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AG Watch: Minn. Defends Prediction Markets Ban

By **Toni Michelle Jackson and Tiffany Aguiar** (July 27, 2026, 5:04 PM EDT)

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.

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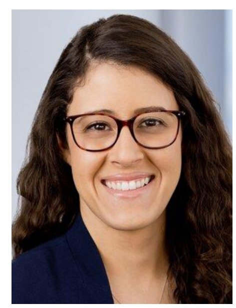

Tiffany Aguiar

Minnesota Attorney General Keith Ellison stepped into one of the most consequential gambling regulation battles of the decade on June 18, in the case of U.S. v. Minnesota, filing a memorandum in opposition to motions for preliminary injunction[1] brought by the U.S. Commodity Futures Trading Commission, Kalshi Inc. and Polymarket — three parties seeking to prevent Minnesota's landmark prediction market statute from taking effect.[2]

With a July 2 hearing already held at the U.S. District Court for the District of Minnesota and a ruling **issued** on July 27, the case has quickly emerged as a flashpoint in the intensifying national standoff over who has the power to control the booming prediction market industry: the federal government or the states.

On July 27, U.S. District Judge Katherine Menendez granted the plaintiffs' motions for a preliminary injunction, enjoining enforcement of the prediction market statute against entities registered as CFTC designated contract markets, or DCMs, pending a final decision on the merits.

Notwithstanding the court's preliminary injunction, which temporarily suspends enforcement of the statute, businesses operating in Minnesota should still strongly consider whether their operations touch prediction markets — including as service providers, payment processors, data suppliers or technology vendors — and not wait for the litigation to resolve before acting.

Minnesota's Landmark Prediction Market Law

Signed into law on May 19 and originally effective Aug. 1, Minnesota's S.F. 4511 is the nation's first statute to criminalize the hosting, facilitation and advertising of prediction markets. The law amends Minnesota's gambling statutes by adding a new section — Minnesota Statutes, Section 609.7615 — and imposes felony liability across a broad range of conduct.

What the Law Prohibits

The statute defines a "prediction market" expansively as a "system that allows consumers to place a wager on the future outcome of a specified event that is not determined or affected by the performance of the parties to the contract." Examples of covered events include:

- Sports and games, which include athletic events, games of skill, and card or dice games;
- Violence, disaster and public health, which include wars, "natural or human-made disasters, mass shootings, acts of terrorism, public health crises," and death or mass casualty events;
- Government, legal and political, which include elections, government actions and legal proceedings; and
- Culture, personal and other, which include popular culture events (e.g., awards, entertainment releases), short-term weather events and whether a specific person will make a particular statement.

Under Subdivision 2, "a person is guilty of a felony if the person, for consideration and as part of a business, … creates, … operates, manages, or controls" a prediction market platform, or "intentionally facilitates" one by listing events for wagering, accepting or directing funds; administering or settling wagers; acting as a counterparty; or setting prices and odds.

The statute's reach extends beyond primary operators to also criminalize providing data, verification or payment-processing services to a prediction market with knowledge of their intended use, as well as advertising or marketing financial or technological products that promote transactions otherwise prohibited under the statute.

Who Is (and Is Not) in the Crosshairs

The law's reach extends beyond the main platforms providing prediction market services. The statute's facilitation and support provision sweeps in service providers that supply event outcome feeds, payment processors and custodial wallet services that hold or route consumer funds, technology infrastructure companies whose services are used to process wagers, and VPN or geolocation service providers whose tools could be used to circumvent the ban.

Subdivision 3 outlines what are not considered bets, including but not limited to: true insurance contracts, bona fide contests, and securities or commodities transactions, among others.

Ellison's Memorandum: The Legal Case for State Authority

Ellison filed a memorandum opposing the CFTC, Kalshi and Polymarket's attempt to supplant the state's role in regulating gambling in Minnesota by seeking a preliminary injunction that would prevent Minnesota's bipartisan prediction market statute from going into effect.

Ellison's core argument rests on a structural reading of the Commodity Exchange Act.[3] The CEA grants the CFTC exclusive jurisdiction over just two types of transactions: commodity futures and, since 2010, swaps. No party believes that prediction market wagers are commodity futures, as those wagers are not contracts to purchase goods at a particular price in the future.

And on the swap question, the memorandum argues that prediction market wagers simply do not qualify. The CEA defines "swap" as an agreement dependent on the occurrence of an event "associated with a potential financial, economic, or commercial consequence."

The memorandum argues that outcome-focused wagers — like how many points the Minnesota Lynx score in a given game, or whether a television pundit uses a buzzword on-air — do nothing to stabilize prices for producers and consumers, serve no legitimate economic purpose, and are not associated with a potential financial, economic or commercial consequence.

Beyond the statutory text, Ellison's memorandum invokes principles of federalism. Under the most basic norms of federalism, courts begin with the assumption that Congress does not intrude on the historic police powers of the states — in this case, in the regulation of gambling — without saying so clearly.

