

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KALSHIEX LLC,

Plaintiff,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Defendant.

No. 23-cv-03257-JMC

Joint Appendix under Rule 7(n)
Volume 3

**JOINT APPENDIX UNDER RULE 7(n)
VOLUME 3**

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By Electronic Submission

July 24, 2023

Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: KalshiEx, LLC's Self-Certified Proposed Political Event Contract

Dear Mr. Kirkpatrick:

Better Markets¹ appreciates the opportunity to comment on the Commission's review of KalshiEX, LLC's proposed congressional control contract under CFTC Regulation 40.11.²

BACKGROUND

On July 19, 2022, KalshiEX, LLC ("Kalshi") submitted a proposal ("Original Proposed Contract") to the CFTC seeking review and approval of a new binary event contract, which Kalshi titles "the 'Will <party> be in control of the <chamber of Congress>?' Contract." Kalshi's Original Proposed Contract was a binary (all-or-nothing) option contract whose payout was contingent on whether a particular political party will control Congress at a particular time.

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

² 17 CFR § 40.11, *Review of event contracts based upon certain excluded commodities*; U.S. COMMODITIES FUTURES TRADING COMMISSION, *CFTC Announces Review and Public Comment Period of KalshiEx Proposed Congressional Control Contracts Under CFTC Regulation 40.11* (June 23, 2023), <https://www.cftc.gov/PressRoom/PressReleases/8728-23>

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On May 16, 2023, after receiving public notice from several news outlets that the Commission was going to deny its Original Proposed Contract³, and after receiving public advice from Commissioner Pham that it should withdraw its proposal⁴, Kalshi withdrew its bid. Less than 30 days later, on June 12, 2023, Kalshi officially notified the Commission that it was self-certifying a political control event contract (“Self-Certified Contract”). Kalshi’s Self-Certified Contract is substantially similar to the Original Proposed Contract, albeit with certain discernible differences. In response to Kalshi’s notification, on June 23, 2023, the Commission announced that it has commenced a review of the Self-Certified Contract in accordance with CFTC Regulation 40.11(c).

The proposed Self-Certified Contract should not be approved based on several legal and policy grounds because it would (1) violate the statutory and regulatory framework applicable to event contracts; (2) constitute “gaming” under state and federal law; (3) undermine public faith in our markets and elections; and (4) fail to serve the primary purpose of the futures markets as a viable hedging and price discovery mechanism. Although the Commission has previously allowed several non-profit ventures to offer trading on similar political event contracts under specific and limited circumstances, Kalshi’s proposal constitutes a significant departure from previous precedent. Never before has the Commission allowed a for-profit venture to operate in this sensitive arena, fraught with the potential for abuse.

The proposal suffers from multiple fatal flaws. Kalshi’s scant publicly available submission lacks sufficient detail to enable a full and meaningful assessment of the proposed Self-Certified Contract. However, on the available record, meager though it is, the Commission must conclude that the contract would violate the law, pose a serious threat to investors, and fail to serve the legitimate hedging and price discovery functions of the markets it regulates. As a legal matter, Kalshi’s event contract involves, relates to, or at the very least is similar to “gaming” and an activity that is unlawful in numerous states across the country. That must bear heavily on the Commission’s decision and indeed prove dispositive. The CFTC must be mindful that the wrong decision by the CFTC here could de facto preempt innumerable state laws in ways that Congress

³ Lydia Beyoud, *CFTC Poised to Deny US Political Gambling Before November Polls*, Bloomberg (Oct. 28, 2022), <https://www.bloomberg.com/news/articles/2022-10-28/cftc-poised-to-deny-us-political-gambling-before-november-polls?sref=mQvUqJZj>. See also Nick Baker, *CFTC Staff Recommends Rejecting Kalshi's US Election Contracts*: Bloomberg, (October 28, 2022), <https://www.coindesk.com/policy/2022/10/28/cftc-staff-recommend-rejecting-kalshis-us-election-contracts-bloomberg/>

⁴ Declan Harty, *CFTC's Pham: Kalshi should withdraw election betting bid*, PoliticoPro (Nov. 08, 2022), <https://subscriber.politicopro.com/article/2022/11/cftc-commissioner-kalshi-should-withdraw-election-betting-bid-00065579>. See Better Markets Ethics Complaint Regarding CFTC Commissioner Caroline Pham’s Apparent Public Disclosure of Highly Confidential, Nonpublic, Internal, Factual and Legal Discussions Regarding the Pending Application of KalshiEx, LLC (Dec. 8, 2022), https://bettermarkets.org/wp-content/uploads/2022/12/Better_Markets_Letter_CFTC_Ethics_Complaint_Pham.pdf see also Better Markets Ethics Complaint Regarding CFTC Commissioner Caroline Pham’s Apparent Public Disclosure of Highly Confidential, Nonpublic, Internal, Factual and Legal Discussions Regarding the Pending Application of KalshiEx, LLC (Dec. 12, 2022), <https://bettermarkets.org/wp-content/uploads/2023/06/LTR-CFTC-Inspector-General-re-Pham-12-12-22-.pdf>.

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clearly did not intend. In addition, the contract is susceptible to manipulation, further endangering investors and the integrity of the markets.

This proposal would contribute to the deeply troubling trend toward the “gamification” and “retailization” of finance. In this increasingly common pattern, everyday consumers and investors are lured into new financial products and services by claims that the offerings represent beneficial “democratization” and “innovation.” Yet as we have seen with the “digital engagement practices” that fueled the meme stock frenzy,⁵ and even more so in the market for cryptocurrencies, the result is typically massive wealth accumulation for a few sponsors and issuers and massive losses suffered by the vast majority of investors.⁶

Democracy and elections are foundational principles for our country and are not appropriate subjects for gaming, gambling and betting. Given the use and abuse of social media in the gambling space⁷ and the A.I. in the political space⁸, allowing gambling on U.S. elections will invite if not incentivize more interference, abuse, and misconduct as gamblers seek to effect political outcomes to maximize their winnings. Even relatively small amounts of spending on negative attack ads can help swing a close race, local elections, and primaries with low turnout, especially if done in the last few days before an election when there is little if any time for a meaningful response.⁹ Imagine what damage an AI deepfake video, supercharged by viral social media, could do if a gambler wanted to try to increase the odds of winning his or her bet in the days before an election. The truth will not catch up to the lie before the votes - and die - are cast.

⁵ See generally Dennis M. Kelleher, Jason Grimes, and Andres Chovil, *Securities—Democratizing Equity Markets With And Without Exploitation: Robinhood, Gamestop, Hedge Funds, Gamification, High Frequency Trading, And More*, 44 W. NEW ENG. L. REV. 51 (2022).

⁶ There are numerous additional downsides that should be considered. See, e.g., Madison Darbyshire, *Traders phone up gambling helplines as game-like broker apps spread*, the Financial Times (Oct. 6, 2021) (“Helplines of gambling addiction recovery groups have been ringing with a new kind of caller: day traders. The rise of mobile brokerage applications outfitted with prompts, animations, rewards, and digital flourishes have brought the feel of investing platforms closer to online sports betting and gambling.”), available at <https://www.ft.com/content/8f9bbc77-06b1-4fbd-8b7e-6e381ba038a7>; Scott Chipolina and Oliver Barnes, *There needs to be a health warning: How crypto trading can lead to addiction*, the Financial Times (June 2, 2023) (“Debate over whether the sector should come under scope of financial services or be treated like gambling.”), available at <https://www.ft.com/content/0f879851-5c74-42ef-914b-154cd4c9a881>.

⁷ Jared Diamond, *A Reporter’s Tweet Moved NBA Draft Odds. He Also Works for a Gambling Company*, The Wall Street Journal, (June 24, 2023), https://www.wsj.com/sports/basketball/nba-draft-shams-charania-the-athletic-fanducl-84c9ccc4?mod=hp_featst_pos5

⁸ Emily Birnbaum and Laura Davison, *AI Is Making Politics Easier, Cheaper and More Dangerous*, (July 11, 2023), <https://www.bloomberg.com/news/features/202307-11/chatgpt-ai-boom-makes-political-dirty-tricks-easier-and-cheaper?srnd=premium&sref=mQvUqJZj>

⁹ While Kalshi’s proposed Self-Certified Contract is nominally limited to the change in partisan control of Congress, we would anticipate that, if allowed by the CFTC, Kalshi and others would quickly offer similar contracts on all sorts of elections from the local level to the Presidency.

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Given all these factors and the negative impact that the commodification of our electoral process would have on the integrity of our democracy, we urge the Commission to reject Kalshi's Self-Certified Contract.

Legal Context

The Commodity Exchange Act ("CEA") Section 5c(c)(5)(C) prohibits the listing of agreements, contracts, transactions, or swaps in an excluded commodity.¹⁰ Section 5c(c)(5)(C)(i) of the CEA prohibits event contracts that "involve, relate to, or reference" terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law.¹¹ The legislative history of CEA Section 5c(c)(5)(C) indicates that CFTC should consider whether the event contract as a whole involves activities listed under Section 5c(c)(5)(C)(i).

