

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

KEVIN CLARKE, in his individual capacity,
TREVOR BOECKMANN, in his individual
capacity, HARRY CRANE, in his individual
capacity, CORWIN SMIDT, in his individual
capacity, PREDICT IT, INC., a Delaware
corporation, and ARISTOTLE
INTERNATIONAL, INC., a Delaware
corporation,

Plaintiffs,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

Case No. 2022-cv-00909-LY

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Kevin Clarke, Trevor Boeckmann, Harry Crane, Corwin Smidt, Predict It, Inc. (“PredictIt”), and Aristotle International, Inc. (“Aristotle”) move the Court for a Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 to enjoin Defendant, The Commodity Futures Trading Commission (“CFTC” or the “Commission”).

This case challenges a Commission decision to revoke permission for the PredictIt Market to operate. Pursuant to agency regulations, the Commission decided in 2014 to afford the PredictIt Market “No-Action Relief” that permitted the Market to offer political event contracts under certain conditions. Pursuant to that decision, the Market operated for seven years. On August 4, 2022, the agency issued a formal letter revoking that No-Action Relief and providing detailed prescriptions for how the Market must close. Most importantly here, the Revocation decision required the Market to force liquidation of all contracts by February 15, 2023, including contracts that turn on election outcomes (including the 2024 U.S. presidential elections) that occur long after

February 2023. That particular mandate, requiring premature liquidation of 2024 election contracts and others, is already causing unnecessary and damaging disruption, distortion, and dislocation in those markets. Because the economic damages to Market investors are being caused by a federal Government action, sovereign immunity and other principles will make it difficult to recover these damages later, rendering the harm irreparable. Accordingly, the Plaintiffs are seeking a preliminary injunction against the Commission prohibiting markets that were already in place as of the Commission's revocation decision from continuing to trade to their natural conclusion. The Plaintiffs also challenge the Commission's decision to close the Market and bar the issuance of contracts on brand new topics, but will seek relief on that issue in the normal course through summary judgment proceedings.

To that end and for the reasons set forth in the memorandum in support of this motion, Plaintiffs respectfully request that the Court enjoin the Commission, pending a final judgment in this action, from prohibiting Plaintiffs Kevin Clarke, Trevor Boeckmann or any other investor participating in the PredictIt Market from buying, selling, or trading through the PredictIt Market:

- a) any political event contract that was initially offered on the PredictIt Market on or before August 4, 2022 (the date of the Commission's revocation decision); or
- b) any political event contract offered by the PredictIt Market after August 4, 2022, to account for emerging candidates in an election that was covered by a PredictIt Market contract as of August 4, 2022 (the date of the Commission's revocation decision).

Plaintiffs further respectfully request that this Court enjoin, until the entry of final judgment in this matter, the Commission from prohibiting or otherwise enforcing its Revocation decision—CFTC Letter 22-08—to prohibit or deter in any way the PredictIt Market, or any entity involved in operating or servicing the PredictIt Market, from:

- a) allowing continued trading in any political event contract that was initially offered on or before August 4, 2022 (the date of the Commission's revocation decision) until the event specified in that contract resolves; or

- b) offering and allowing to trade a new event contract that seeks to add an avenue for predicting the success or failure of additional candidates in an election that was addressed by a PredictIt Market contract as of August 4, 2022 (the date of the Commission's revocation decision).

Plaintiffs respectfully request a hearing on their motion.

Plaintiffs conferred with counsel for the CFTC regarding the relief requested herein as required by Local Rule CV-7(g). The CFTC does not consent to the requested relief.

Dated: September 30, 2022

Respectfully submitted,

/s/ Michael J. Edney
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Attorneys for Plaintiffs Kevin Clarke, Trevor Boeckmann, Harry Crane, Corwin Smidt, Aristotle International, Inc., and Predict It, Inc.

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Plaintiffs has conferred with counsel for Defendant about the relief requested in this Application and that an agreement could not be reached between Plaintiff and Defendants regarding this Motion as required by Local Rule CV-7(G). This Motion is therefore being presented to the Court for determination.

/s/ Michael J. Edney _____