rules. But they need to serve actual objectives rather than simply eliminating competition, meaning, if our concern about prediction markets is consumer protection, then lobby for CFTC rules that require third-party integrity monitoring. If we are just SAYING we care about consumers because want to protect state tax revenue from an alternative to sports betting – well – then that's just putting a thumb on the scale in favor of big business.

Betting on sports in one form or another isn't going anywhere. It has always existed, even if only in the shadows. There's really no point in pondering, well what if PASPA had never been overruled and it had stayed illegal? Because then why not ask, what if PASPA had never been enacted? Might things be different? Who knows – maybe the timeline would be different, and maybe slower industry growth would have allowed for more intentional and thoughtful state implementation. And maybe some of the states that don't have land-based casinos or iGaming would have stayed out of the fray instead of riding the rush – but also – maybe not. Because it's here – we're here – and lots of people, companies, municipalities, tribes, are making fortunes. Despite the social concerns, despite the betting scandals, despite the calls for change, as long as the money continues to flow, our systems of power will ensure sports betting continues.

And I honestly don't think this will change until, or if, the public discourse around gambling shifts. Maybe sentiment will turn against the leagues after the 1000th athlete betting scandal, maybe the generation about to reach the age of majority will suffer gambling harms in a manner so widespread that it cannot be ignored, or maybe we will all move on to the next shiny new thing. But I have a strong feeling, maybe I'd even bet on it, that we have many more years of sports betting ahead of us. And I lay all this out here to simply highlight the complexity of this landscape. Perhaps more than I've even been able to communicate throughout this season, I've come to see that there are no good guys or bad guys, no clear winners or losers – everyone is just figuring out how to handle this thing the best they can. Thanks for listening to this season of Hearsay from the Sidelines, a collaboration of Seton Hall Law School and Culture in Sports; research and writing by me, Sara Gras with the help of my amazing research assistants, Emily Raedisch and Lauren Vuolo; music by my son, Robert; produced by me and Dr. Jeremy Piasecki, Executive Director of Culture in Sports. Links to all available academic and primary legal sources, media, music, transcription, and other materials mentioned in this episode are available on the Hearsay from the Sidelines show page, hearsayfromthesidelines.com. And if you like this show, check out cultureinsports.com where you'll find more articles, shows, webinars, summits, and courses for sports leaders of all levels.