In 2011, the Commission promulgated Regulation 40.11 to implement Section 5c(C)(5)(C) of the CEA.¹² Regulation 40.11(a)(1) prohibits the listing of an agreement, contract, or transaction "that involves, relates to, or references" terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law.¹³ Because not all undesirable contracts may fall neatly within the specific categories listed in Regulation 40.11(a)(1), CFTC Regulation 40.11(a)(2) includes a provision that prohibits event contracts involving an activity that is "similar to" the activities enumerated in 40.11(a)(1), so long as the Commission determines the contract to be "contrary to the public interest."¹⁴

Regulation 40.11(c) provides for a 90-day review period for any such contract that the Commission determines may involve gaming or any of the other activities referenced in Regulation 40.11(a)(1).¹⁵

Prior Commission Approaches

Historically, the CFTC has permitted binary event contracts only under conditions more limited and tightly controlled than those of the Kalshi contract. In 1993, CFTC staff issued a no-action letter to the Iowa Electronic Markets ("IEM"), an academic prediction market run by the

¹⁰ 7 U.S.C. § 7a-2(c)(5)(C). The Commodities Exchange Act (CEA) is codified at 7 U.S.C. § 1 *et seq.*

¹¹ 7 U.S.C. § 7a-2(c)(5)(C)(i).

¹² Provisions Common to Registered Entities, 76 Fed. Reg. 44776, 44785 (July 27, 2011).

¹³ 17 C.F.R. 40.11(a)(1).

¹⁴ 17 C.F.R. 40.11(a)(2).

¹⁵ 17 C.F.R. 40.11(c).

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University of Iowa's Tippie College of Business in conjunction with several other universities.¹⁶ Among the event contracts available for trading on the IEM are political event contracts regarding partisan control of the United States Congress. The CFTC's staff no-action letter allowed the IEM to continue offering its political event contracts, but with several restrictions. First, the no-action was premised on the IEM's academic purpose and operation as a non-profit entity. Second, neither the IEM nor the University of Iowa charges any commissions or receives a return in connection with its operation, and IEM does not realize a financial profit or suffer loss as a result of the transactions.

In December 2011, the North American Derivatives Exchange ("NADEX") submitted a proposal to the CFTC seeking approval of five new political event contracts relating to the political control of the United States Congress and the Presidency.¹⁷ On April 2, 2012, the CFTC issued an order prohibiting NADEX from listing its proposed political event contracts.¹⁸ In its order, the CFTC found that the contracts, which would have paid out based upon the outcome of US federal elections, "involved[] gaming" and were contrary to the public interest under CEA Section 5c(c)(5)(C)(i). In its analysis, the CFTC determined, among other things:

- (1) "the unpredictability of the specific economic consequences of an election means that the Political Event Contracts cannot reasonably be expected to be used for hedging purposes;"
- (2) "there is no situation in which the Political Event Contracts' prices could form the basis for the pricing of a commercial transaction involving a physical commodity, financial asset or service, which demonstrates that the Political Event Contracts have no price basing utility;" and
- (3) "the Political Event Contracts can potentially be used in ways that would have an adverse effect on the integrity of elections, for example by creating monetary incentives to vote for particular candidates even when such a vote may be contrary to the voter's political views of such candidates."¹⁹

¹⁶ CFTC No-Action Letter, CFTCLTR No. 93-66, 1993 WL 595741 (June 18, 1993), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/93-66.pdf>.

¹⁷ U.S. COMMODITIES FUTURES COMMISSION, *CFTC Commences 90-day Review of NADEX's Proposed Political Event Derivatives Contracts* (Jan. 5, 2012), <https://www.cftc.gov/PressRoom/PressReleases/6163-12>.

¹⁸ U.S. COMMODITIES FUTURES COMMISSION, *Order Prohibiting the Listing or Trading of Political Event Contracts*, https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexo_rder040212.pdf.

¹⁹ *Id.*

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In 2014, the CFTC staff issued a no-action letter to PredictIt, operated by researchers at the Victoria University of Wellington, allowing its political event contracts to operate in the United States provided that it met certain conditions. Among these conditions were that the market must:

- be small-scale and not-for-profit;
- be operated for academic and research purposes only;
- be overseen by faculty at the University, without receipt of separate compensation;
- be limited to 5,000 traders per contract, with an \$850 investment limit per participant in any contract;
- not offer brokerage services or charge commissions to participants;
- utilize a third-party service provider to perform know-your-customer (“KYC”) due diligence on its participants; and
- only charge those fees necessary to cover the costs of implementing the KYC process, regulatory compliance, and basic expenses necessary to operate the proposed event contract market.

In August 2022, however, the CFTC staff informed PredictIt that it had violated the no-action letter, that it was withdrawing the no-action letter, and instructed the company to wind down its operation of the political event contracts by February 2023.²⁰

The Kalshi Contract

Kalshi’s Original Proposed Contract provided that it was their intention to impose a position limit of \$25,000. However, in Kalshi’s new Self-Certified Contract, it is the exchange’s intention to increase the position limit as follows:

- (i) The Position Limit for Individuals shall be \$125,000 per Member; and \$250,000 for those with demonstrated established economic hedging need;
- (ii) The Position Limit for Entities shall be \$5,000,000 per Member; and \$10,000,000 for those with demonstrated established economic hedging need;
- (iii) The Position Limit for Eligible Contract Participants shall be \$50,000,000 per Member; and \$100,000,000 for those with demonstrated established economic hedging need.

Kalshi’s Self-Certified Contract provides that a claim for a purported need for economic hedging by an individual, entity, or eligible contract participant member may be demonstrated to Kalshi according to the means and methods established by Kalshi. Whether a member has demonstrated

²⁰ U.S. COMMODITIES FUTURES COMMISSION, *CFTC Staff Withdraws No-Action Letter to Victoria University of Wellington, New Zealand Regarding a Not-For-Profit Market for Certain Event Contracts* (Aug. 4, 2022), <https://www.cftc.gov/PressRoom/PressReleases/8567-22>.

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that it has a sufficiently established an economic hedging need is determined solely at Kalshi's discretion. Furthermore, the Self-Certified Contract provides little information on the fees and commissions Kalshi charges on its platform, stating only the following:

“Members will be charged fees in accordance with Rule 3.6 of the Rulebook. Fees are charged in such amounts as may be revised from time to time to be reflected on the Exchange's Website.”

As with its Original Proposed Contract, Kalshi does not include a copy of the Rulebook referenced in its submission, leaving readers and possibly the Commission itself without key information regarding the specifics of its fee structure or Kalshi's unilateral, subjective power to change any and all provisions. Finally, Kalshi does not presently allow leveraged or margined trading on its platform, but it reserves the right to change this policy in the future, as it, of course, can change any of its other policies, procedures or statements.

If approved, Kalshi's proposal would represent a significant departure from the fundamental and historical underpinnings of the futures markets. The fundamental purpose of the derivatives market is to provide a means of hedging risk and price discovery for commercial enterprises, not to enable mass speculative gambling among retail traders.²¹ While limited speculation is permitted to provide additional liquidity necessary to enable derivatives markets to perform their important historic functions, the markets overseen by the CFTC are not — and never were — intended as casinos or predominantly speculative vehicles.²² Nor were our elections intended to be commodified, commercialized, and gambled upon *en masse* with the mere click of a button.

The Commission has appropriately identified several areas of interest in the 24 questions it posed for public comment.²³ We hope our comments assist the Commission as it reviews this proposal.

¹³ See Timothy E. Lynch, *Derivatives: A Twenty-First Century Understanding*, 43 LOY. U. CHI. L. J. 1 (2011) (“[E]nabling hedging is the *raison d'être* for the existence of derivatives, and without this characteristic, it is doubtful that the modern derivatives industry would have developed.”); Lynn A. Stout, *Derivatives and the Legal Origin of the 2008 Credit Crisis*, 1 HARV. BUS. L. REV. 1 (2011); Miriam A. Cherry & Robert L. Rogers, *Prediction Markets and the First Amendment*, 2008 U. ILL. L. REV. 833, 838 (2008) (distinguishing the information-aggregating function of prediction markets from the price discovery function of other traditional markets); COMMODITIES FUTURES TRADING COMMISSION, *The Economic Purpose of Futures Markets and How They Work*, <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/economicpurpose.html>

²² See generally Lynn A. Stout, *How Deregulating Derivatives Led to Disaster, and Why Re-Regulating Them Can Prevent Another*, 1 LOMBARD ST. 4 (July 2009).

²³ COMMODITIES FUTURES TRADING COMMISSION, *Questions on the KalshiEX, LLC “Will <party> be in control of the <chamber of Congress> for <term>?” Contracts for Public Comment*, <https://www.cftc.gov/media/8801/DMOKalshiQuestions062323/download>

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COMMENTS

I. The Submission fails to provide sufficient information to allow meaningful public comment or appropriate review by the Commission.

As a threshold matter, the Self-Certified Contract from Kalshi is grossly deficient and has to violate the Administrative Procedures Act (“APA”) that requires enabling meaningful public comment. It is largely opaque, providing remarkably scant detail about the material features of the contract. In short, it fails to supply enough information that might enable the Commission or interested members of the commenting public to fully evaluate the contract. Even if the Commission believes that it has sufficient information from Kalshi’s public and confidential submissions, that is inadequate because the Commission has deprived itself of the benefit of informed, meaningful public comment on the material aspects of the proposed Self-Certified Contract. This is a key reason that the APA requires agencies like the CFTC to seek, obtain, and take into account public comment.

Kalshi’s Self-Certified Contract fails to provide sufficient detail regarding several key issues surrounding the contract. As discussed above, Kalshi’s submission includes no specific details regarding the fee structure it would charge its users, stating only that users will be charged fees according to its own “Rulebook,” which Kalshi fails to include with its publicly available submission.²⁴ The Self-Certified Contract application also does not offer a description of how margin will be handled under the contract.

