

decision to close the Market in March 2023—likely had violated the Administrative Procedure Act. *Id.* at 641–42. These efforts endangered “significant reliance interests” that Market operators, traders, and academics had in the Market’s continued operation, given their significant investments in standing up, purchasing contracts on, and studying that Market. *Id.* The efforts likely also could not be squared with the procedural protections that accompany a license from a federal agency, as the agency provided no hearing much less an opportunity “to demonstrate or achieve compliance.” *Id.* at 642 (quoting 5 U.S.C. § 558(c)). The Circuit Court found it unlikely that the agency did—or frankly could—reconcile closing the Market with the “significant reliance interests at play.” *Id.* at 641. The Court found arbitrary the agency’s efforts to close the Market in light of the alternative of the agency identifying the alleged violations of the no-action letter’s terms, seeking correction of them, and then monitoring the Market for future compliance. *Id.* at 642. The Court also held that the threat of irreparable injury to Market operators and traders, as well as academics studying the Market, the balance of the equities, and the public interest weighed in favor of a preliminary injunction. *Id.* at 643–44.

The Circuit Court also explained that, prior to issuing its opinion, it had enjoined pending appeal the CFTC “from closing the PredictIt Market or otherwise prohibiting or deterring the trading of Market contracts.” *Id.* at 635. The Court then examined the agency’s March 2023 announcement withdrawing its revocation of the no-action letter, replacing it with a preliminary decision to close the Market, and inviting Victoria University of Wellington to present reasons why this decision should be changed. *Id.* at 636. All of this, the Court held, was agency action “prohibiting or deterring the trading of Market contracts” in violation of the Court’s injunction. *Id.* at 635–36.

The Circuit Court remanded the case to the District Court with instructions to “enter a

preliminary injunction pending its consideration of [Plaintiffs'] claims.” *Id.* at 644. The Fifth Circuit issued its mandate on September 12, 2023.

This Court granted the Plaintiffs’ September 2022 request for a preliminary injunction and ordered the Plaintiffs to file a proposed order for a broader injunction addressing intervening events, including the March 2023 effort to close the Market. ECF No. 43. In line with the broader injunction pending appeal entered by the Fifth Circuit and the reasoning of the Fifth Circuit’s opinion on the merits, this Court hereby **ORDERS** that the Defendant is **ENJOINED** from taking any action, including without limitation issuance of any preliminary decisions, that would have the effect of prohibiting or deterring the issuance or trading of PredictIt Market contracts or to close or otherwise to impede the normal operations of the Market, until 90 days after a final, not further appealable, judgment is entered in this matter.

The Court further waives any bond requirement in connection with this preliminary injunction

IT IS SO ORDERED.

DATED: San Antonio, Texas, _____, 2023.

David Alan Ezra
Senior United States District Judge