At the same time, the memorandum also pushes back on the notion that federal and state jurisdiction must be mutually exclusive. The CFTC and Minnesota can both regulate Kalshi and Polymarket without trouble. Kalshi and Polymarket can easily satisfy federal requirements set forth under the CEA while, at least in Minnesota, restricting their offerings to subjects that do not include sports betting, pop culture event betting or other wagers prohibited under the Minnesota prediction market statute.

Ellison also framed the fight as extending well beyond Minnesota. Minnesota joins many other states — including Arizona, Connecticut, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, Ohio, Rhode Island, Tennessee, Utah, Washington and Wisconsin — in fighting to ensure that states get to decide how to protect and ensure the health, safety and well-being of their citizens.

The Preliminary Injunction Hearing

At a July 2 preliminary injunction hearing, Judge Menendez focused on one main question: What happens when contracts on a designated contract market meet the CEA's definition of a swap, while others do not? Kalshi's counsel argued that the CFTC holds exclusive jurisdiction over all such contracts and that the agency, rather than a state court, must make validity determinations under the CEA. Minnesota's counsel took a more practical approach, suggesting the court need not draw precise lines, and that if state law is not preempted, it could apply across the board.

The July 27 Order

On July 27, Judge Menendez granted the motions for a preliminary injunction filed by the CFTC, Kalshi and Polymarket, enjoining Minnesota from enforcing its prediction market statute pending a final decision on the merits.

Likelihood of Success on the Merits — Express Preemption

The court's core finding was that the plaintiffs are likely to succeed on their express preemption claims, at least as to many of the trades listed on Kalshi's and Polymarket's platforms. The court found that the plain and ordinary meaning of the terms "associated with" and "potential" in the CEA's swap definition is broad, capturing many of the event contracts listed on both platforms.

Contracts cited as clear examples of event contracts closely associated with potential financial, economic or commercial consequences — and therefore likely qualifying as swaps subject to the CFTC's exclusive jurisdiction — included those paying out based on:

- The outcome of a U.S. Senate election;
- Which NBA team would sign LeBron James;
- The World Cup winner; and
- When traffic in the Strait of Hormuz would return to normal.

The court also drew support from the Dodd-Frank Act's "special rule," which empowers the CFTC — and not the states — to determine whether certain categories of event contracts are contrary to the public interest, further reflecting congressional intent to vest authority over DCM-based prediction market transactions in the CFTC.

The court did note, however, that not all event contracts listed on these platforms appear to fit the CEA's definition of swaps — for example, contracts predicting who will win a reality television competition or what announcers will say during a broadcast lack the required financial, economic or commercial nexus — meaning any permanent relief may ultimately be narrower in scope.

Remaining Preliminary Injunction Factors

On the remaining preliminary injunction factors, the court found that Kalshi and Polymarket have demonstrated at least some threat of irreparable harm.

Irreparable Harm

The court found that Kalshi and Polymarket have demonstrated at least some threat of irreparable harm to the DCMs and the CFTC. Key findings included:

- The defendants have not disavowed an intent to enforce the statute once effective, exposing the DCMs to the possibility of criminal prosecution under a law likely at least partially preempted by federal law;

- Because of the defendants' sovereign immunity, there would be no way for Kalshi and Polymarket to recover damages even if they ultimately prevailed, weighing heavily in favor of injunctive relief; and

- Enforcement would cause intangible, uncompensable harm, including erosion of user confidence and damage to the goodwill the DCMs have built with their users.

The court further found that CFTC itself faces irreparable harm, because infringement on the exclusive federal authority Congress vested in the agency can itself constitute irreparable injury.

Balance of Harms and Public Interest

On the balance of harms and public interest, the court acknowledged that Minnesota's statute was enacted in response to perceived serious harms from prediction markets, but found those interests are diminished when a state law is likely preempted, and that the public interest in enforcing valid state laws is correspondingly less significant in those circumstances.

Claims Reserved for Later Proceedings

The court declined to rule on implied preemption or First Amendment claims at this stage, reserving those questions for later proceedings.

Notably, the court made clear that the order is not a final determination on the merits, but reflects a preliminary assessment intended to preserve the status quo until the parties' claims and defenses can be fully adjudicated.

Conclusion

Ellison has demonstrated a willingness to aggressively defend the statute on both statutory and federalism grounds — a posture that signals he will not hesitate to pursue enforcement once the law takes effect.

The Minnesota case remains the nation's most closely watched front in the war over prediction market regulation, and the court's decision here could set the template for state authority across the country.

Businesses operating in Minnesota should therefore keep a close eye on the docket and consider an internal audit to assess whether their products, services or operations — including ancillary functions such as payment processing, data provision and technology infrastructure — fall within the statute's sweeping reach.

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[1] https://www.ag.state.mn.us/Office/Communications/2026/docs/02661_PredictionMarkets_DefendantsMemo.pdf.

[2] https://www.revisor.mn.gov/bills/94/2026/0/SF/4511/versions/latest/.

[3] https://www.law.cornell.edu/uscode/text/7/chapter-1.