More significantly, the Self-Certified Contract conspicuously omits any assessment of the actual impact of that trading activity, either on investors or those who may have attempted to use those contracts to, for example, hedge a risk. Finally, information regarding the Self-Certified Contract’s risk mitigation analysis and price-basing utility, as well as any additional considerations related to the Self-Certified Contract is not available to be reviewed for public comment for it is supposedly included in confidential appendices of Kalshi’s submission. Notwithstanding Kalshi’s representations, as deficient and incomplete as they are, Kalshi could possibly materially change any term, policy, or practice after receiving Commission approval of its contract.²⁵

1. Kalshi failed to properly comply with the submission requirements provided in CFTC regulation 40.2(a)(3).

In its Self-Certified Contract submission, Kalshi used language that appears to certify that the event contract complies with the CEA and CFTC regulations. However, in the actual

²⁴ As noted above, even the minimal information that is publicly available is subject to our serious concerns surrounding Kalshi’s reservation of the right to alter the terms of the contract in the future.

²⁵ Kalshi’s ability to change the contract in the future is a major concern even if such future alterations are subject to Commission approval. Regardless of that approval process for later changes, the public (and the Commission itself) are now being asked to evaluate a contract with terms that may essentially be inaccurate, to the extent Kalshi already harbors the intention to change them in the future.

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certification document required under Regulation 40.2(a)(3)(iv), Kalshi did not certify that the event contracts comply with the CEA and CFTC regulations. In fact, Kalshi only included language in the certification document from regulation 40.2(a)(3)(vi) which certifies that Kalshi posted a notice of pending product certification with the CFTC and a copy of the submission on its Website.

In contrast, Kalshi's previous self-certified event contracts with different underlying subject matters all contained a statement certifying the compliance of their contracts with CEA and CFTC regulations along with a signature from a representative. However, Kalshi did not do the same in its Self-Certified Contract. With this apparent omission, this is a de facto admission by Kalshi that its Self-Certified Contract does not comply with the CEA and CFTC regulations. Regardless, Kalshi has failed to meet the necessary regulatory requirements for self-certifying its political control event contract. The CFTC should require Kalshi to remove its political control contracts due to its failure to comply with the regulatory requirements put in place to ensure legal compliance and protect market integrity.

II. The Commission should prohibit trading of the Self-Certified Contract because it conflicts with the intent of the Commodity Exchange Act, violates the letter of the Commission's rules against event contracts, and is contrary to the public interest.

The Commission should reject Kalshi's Self-Certified Contract because it conflicts with the letter and spirit of the Commodity Exchange Act, Commission Rule 40.11, and the public interest. Section 5c(e)(S)(C) of the Commodity Exchange Act provides, in pertinent part:

(C) SPECIAL RULE FOR REVIEW AND APPROVAL OF EVENT CONTRACTS AND SWAPS CONTRACTS.—

(i) **EVENT CONTRACTS.**—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i) [2] of this title), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—

- (I) activity that is unlawful under any Federal or State law;
- (II) terrorism;
- (III) assassination;
- (IV) war;
- (V) gaming; or
- (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.

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- ii. PROHIBITION.—No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

Following these Dodd-Frank amendments to the CEA, the Commission promulgated Rule 40.11,²⁶ pertaining to event contracts. In that rule, the Commission wisely chose to exercise the authority from Congress to impose an outright ban on gaming contracts or similar contracts that are contrary to the public interest. The rule provides as follows:

§ 40.11 Review of event contracts based upon certain excluded commodities.

(a) *Prohibition.* A registered entity shall not list for trading . . . any of the following:

- (1) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law; or
- (2) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which involves, relates to, or references an activity that is similar to an activity enumerated in § 40.11(a)(1) of this part, and that the Commission determines, by rule or regulation, to be contrary to the public interest.

A. The proposed Self-Certified Contract involves, relates to, or is similar to, gaming, which is condemned under the CEA, prohibited under the Commission’s rules, and outlawed in several states.

Kalshi’s Self-Certified Contract is substantially similar in all material respects to the NADEX contracts, which the Commission appropriately denied because they were, involved, related to, or were similar to gaming and because they were illegal under state law.

1. The Kalshi contract involves gaming.

As the CFTC determined in its response to NADEX’s 2012 proposal for binary event contracts, political event contracts involve or are similar to “gaming.”²⁷ Here too, Kalshi’s virtually identical political event contract is gaming, involves gaming, relates to gaming, or is “similar to”

²⁶ 17 C.F.R. § 40.11.

²⁷ See U.S. COMMODITY FUTURES TRADING COMM’N, *Order Prohibiting the Listing or Trading of Political Event Contracts*, (Apr. 2, 2012), <https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf>

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gaming within the meaning of CEA § 5cI(5)(C)(i) and Commission Regulation 40.11(a)(1). It, therefore, falls squarely under the Commission’s regulatory prohibition, as authorized under the terms of the CEA.

Like NADEX’s proposal in 2012,²⁸ Kalshi now proposes to list a binary (all-or-nothing) event contract whose payoff is contingent upon the election of representatives to the United States Congress, such that one political party gains “control” — or a voting majority — of a chamber of Congress for a particular congressional term. Participants in such political prediction markets place a sum of money at risk, with the payout based on the market’s assessment of the probability of each outcome. If a participant “predicts” correctly, they are rewarded monetarily. Conversely, if they predict incorrectly, their position will lose monetary value.

The conclusion that the Kalshi Self-Certified Contract, and the NADEX contract before it, are, involve, relate to, or are similar to “gaming” follows from an analysis of both federal and state law.²⁹ With respect to federal law, although “gaming” is not defined in either the CEA or CFTC regulations, the Commission previously relied on the Unlawful Internet Gambling Enforcement Act in its prior finding that NADEX’s similar political event contracts constituted “gaming” under the CEA and Commission Rule 40.11.³⁰ The Unlawful Internet Gambling Enforcement Act defines the terms “bet or wager” as:

“the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.”³¹

Clearly, Kalshi’s proposed event contracts fall squarely within this definition — namely, “*the staking or risking by any person of something of value upon the outcome of a contest of others.*”³² Although neither the Unlawful Internet Gambling Enforcement Act nor the Commodity Exchange

²⁸ For a discussion of the Commission’s treatment of the NADEX contracts, see Dave Aron & Matt Jones, *States’ Big Gamble on Sports Betting*, 12 UNLV GAMING L. J. 53, 75–76 (2021).

²⁹ For a discussion of prior CFTC consideration and analysis of event contracts and “gaming,” *see id.*, at 71–86.

³⁰ U.S. COMMODITY FUTURES TRADING COMM’N, *Order Prohibiting the Listing or Trading of Political Event Contracts*, (Apr. 2, 2012), <https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf>; The Unlawful Internet Gambling Enforcement Act is codified at 31 U.S.C. § 5361 *et seq.*

³¹ 31 U.S.C. § 5362(1)(A) (emphasis added); *see also* Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling and the Speculation Paradox*, 86 B.U. L. REV. 371 (2006); Dave Aron & Matt Jones, *States’ Big Gamble on Sports Betting*, 12 UNLV GAMING L. J. 53, 67–86, 71 (2021) (discussing the CEA’s application to event contracts).

³² Relatedly, the traditional common law definition of “gaming” includes three elements: consideration, prize, and chance, all of which are present in prediction markets. *See* Tom W. Bell, *Gambling for the Good, Trading for the Future: The Legality of Markets in Science Claims*, 5. CHAP. L. REV. 159, 165-166 (2002).

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Act defines the term “contest,” the Cambridge English Dictionary provides the following definition:

“a competition to do better than other people, esp. to win a prize or achieve a position of leadership or power: **‘In the last election, he survived a close contest against a political newcomer.’**”³³

Moreover, as observed by the CFTC in its 2012 order against the NADEX proposal, numerous states’ gambling laws expressly link the terms “gaming” or “gambling” with betting or wagering upon the outcome of an election:

“[S]everal state statutes, on their face, link the terms gaming or gambling (which are used interchangeably in common usage, dictionary definitions and several state statutes) to betting on elections, and state gambling definitions of ‘wager’ and ‘bet’ are analogous to the act of taking a position in the Political Event Contracts.”³⁴

This is no less true now than it was in 2012, and there is no reason why the Commission should now find otherwise.

While some contend that political event contracts cannot be or involve “gaming” because prediction markets contain an element of skill as opposed to mere chance, the statutory definition of “bet or wager” above lists “a game subject to chance” in the disjunctive and but one of several examples, not a necessary element. That political prediction markets contain an element of skill — i.e., informational or predictive superiority — makes them no more distinct from gaming than does a professional poker player’s expertise make their profession distinct from gambling. Both at the blackjack table and in a prediction market, skill will aid the participants. But in both cases, significant elements of uncertainty and chance preside over the endeavor that are outside the control of the participants, rendering the activity one that is, involves, relates to — or is at least similar to — “gaming” for purposes of the CEA.³⁵

Proponents of Kalshi wrongfully claim that the language and structure of Section 5c(5)(C)(i) make clear that the scope of the Commission’s discretionary review is narrowly

³³ THE CAMBRIDGE ENGLISH DICTIONARY, *Contest* (emphasis added), <https://dictionary.cambridge.org/us/dictionary/english/contest>.

³⁴ U.S. COMMODITY FUTURES TRADING COMM’N, *Order Prohibiting the Listing or Trading of Political Event Contracts*, (Apr. 2, 2012), <https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf>.

³⁵ See Ryan P. McCarthy, *Information Markets as Games of Chance*, 155 U. PA. L. REV. 749, 770 (2007); Thomas Lee Hazen, *Disparate Regulatory Schemes for Parallel Activities: Securities Regulation, Derivatives Regulation, Gambling, and Insurance*, 24 ANN. REV. BANKING & FIN. L. 375, 401-12, 416-18 (2005) (comparing investing, hedging, insurance, and gambling as risk-taking activities).

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focused on the nature of the contract's underlying event, not on trading in the contract itself. Because elections do not fit within any of the enumerated activities, they claim that the Commission should not impede self-certification of the political control contract.³⁶ However, the legislative history of CEA Section 5c(c)(5)(C) makes clear that the relevant question for the Commission in determining whether a contract involves one of the activities enumerated in CEA Section 5c(c)(5)(C)(i) is whether the contract, considered as a whole, involves one of those activities.³⁷ As mentioned previously, the Self-Certified Contract proposed by Kalshi should be rejected by the Commission since the whole contract can be categorized as a form of gaming. On Kalshi's exchange, customers will voluntarily bet money based on the outcome of a competitive political election.

2. The Kalshi contract involves an activity that is unlawful under state law.

As a separate matter, the Commission also rejected the NADEX contract because it plainly involved, related to, or referenced an activity that was unlawful under numerous states' laws. The same is true with respect to the Kalshi contract, a separate factor that is also dispositive under Rule 40.11(a)(1).³⁸ Placing a bet or wager on the outcome of an election is civilly or criminally unlawful in well over a dozen states nationwide.³⁹ For decades, states have long asserted their right to protect

³⁶ See Dissenting Statement of Commissioner Caroline D. Pham Regarding the Review and Stay of KalshiEX LLC's Political Event Contracts, <https://www.cftc.gov/sites/default/files/filings/ptc/23/06/ptc0612232837.pdf>

³⁷ See In the Matter of the Self-Certification by North American Derivatives Exchange, Inc., available at <https://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf>

³⁸ See, e.g., NV REV. STAT. § 293.830 (2014) ("Any person who makes, offers or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate . . . is guilty of a gross misdemeanor."); TN CODE § 2-19-129 (2014) ("A person commits a Class C misdemeanor if such person makes any bet or wager of money or other valuable thing upon any election."); 720 ILL. COMP. STAT. ANN. 5/28-1 (2011) ("A person commits gambling when he . . . [m]akes a wager upon the result of any game, contest, or any political nomination, appointment or election . . ."); NEB. REV. STAT. § 28-1101(4) (2011) ("A person engages in gambling if he or she bets something of value . . . upon the outcome of a game, contest, or election . . ."); N.M. STAT. ANN. § 44-5-10 (1978) ("Bets and wagers on an election authorized by the constitution and laws of the United States, or by the laws of this state, are gaming within the meaning of this chapter [on gambling debts and losses.]; N.D. CENT. CODE ANN. § 12.1-28-01 (West 2011) ("Gambling' means risking any money . . . upon . . . the happening or outcome of an event, including an election . . . over which the person taking the risk has no control."); See also GA. CODE ANN. § 16-12-21(a)(2) (West 2011) ("A person commits the offense of gambling when he . . . [m]akes a bet upon the result of any political nomination, appointment, or election . . ."); MISS. CODE ANN. § 97-33-1 (2011) ("If any person . . . shall wager or bet . . . upon the result of any election . . . he shall be fined in a sum not more than Five Hundred Dollars . . ."); S.C. CODE ANN. § 16-19-90 (2011) ("Any person who shall make any bet or wager of money . . . upon any election in this State shall be guilty of a misdemeanor . . ."); TEX. PENAL CODE ANN. § 47.02(a)(2) (West 2011) ("A person commits an offense if he . . . makes a bet on the result of any political nomination, appointment, or election . . .").

³⁹ See NATIONAL CONFERENCE OF STATE LEGISLATURES, *Wagering on Elections? Not a Smart Bet* (Sept. 17, 2014), <https://www.ncsl.org/blog/2014/09/17/wagering-on-elections-not-a-smart-bet.aspx>.

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the integrity of their elections by prohibiting placing wagers on the outcome of an election.⁴⁰ In the absence of finding a public interest, the Commission should not preempt these states' longstanding, deeply rooted concerns by granting KalshiEx — a profit-driven venture — license to profit from speculation on the outcome of our elections.

B. The Contract is otherwise contrary to the public interest.

1. The proposed event contract is readily susceptible to manipulation.

Kalshi's political event contract runs afoul of the CFTC's Core Principles applicable to Designated Contract Markets — namely, Core Principle #3's requirement that a contract must not be “readily subject to manipulation.”⁴¹

Political prediction markets operate in a shrouded space that would readily lend itself to manipulation and other forms of abusive activity. It raises the specter of political insiders privy to non-public information — say, internal polling or campaign finance data — wielding their informational advantage to profit at the expense of others.⁴² And it would be susceptible to other classic forms of market manipulation. After all, “parties with an interest in the outcome have an incentive, whenever possible, to move the odds prices in their preferred direction.”⁴³

In her 2009 Harvard Law Review article “Prediction Markets and Law: A Skeptical Account,” Professor Rebecca Haw Allensworth detailed how bad actors might manipulate prediction markets:

Prediction markets are vulnerable to manipulation, although scholars do not agree on how serious the problem is. Information market traders can gain from manipulations in two ways. First, they could profit by artificially lowering the trading price temporarily and purchasing shares to be sold at a higher price when the market returns to ‘normal.’ Second, they could try to affect the informational value of the market. For example, a candidate's supporter could purchase his shares at an inflated value, raising the perceived odds that he would win the election, and (hopefully) getting more voters to jump on the putative bandwagon. At least in the

⁴⁰ See generally Paul W. Rhode & Koleman S. Strumpf, *Historical Presidential Betting Markets*, 18 J. OF ECON. PERSP. 127 (2004) (outlining the history of election wagering in America).

⁴¹ See COMMODITIES FUTURES TRADING COMMISSION, *Designated Contract Markets (DCMs)*, <https://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm>

⁴² See Alex Altman, *Political Betting Market Raises Questions About Insider Trading*, TIME (Oct. 6 2015), <https://time.com/4062628/fantasy-sports-predictit-political-forecasting/>.

⁴³ Paul W. Rhode & Koleman S. Strumpf, *Manipulating Political Stock Markets: A Field Experiment and a Century of Observational Data 2* (Jan. 2007) (unpublished manuscript, available at <https://economics.yale.edu/sites/default/files/files/Workshops-Seminars/Economic-History/rhode-051116.pdf>).

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short term, manipulators have succeeded in artificially inflating or deflating the prices of securities in information markets. In 2004, TradeSports's election prediction market fell victim to two 'sustained attempts' at manipulation, which resulted in 'large price changes that do not appear to have been based on any information.'⁴⁴

Similarly, in one study, titled "Affecting Policy by Manipulating Prediction Markets: Experimental Evidence," researchers found experimental evidence demonstrating how a highly motivated actor can manipulate prediction markets, thereby undermining their predictive reliability:

We find clear evidence that highly incentivized manipulators can destroy the predictive power of an information market. That is, we have identified a case where manipulators do cause human forecasters to make predictions that are no better than random guessing would generate showing that prediction markets can be manipulated. Further, our results show that the effects of introducing manipulators are due to more than just the large influx of liquidity in the market. This finding demonstrates that policy makers should not indiscriminately rely upon market predictions, but rather need to consider the incentives and wherewithal of potential manipulators. Our results are also suggestive that the possibility of such manipulators may also be sufficient to undermine the market aggregation of information.⁴⁵

With Kalshi allowing single contracts of \$100,000,000 and aggregate amounts at risk almost certain to be in the tens if not hundreds of billions of dollars, the incentive to interfere with and manipulate the political events are likely to prove overwhelming so some number of gamblers.

Kalshi's submission (or at least the part available to the public) does not explain how it will identify and eliminate manipulation risks. Given the many ways one could conceivably influence or manipulate a prediction market to their advantage,⁴⁶ the Commission should not allow the adoption of political event contracts as Kalshi proposes.

⁴⁴ Rebecca Haw Allensworth, *Prediction Markets and Law: A Skeptical Account*, 122 HARV. L. REV. 1217 (2009).

⁴⁵ Deck, *infra* n. 46, at 61.

⁴⁶ See, e.g., Brad Plumer, *How to Swing the Prediction Markets and Boost Mitt Romney's Fortunes*, THE WASHINGTON POST (Oct. 23, 2012), <https://www.washingtonpost.com/news/wonk/wp/2012/10/23/how-to-manipulate-prediction-markets-and-boost-mitt-romneys-fortunes/>; Alex Klein, *InTrade And Jon Huntsman: Why the Media's Faith in the Internet Betting Ring Is Foolish*, THE NEW REPUBLIC (Jun. 21, 2011), <https://newrepublic.com/article/90371/intrade-and-jon-huntsman-president-odds-republican-nomination>. See generally Kloker, Simon and Kranz, Tobias T., *Manipulation In Prediction Markets – Chasing The Fraudsters*. In PROCEEDINGS OF THE 25TH EUROPEAN CONFERENCE ON INFORMATION SYSTEMS (ECIS), Guimarães, Portugal, June 5-10, (2017) (pp. 2980-2990), <http://aisel.aisnet.org/ecis2017rip/47>; Cary Deck, Shengle Lin, & David Porter, *Affecting Policy by Manipulating Prediction Markets: Experimental Evidence*,

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2. Kalshi’s proposed for profit contract would fail to provide the consumer protections and academic benefits provided by other non-profit prediction markets.

The fact that some other event contract platforms have been allowed to operate does not support the approval of the Kalshi submission. Those other platforms were readily distinguishable and were subject to multiple important limitations and conditions. Unlike the Iowa Electronic Markets⁴⁷ — and, until recently, PredictIt⁴⁸ — Kalshi is a for-profit entity established and motivated to maximize financial gain. Moreover, unlike non-profit prediction markets, Kalshi would face significant commercial pressure to extract wealth from its users through high transaction, commission, withdrawal, and other fees, as well as creating and offering a proliferation of other contracts, presumably enabling betting on virtually all other elections in the U.S. and elsewhere. Kalshi’s submission proposal provides little assurance that it will not do so, outlining no specific details regarding its fees, commission policies, or business plans.

In contrast, the conditions of the no-action letter granted to the Iowa Electronic Markets state that its prediction market is run on a not-for-profit basis, no commissions are charged to users, and its administrators do not receive a return in connection with the site. Moreover, traders are limited to position limits of well under \$1,000. Until recently, the political prediction market PredictIt — a non-profit project run by academics from the Victoria University of Wellington in New Zealand — likewise operated with similar restrictions protecting traders and guaranteeing researchers access to its data.⁴⁹ These contracts are a far cry from Kalshi’s proposed Self-Certified Contract. The Commission’s recent withdrawal of PredictIt’s no-action letter only intensifies concerns surrounding the appropriateness of allowing even non-profit research enterprises to operate event contract platforms, let alone the one advanced by Kalshi.

3. Kalshi’s proposed contract would redirect capital from productive uses into highly speculative markets and would undermine public trust in our elections.

85 J. ECON. BEHAV. & ORG. 48 (2013) (“[W]e present evidence from the lab indicating that single-minded, well-funded manipulators can in fact destroy a prediction market’s ability to aggregate informative prices and mislead those who are making forecasts based upon market predictions.”).

⁴⁷ See IOWA ELECTRONIC MARKETS, <https://iemweb.biz.uiowa.edu/>; CFTC No-Action Letter, CFTCLTR No. 93-66, 1993 WL 595741 (June 18, 1993), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/93-66.pdf>.

⁴⁸ See Declan Harty, *No Future: Regulator Orders Political Prediction Market to Shut Down in U.S.*, POLITICO (Aug. 09, 2022), <https://www.politico.com/news/2022/08/09/nofuture-regulator-orders-political-betting-market-to-shut-down-in-u-s-00050238>.

⁴⁹ See Declan Harty, *Washington Weighs Plan to Let Americans Wager on Elections*, POLITICO (Sep. 5, 2022), <https://www.politico.com/news/2022/09/05/votersbetting-elections-trading-00054723>.

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Kalshi's contract would redirect capital that could otherwise be productively deployed in the public securities markets and elsewhere into a highly speculative and risky market that serves little if any economic purpose, just like traditional gambling.⁵⁰ Such markets prey on unwary traders and typically serve to enrich the few at the expense of the many.⁵¹ What is more, this speculative market runs contrary to the fundamental and historical purposes underlying the derivatives market — namely, to hedge commercial risks and assist in price discovery. Indeed, if anything, the so-called market that would be created by Kalshi's Self-Certified Contract would appear to increase risk rather than hedge or alleviate it.

And it does so at the steep cost of jeopardizing the integrity of and public faith in our elections. Whether through mere perception or through other means, there is little doubt that the mass commodification of our democratic process would raise widespread concerns about the integrity of our electoral process. Putting aside the significant issues of whether such markets could inspire vote-switching and other nefarious conduct, the mere impact on the public's perception of our democracy is cause enough to conclude that it is decidedly not in the public interest.

A. CFTC Regulation 40.11(a)(2) includes a very important catch-all provision.

Because not all contracts that would clearly be contrary to the public interest may fall neatly within the specific categories listed, CFTC adopted a regulation, 40.11(a)(2), that prohibits event contracts involving an activity that is “similar to” the activities enumerated in 40.11(a)(1), so long as the CFTC determines the contract to be “contrary to the public interest.”⁵² This provision serves as a clear recognition that there are simply some types of trading that society can and must consider off limits.⁵³

For example, betting via event contracts on where the next school shooting will be or how many school children will be murdered in the next school shooting are not enumerated and therefore it could be argued not prohibited. However, few would doubt that such betting should be prohibited because such a contract would “involve, relate to, or reference” assassination. But

⁵⁰ See Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling, and the Speculation Paradox*, 86 B.U. L. REV. 371, 373-74 (2006) (“[G]ambling is viewed as an enterprise of chance that encourages [participants] . . . to divert useful capital into a chaotic system whereby an undeserving few reap ill-gotten gains while the vast majority foolishly lose.”); Lynn A. Stout, *Why the Law Hates Speculators: Regulation and Private Ordering in the Market for OTC Derivatives*, 48 DUKE L.J. 701, 715 (1999) (“Common law courts regarded speculation as a type of wagering rather than a useful form of economic commerce.”); Thomas Lee Hazen, *Disparate Regulatory Schemes for Parallel Activities: Securities Regulation, Derivatives Regulation, Gambling, and Insurance*, 24 ANN. REV. BANKING & FIN. L. 375, 377 (“In contrast to investing, hedging and insurance, gambling is not generally viewed as a productive activity or one that provides any benefit to society beyond its entertainment value.”).

⁵¹ See Jon Kimball & David Rees, THE WASHINGTON POST, *We Made Thousands On This Website. But We're Still Happy It's Shutting Down* (Aug. 25, 2022), <https://www.washingtonpost.com/opinions/2022/08/25/predict-gambling-political-prediction-markets/>.

⁵² 17 C.F.R. 40.11(a)(1).

⁵³ 17 C.F.R. 40.11(a)(2).

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it's not difficult to anticipate a lawyer's argument that a school shooting actually did not "involve, relate to, or reference" assassination, at least not in a narrow traditional sense. No one, however, could argue that such a contract would be "similar to" assassination and thereby properly prohibited as contrary to the public interest. Regarding Kalshi's Self-Certified Contract, in addition to being unlawful under a number of state and federal laws and prohibited gaming (either directly or because it "involves" and "relates to" gaming), it should also be prohibited because it is similar to gaming and therefore should be rejected as contrary to the public interest.

B. Congress did not intend for the CFTC to police elections.

Widespread gambling on our elections through the simple click of a button is far removed from the purpose, function, and importance of the electoral processes. Such activities undermine the sanctity and democratic value of elections, turning them into speculative spectator sports. Better Markets agrees with the statements made by Chair Behnam regarding the new and entirely different role the CFTC would have to assume if political contracts were allowed.⁵⁴

The prospect of the CFTC assuming the role of an "election cop" raises valid concerns about the misalignment of that role with the CFTC's mandate and with the original intent and objectives set forth by Congress. This situation presents not only legal implications but also broader policy considerations. It prompts questions regarding the suitability of this financial regulatory body being heavily involved in overseeing and policing gambling on the country's electoral processes. Therefore, it is important for the CFTC to carefully evaluate all these implications and potential consequences when it deliberates on whether to allow a political event contract in the derivatives marketplace.

III. The Submission cannot and will not serve a meaningful hedging or price discovery function.

The legislative history of CEA Section 5c(c)(5)(C) makes clear Congress's intent to restore the economic purpose test that was used by the CFTC to determine whether a contract was contrary to the public interest pursuant to CEA Section 5(g) prior to its deletion by the Commodity Futures Modernization Act of 2000. The restored economic purpose test calls for an evaluation of an event contract's utility for hedging and price discovery purposes. The unpredictability of the specific,

⁵⁴ Tracey Alloway and Joe Weisenthal, Transcript: CFTC Chair Rostin Behnam on the Fight to Regulate Crypto, A live Odd Lots interview from the ISDA annual meeting, (May 18, 2023), <https://www.bloomberg.com/news/articles/2023-05-18/transcript-cftc-chair-rostin-behnam-on-the-fight-to-regulate-crypto?sref=mQvUqJZj> stating, "Imagine a situation where we have alleged fraud or alleged manipulation of an election and someone coming to the CFTC and say, "You know, you have a contract listed on an election in, you know, X district in Y state, and we believe there was fraud, because of hardware, software, news, you name it." Right? "You need to police that fraud." So without being too indirect, what I'm trying to say is the CFTC could end up being an election cop, and I don't think that's what Congress meant or intended for us to do. And I think that raises for me personally, and I can't speak for the commission or my colleagues, a lot of legal questions and policy questions about whether or not you would want a financial regulator that's very interesting policing elections."

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concrete economic consequences of an election (or change in partisan control of Congress) means that the political event contracts cannot reasonably be expected to be used for hedging purposes. The political event contracts' prices could not form the basis for the pricing of a commercial transaction involving a physical commodity, financial asset or service, which demonstrates that the political event contracts have no price-basing utility.

While the contract would pose significant threats to the public interest, as demonstrated above, Kalshi's proposed contracts would not perform any countervailing function that these markets were created for and intended to serve. Specifically, they cannot serve the futures markets' fundamental purpose as a meaningful hedging or price discovery mechanism. The proposal thus poses serious risks without benefits, a lose-lose proposition.

As the Commission itself observed in its previous review of NADEX's political event contracts,⁵⁵ the consequences of political control of Congress are too uncertain to provide a meaningful hedging function, for significant uncertainty still surrounds whether control of Congress will translate into any specific policy outcome or whether and to what extent such policy outcomes would influence commodity-related risks. For example, just because a party running on a tax reform platform gains control of Congress does not mean that this party can and will muster the support to pass their desired specific tax changes, much less whether or not a President would then sign such a law.⁵⁶ This calls into question the efficacy of a political event contract for purposes of hedging against tax risk. The same uncertainty applies to the impact of an election on any policy.

History is littered with innumerable examples of campaign promises, however genuine, being utterly meaningless once a person or party is elected or in control of one or both houses of Congress. As the old saying goes, "too many in this town mistake majority for control." Partisan majorities do not mean control and neither majorities nor control mean that some specific legislative item or agenda has any chance of passing or not, much less becoming law. The proponents of the Self-Certified Contract are ignoring these well-known, longstanding facts. The unsupported and unsupportable claims of a hedging purpose for the Self-Certified Contract are nothing but a smokescreen to get the CFTC to allow gaming and gambling on U.S. elections.

Moreover, the burden is on Kalshi to also specify why and exactly how the alleged hedging benefits of the proposed contract cannot be adequately addressed by existing hedging instruments.

⁵⁵ COMMODITIES FUTURES TRADING COMMISSION, *Order Prohibiting the Listing or Trading of Political Event Contracts* (Apr. 2, 2012) ("[T]he unpredictability of the specific economic consequences of an election means that the Political Event Contracts cannot reasonably be expected to be used for hedging purposes."), <https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder040212.pdf>.

⁵⁶ See, e.g., Marianna Sotomayor & Leigh Ann Caldwell, *House GOP Tries to Embark on a United Front as Expected Rifts Loom*, THE WASHINGTON POST (Sep. 23, 2022) ("Pleasing the factions will be a difficult job for anyone in leadership unless the possible majority margin is large enough to deter members from advancing their will — a tension often seen this term among Democrats who have only a four-vote margin."), <https://www.washingtonpost.com/politics/2022/09/23/house-gop-tries-embark-united-front-expected-rifts-loom/>.

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Kalshi's submission fails to carry this burden. More specifically, Kalshi has failed to demonstrate why existing hedging mechanisms more tailored to the particularized risks a hedger arguably faces — such as a sector-specific fund, for example — are inferior to Kalshi's proposed contract. Ultimately, political risk itself must be disaggregated into other, more specific, concrete risks. And to the extent that any more specific risks flow from the change in control of a congressional chamber, they are more appropriately hedged by instruments other than the Self-Certified Contract.

IV. Legalizing gambling on elections will be a dramatic policy change with potentially grave national implications.

While Kalshi's Self-Certified Contract is nominally limited to the change in partisan control of Congress, it can be anticipated that, if allowed, Kalshi and others would quickly offer similar contracts on all sorts of elections from the local level to the Presidency. Thus, the proposal, if approved or otherwise allowed to go into effect, would almost certainly usher in widespread betting on elections throughout America.

Legalizing gambling on U.S. elections — de facto or otherwise — would be a dramatic policy change with potentially grave national implications. The consequences of gambling on elections are far-reaching and alarming. Given the use and abuse of social media in the gambling space⁵⁷ and artificial intelligence (AI) in the political space⁵⁸, allowing gambling on U.S. elections will invite if not incentivize more interference, abuse, and misconduct as gamblers seek to effect political outcomes to maximize their winnings. As noted above, when \$100,000,000 bets are allowed and billions of dollars are at stake, this is inevitable. It would also be reasonable to think that with this much money at stake that organized crime syndicates would get involved in what has historically been a lucrative activity for them, i.e., gambling.

Elected officials rely not only on free and fair elections to engender faith in the outcomes of elections, but elections are the foundation of American democracy. Gambling on elections would create very powerful incentives for bad actors, or even those just looking to make a quick buck, to interfere with our elections and try to sway voters outside of the democratic process. For example, it is easy to imagine how AI or social media might be manipulated to quickly circulate false and misleading information within hours or days of an election that could move enough votes to change the election's results.

⁵⁷ Jared Diamond, A Reporter's Tweet Moved NBA Draft Odds. He Also Works for a Gambling Company, (June 24, 2023), https://www.wsj.com/sports/basketball/nba-draft-shams-charania-the-athletic-fanduel-84e9ecc4?mod=hp_featst_pos5

⁵⁸ Tiffany Tsu and Steven Lee Myers, A.I.'s Use in Elections Sets Off a Scramble for Guardrails, Gaps in campaign rules allow politicians to spread images and messaging generated by increasingly powerful artificial intelligence technology, (June 25, 2023), <https://www.nytimes.com/2023/06/25/technology/ai-elections-disinformation-guardrails.html?smid=nytcore-ios-share&referringSource=articleShare>

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As Bloomberg News reported on July 12, 2023, “AI is making politics easier, cheaper and more dangerous,” including:

“AI holds the potential to supercharge the dissemination of misinformation in political campaigns. The technology is capable of quickly creating ‘deepfakes,’ fake pictures and videos that some political operatives predict will soon be indistinguishable from real ones, enabling miscreants to literally put words in their opponents’ mouths. Deepfakes have plagued politics for years, but with AI, savvy editing skills are no longer required to create them.”⁵⁹

As a result, deepfake videos are already being deployed to impact voters, as Bloomberg pointed out:

“In March [2023], an anonymous Twitter user posted an altered video that went viral, purporting to show Biden verbally attacking transgender people. Another one, circulate widely by a right-wing US pundit, appeared to show Biden ordering a nuclear attack on Russia and sending troops to Ukraine.”⁶⁰

Allowing gambling on elections will make the dangers of AI and interference in elections much worse, more likely, and gravely consequential. Given the current environment where many Americans already question the integrity of U.S. elections, this would be adding fuel to the fire at the worst possible time.

As betting apps proliferate on mobile phones, widespread gambling on our elections through the simple click of a button is far removed from the purpose, function, and importance of the electoral processes. Such activities undermine the sanctity and democratic value of elections, turning them into speculative spectator sports. Moreover, the prospect of the CFTC assuming the role of an “election cop” raises very serious concerns about the misalignment of that new and unprecedented role with the CFTC’s historic mission and mandate as established by Congress. The CFTC is not designed, intended, set up, or funded to regulate gambling activities.

In short, Kalshi’s proposal would distort the fundamental and historical purposes of the futures markets — namely, to aid hedging and price discovery among commercial enterprises — while ushering in a flood of retail traders to enter a quintessentially speculative market with the prospect of suffering substantial losses.⁶¹ As noted at the outset of this letter, this proposed contract would further contribute to the trend toward the “gamification” and “retailization” of finance. In

⁵⁹ Emily Birnbaum and Laura Davison, AI Is Making Politics Easier, Cheaper and More Dangerous, Voters are already seeing AI-generated campaign materials — and likely don’t know it, (July 11, 2023), <https://www.bloomberg.com/news/features/202307-11/chatgpt-ai-boom-makes-political-dirty-tricks-easier-and-cheaper?srnd=premium&sref=mQvUqJZj>

⁶⁰ *Id.*

⁶¹ *See supra* notes 21–22, 50 and accompanying text.

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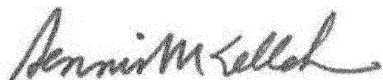
this increasingly common pattern, everyday consumers and investors are lured into new financial products and services, justified by claims that the offerings represent beneficial “democratization” and “innovation.” Yet as we have seen again and again—with the “digital engagement practices” that fueled the meme stock frenzy, and even more so in the market for cryptocurrencies—the result is typically massive wealth accumulation for a few sponsors and issuers and massive losses suffered by the majority of investors.⁶²

The futures markets were not established as a new type of casino but to facilitate the provision of essential goods to Americans by enabling commercial entities to manage the price risk associated with their productive commercial activities.⁶³ There is no credible evidence that Kalshi’s proposed Self-Certified Contract will serve these critical functions, but little question that it will pose serious threats to investors, markets, and our democracy. Given what is at stake, we urge the Commission not to approve Kalshi’s contract.

CONCLUSION

We hope these comments are helpful as the Commission finalizes the proposal.

Sincerely,



Dennis M. Kelleher
Co-founder, President and CEO

Cantrell Dumas
Director of Derivatives Policy

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⁶² See generally Dennis M. Kelleher, Jason Grimes, and Andres Chovil, *Securities—Democratizing Equity Markets With And Without Exploitation: Robinhood, Gamestop, Hedge Funds, Gamification, High Frequency Trading, And More*, 44 W. NEW ENG. L. REV. 51 (2022).

⁶³ See generally Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling and the Speculation Paradox*, 86 B.U. L. REV. 371 (2006).



07/24/2023

VIA ELECTRONIC SUBMISSION

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington DC 20581

**Re: Commodity Futures Trading Commission Request for Information and Comment
for KalshiEX Congressional Control Contracts, Industry Filing 23-01**

Dear Mr. Kirkpatrick,

CME Group Inc. ("CME Group") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("CFTC" or the "Commission") request for information and comment regarding KalshiEX LLC's ("Kalshi") proposed congressional control contracts.

CME Group, a corporate holding company, owns and operates multiple futures exchanges. Our exchanges offer the widest range of global benchmark products across all major asset classes. These products are widely used by market participants for risk management and price discovery. Throughout our corporate history, our exchanges have been involved in most of the major developments that serve as the basis for today's futures industry. For example, we had a front row seat at the very birth of futures trading, the standardization of futures contracts, the formation of the clearing process, as well as the initial introduction of financial futures, cash-settled contracts, and electronic trading. Over our long history, we have demonstrated ongoing leadership with respect to developing new products that have legitimate economic purpose.

Kalshi has recently proposed to offer derivatives contracts based on the outcome of elections in the U.S. Congress. In short, we believe that contracts based on elections are contrary to the public interest and the Commission should prohibit an exchange from listing them, as it has in the past.

The Commission does not currently allow exchanges to list event contracts based on political elections. North American Derivatives Exchange (“Nadex”) proposed listing very similar contracts a little over a decade ago. At that time, the Commission reviewed and correctly exercised its statutory authority to reject the filing.¹ In our view, nothing has changed. The Commission may now hear technical arguments seeking to call its authority into question. While reasonable minds can almost always differ on some point of law, the Commission should ignore this legal nitpicking that is beside the point. Congress clearly gave the CFTC specific statutory authority in this area.² The Commission chose to use that authority in 2012 to prevent event contracts that were based on the outcome of political elections. The analytical reasoning underpinning the Commission’s prohibition had a sound legal basis.³ That legal basis remains completely intact today. Thus, from our perspective, the CFTC has already correctly made this decision and that decision should stand.

We are also persuaded by the logic of certain questions recently raised by Chairman Behnam. The Chairman has asked whether a derivative contract on a political election might compel the Commission to attempt to act as an “election cop”.⁴ The question is pertinent because the Commission is obligated by Section 6(c) of the Commodity Exchange Act to police for fraud and manipulation in connection with any commodity in interstate commerce. For the contracts in question here, the underlying “commodities” are the relevant political elections. Therefore, the Commission must consider and potentially address the unfortunate possibility that fraud occurs in a political election underlying a contract. Do any of us really believe that Congress intended for the CFTC to play this role in the electoral process? Is this result in the public’s interest? For our part, we do not think Congress intended or wants this result, and we do not think such a result would be in the public’s interest.

Finally, and importantly, the Commission’s prior decision to prevent widespread adoption of these types of political contracts relied on a very compelling public policy rationale, and that rationale has never been stronger. The Commission made a finding in the Nadex Order that these types of instruments could “potentially be used in ways that would have an adverse effect on the integrity of elections”.⁵ Although some may attempt to argue that allowing these

¹ CFTC Order Prohibiting North American Derivatives Exchange’s Political Event Derivatives Contracts (April 2, 2012) (“Nadex Order”), available at <https://www.cftc.gov/PressRoom/PressReleases/6224-12>.

² In the Nadex Order, the Commission relied on its authority under section 5c(c)(5)(C)(i) of the CEA, which authorizes it to disapprove certain types of event contracts if it finds they are contrary to the public interest. The Commission has other statutory authority as well that may provide a separate basis for rejecting the contracts. For example, there is a legitimate question as to whether political election results are covered by the CEA’s “excluded commodity” definition or the event contract element of the “swap” definition, and if they are not, they cannot be the basis for a regulated contract offering by an exchange. The Commission also has plenary authority to regulate options under section 4c(b)-(e).

³ When the Commission rejected the Nadex filing in 2012 pursuant to section 5c(c)(5)(C)(i), it properly found that the contracts, considered as a whole, constituted gaming contracts and were contrary to the public interest. The Commission’s order further noted that several states had laws linking betting on election outcomes to gaming/gambling. To the extent any states prohibit or regulate betting on election outcomes, that further supports rejecting Kalshi’s proposal as contrary to the public interest. Allowing Kalshi to list the contracts would preempt state gaming laws by operation of section 12(e), doing an end-run around the states’ public policy determinations on gaming, for contracts that serve no meaningful economic purpose to justify receiving such a benefit.

⁴ See “CFTC Chair Rostin Behnam on the Fight to Regulate Crypto.” *Odd Lots* Podcast, published May 18, 2023, at 34:00. <https://podcasts.apple.com/us/podcast/odd-lots/id1056200096>

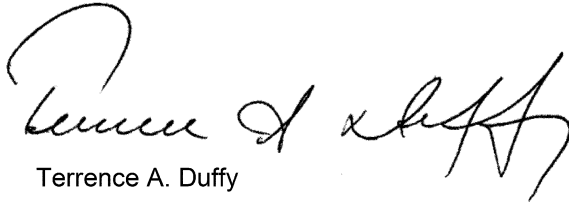
⁵ Nadex Order at p. 4.

contracts now is indeed in the public interest, based on our vantage point, and armed with the past ten years of experience, we would disagree.

In summary, we firmly believe the Commission should not change its mind on this topic now. And we are also quite sure that if it did entertain that possibility, and it conducted a credible review of the public interests involved, it would very quickly conclude that approving contracts like these was still obviously contrary to the public interest, just as it was 10 years ago. But we do not see any need to take this step. The Commission should be very comfortable relying on its past precedent here. Derivatives contracts on political elections have not been allowed and should not be allowed, for good reason.

CME Group appreciates the opportunity to comment on this matter and we would be happy to discuss any of our views with the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Terrence A. Duffy". The signature is fluid and cursive, with a large initial "T" and "D".

Terrence A. Duffy

C A M P A I G N F O R
ACCOUNTABILITY

July 24, 2023

Chairman Rostin Behnam
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

RE: Campaign for Accountability comment on KalshiEX, LLC's proposed futures contracts for election outcomes (Release No. 8728-23)

Dear Chairman Behnam and Commissioners,

Campaign for Accountability is writing to express opposition to KalshiEX, LLC's (Kalshi) proposed contracts that would effectively allow betting on which political party will control the chambers of the U.S. Congress. Despite some commenters' assertions that allowing such contracts would primarily be an aid to academic study, it is undeniable that the question at issue is whether or not to allow widespread gambling on the outcome of U.S. elections. CFTC's answer in the affirmative would unnecessarily introduce and likely exacerbate myriad harmful incentives around US elections.

As an organization dedicated to exposing misconduct in public life, Campaign for Accountability has a great deal of experience examining situations where financial incentives promote behavior contrary to the public good. We fear that giving a green light to betting on the outcome of U.S. elections would be one of these situations.

Currently, the people most incentivized to advocate for a certain election outcome are the citizens that make up that election's constituency – at least, that is how it should be. In recent years, we have seen foreign actors stage large-scale attempts to influence the outcomes of U.S. elections when they feel that one outcome may better serve their own interests. We've also seen dark money operations overwhelm smaller races with massive contributions that weaken the power of individual constituents.

While we should work to minimize these outside influences, they can at least be partially mitigated through an understanding of the platforms and policies that special interests are attempting to shape via their preferred candidate. In contrast, individuals allowed to gamble on election outcomes would be incentivized to influence races *without any consideration of what officials will do once elected*. While this incentive does not make American citizens worse off by necessity, it promotes the idea of "electoral victory as end result" that undoubtedly draws us away from the aspirations of representative democracy.

611 Pennsylvania Ave., S.E. #337 • Washington, D.C. 20003 • (202) 780-5750
campaignforaccountability.org

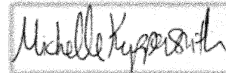
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Further, condoning this sort of cold financial calculus around election outcomes entrenches a growing, cynical “gamification” of American politics. Already, political cable news shows strike a tone eerily similar to those covering sectors of American society which are more nakedly concerned with “winners and losers.” Further injecting gambling into politics would exacerbate this. People watch ESPN before placing wagers on sports betting apps, CNBC before making stock trades, and might soon be tuning into CNN or MSNBC before betting on election outcomes.

We hope that the CFTC shares our view that such a reality would be grim, and that the depressing effects that it would have on good-faith civic engagement would overshadow any potential benefits. Reading through public comments, we anticipate you will consider among these benefits assertions from economists and academics that contracts like those proposed by Kalshi will provide interesting datasets which could be used to better forecast human behavior. We insist that, while an emerging market might provide fascinating material for academic study, the behavior encouraged by that market can still be deeply contrary to the public’s best interests.

Sincerely,

A rectangular box containing a handwritten signature in cursive script that reads "Michelle Koppersmith".

Michelle Koppersmith
Executive Director
Campaign for Accountability



Center for American Progress
1333 H Street NW, Suite 100E
Washington, DC 20005
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americanprogress.org

July 24, 2023

The Honorable Rostin Behnam
Chairman, Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Comment on KalshiEX LLC's Congressional Control Contracts

Dear Chairman Behnam,

The Center for American Progress (CAP) is writing to the Commodity Futures Trading Commission ("CFTC" or "the Commission") regarding CFTC's request for comment on KalshiEX, LLC's ("Kalshi") proposed Congressional control event contracts (the "Proposal"). CAP is an independent, nonpartisan policy institute dedicated to improving the lives of all Americans through bold, progressive ideas, as well as strong leadership and concerted action. As an organization dedicated to strengthening our democracy, we strongly object to Kalshi's proposal. Kalshi's bid is predicated on a misreading of CFTC jurisdiction under section 5c(c)(5)(C) of the Commodity Exchange Act ("CEA"), codified at 7 U.S.C. § 7a-2 and 17 C.F.R. § 40.11. Furthermore, these proposed Congressional control event contracts endanger American democracy by incentivizing election interference. CAP opposes the authorization of these proposed event contracts, as doing so would be against the public interest.

Kalshi's proposal makes numerous justifications,¹ but it fundamentally amounts to nothing more than betting on the results of elections. The CFTC got it right in 2012 when it did not allow the North American Derivatives Exchange ("Nadex") to host binary political event contracts regarding the results of various U.S. federal elections in 2012.² The Commission's conclusion that the political event contracts at issue in the Nadex proceeding constituted gaming under state and federal law and were contrary to the public interest³ should hold. Kalshi argues that the Nadex holding was incorrect because the underlying activity of political event contracts, elections, are not an excluded commodity. However, political event contracts taken as a whole are considered gaming,⁴ which is an explicitly excluded commodity.⁵ Kalshi's proposal is materially indistinguishable from the 2012 Nadex request and the Commission

¹ Comments from KalshiEX to Commission, Sept. 25, 2022, *available at* <https://www.cftc.gov/sites/default/files/filings/ptc/23/06/ptc0612232836.pdf>.

² "Order Prohibiting The Listing Or Trading Of Political Event Contracts" ("Nadex Order"), April 2, 2012, *available at* https://www.cftc.gov/sites/default/files/stellent/groups/public/@rulesandproducts/documents/ifdocs/nadexorder_040212.pdf.

³ *Ibid.*

⁴ KalshiEX, "Comments Responding to the Commission's Specific Questions Related to KalshiEX, LLCs Proposed Congressional Control Contracts."

⁵ 7 U.S.C. § 7a-2(c)(5)(C).

should come to the same result. As the Commission previously cited in Nadex, the political event contracts at issue meet state and federal definitions of gaming, and should be examined as instances of gaming.⁶

Viewed as instances of gaming, Kalshi's proposed political event contracts would have deleterious effects on American democracy. Kalshi's proposal strikes at the very heart of democracy—when citizens vote, their task is to vote for the person they believe *should* win the election. But if voters could directly financially benefit from the results of an election, they would instead be incentivized to vote for the person they think (and potentially have bet) *will* win the election.

Kalshi's political event contracts would not only encourage voters to vote against their conscience, but would also threaten the integrity of our elections at large. If there is the possibility of acquiring material gain with the result of an election, participants may interfere with the electoral process. This may include, but is not limited to, disinformation campaigns in various mediums—including the use of generative artificial intelligence (AI), voter intimidation, and election hacking. Congressional officials have already voiced their concerns about algorithmic, AI-generated, and social-media-spurred disinformation in the 2024 general election;⁷ these proposed election wagers would only exacerbate the issue. This Commission has agreed with this fact in the past, stating in the Nadex order that these contracts “can potentially be used in ways that would have an adverse effect on the integrity of elections.”⁸

Though Kalshi's present proposal is limited to wagers regarding which party controls the chambers of the U.S. Congress, it is a slippery slope. If the precedent is set to allow this activity, Kalshi and its competitors could likely use its logic to set about creating betting contracts at other levels of government—from the local level to the presidency—and on every conceivable question. This possibility of wholesale betting on U.S. elections could make each individual election more contentious and open to the individualized targeting by malicious actors. This could happen both before and after the results are called. Some evidence suggests that electoral betting fueled the fire of election denial in 2020.⁹ At a time when Americans' faith in election integrity is regrettably low compared to two decades ago,¹⁰ it is against the public interest to introduce financial incentives to our electoral system that would damage it further. Any benefit that could possibly be attributed to these contracts pales in comparison to the threat to our election security and the sanctity of American democracy.

As such, CAP strongly urges the CFTC to deny the proposal set forth by Kalshi just as it correctly did a decade ago with Nadex. Kalshi's proposal to allow gambling on our elections is squarely against the public interest.

⁶ See Nadex Order, *supra* n. 2.

⁷ Tiffany Hsu and Steven Lee Meyers, “A.I.'s Use in Elections Sets Off a Scramble for Guardrails,” *NY Times*, June 25, 2023, available at <https://www.nytimes.com/2023/06/25/technology/ai-elections-disinformation-guardrails.html>.

⁸ Nadex Order, *supra* n. 2, at 4.

⁹ Elizabeth Howcroft and Krystal Hu, “As Trump refuses to concede, some bettors hold out too,” *Reuters*, Nov. 12, 2020, available at <https://www.reuters.com/article/us-usa-election-betting/as-trump-refuses-to-concede-some-bettors-hold-out-too-idUSKBN27S1P5>.

¹⁰ Justin McCarthy, “Confidence in Election Integrity Hides Deep Partisan Divide,” *Gallup*, Nov. 4, 2022, available at <https://news.gallup.com/poll/404675/confidence-election-integrity-hides-deep-partisan-divide.aspx>.

Congress of the United States
Washington, DC 20510

July 24, 2023

The Honorable Rostin Behnam
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Comment on KalshiEX LLC's Congressional Control Contracts

Dear Chair Behnam:

We write today in response to the Commodity Futures Trading Commission (CFTC) review of and [request for public comment](#) on KalshiEX, LLC's (Kalshi) congressional control event contract [proposal](#). As Members of Congress, we feel a special responsibility to ensure that the democratic process by which we are elected is safeguarded at every turn and we view Kalshi's proposed event contract as posing a fundamental threat to that goal. Especially at a time when a majority of American voters believe democracy is under threat, the stakes are too high to incentivize activities that would further erode trust in the integrity of our democratic institutions or elected leaders. We strongly believe that Kalshi's proposed congressional control event contract is contrary to the public interest and urge the Commission to bar its listing.

As you know, the CFTC regulates derivatives and commodities – like wheat, soybeans and cattle – that are vital to all Americans. Properly regulating and policing those markets ensures commodities are delivered in the right amounts at the right times, and at prices that are reasonably reflective of the supply and demand available to the American people. These are critical functions, and CFTC plays an important role in the daily lives of all Americans as it undertakes its mission.

In this instance, however, the CFTC is being asked to make a decision that fundamentally implicates areas outside of its mission: American elections. The CFTC's involvement in gambling and elections would be a wild departure from the core principles and historic foundations of the futures markets it is responsible for regulating and overseeing. The primary purpose of those markets is to serve as a mechanism for hedging risk and facilitating price discovery for physical commercial purchasers and producers of commodities that are vital to every American family. Those markets do not exist to promote, facilitate or enable widespread speculative gambling among retail traders and are not intended or designed to function as casinos.

Kalshi's proposal seeks to have the CFTC consent to allowing Kalshi to offer de facto betting contracts on the outcome of elections in the United States via so-called "event contracts." These contracts would allow participants to place money at risk as they predict which political party will control a chamber of the United States Congress for a given term. Ultimately, participants who correctly predict control of a chamber of Congress would receive a monetary payout based on the market's assessment of the probability of the outcome, while participants who guess incorrectly lose their monetary investment.

Gambling on elections in this way is concerning for many reasons, and the CFTC itself has, in fact, already reached this very conclusion. Under Section 5c(c)(5)(C)(i) of the Commodity Exchange Act, the CFTC may prohibit event contracts that involve(1) an activity that is unlawful under state or federal law,

(2) terrorism, (3) assassination, (4) war or (5) gaming.¹ Additionally, because not all undesirable contracts may fall neatly within the specific categories listed, the CFTC adopted a regulation, 40.11(a)(2), that prohibits event contracts involving an activity that is “similar to” the activities enumerated above so long as the CFTC determines the contract to be “contrary to the public interest.”² The legislative history of CEA Section 5c(c)(5)(C) indicates that the CFTC should consider whether the event contract *as a whole* involves activities listed under Section 5c(c)(5)(C)(i), meaning that the CFTC should consider, among other things, the event underlying the event contract, in this case, elections, and the purpose of the contract, betting on elections. Moreover, the CFTC broadened the scope of Section 5c(c)(5)(C)(i) through the adoption of Regulation 40.11(a)(1), which now prohibits not only an event contract that “involves” the five enumerated activities but also one that “relates to, or references” them.

In 2012, the CFTC was presented with a proposal that was substantially similar to the Kalshi proposal from the North American Derivatives Exchange (NADEX). The NADEX proposal also sought to offer binary event contracts relating to the political control of each chamber of Congress in a given term, and similarly planned to pay out monetary amounts to winning individuals. After analysis of the NADEX proposal, the CFTC, in an April 2, 2012 order, denied the listing of the NADEX contract on the basis that it not only included an activity prohibited under state law and involved or was similar to “gaming,” but also because it was deemed contrary to the public interest. In stating its decision, the CFTC noted such an event contract could “potentially be used in way that would have an adverse effect on the integrity of elections.” We agree and believe the 2012 determination provides a strong basis for a similar determination on Kalshi’s current proposal.

Free, fair and transparent elections are the foundation of American democracy. When our constituents exercise their fundamental right to vote, they are not merely choosing the winner of a contest. They are making a values-based declaration regarding the future direction of our country and the nature of the policy that should govern it. The CFTC should avoid blessing any betting scheme that would frustrate that expectation by undermining the credibility of our democratic elections and contributing to voter cynicism about the political process.

That means rejecting proposals such as those put forward by NADEX and Kalshi. While these proposals are facially similar and what was true of this type of political event contract in 2012 remains true today, now, 11 years later, the stakes are even higher. As betting apps proliferate on mobile phones, widespread gambling on our elections through the simple click of a button has an insidious effect upon the purpose, function and integrity of the electoral process. Moreover, since 2012, our nation has seen a deluge of dark money attempt to drown out the voices of voters, an undercurrent of election denialism and extremism, and an increase in politically-motivated violence. The proposed political event contract would only further incentivize such activity and encourage bad actors, or even those just looking to make a fast dollar, to interfere with our elections and seek to sway voters outside of the democratic process.

For example, it is easy to imagine how artificial intelligence (AI) or social media might be manipulated to quickly circulate false and misleading information within hours or days of an election that could move enough votes to change the results.³ As Bloomberg News reported on July 12, 2023:

¹ 7 U.S.C. § 7a-2(c)(5)(C)(i). The Commodities Exchange Act (CEA) is codified at 7 U.S.C. § 1 *et seq.*

² 17 C.F.R. § 40.11.

³ See, e.g. *AI’s Use in Elections Sets Off a Scramble for Guardrails*, New York Times (June 25, 2023) online at: www.nytimes.com/2023/06/25/technology/ai-elections-disinformation-guardrails.html?smid=nytcore-ios-share&referringSource=articleShare.

AI holds the potential to supercharge the dissemination of misinformation in political campaigns. The technology is capable of quickly creating ‘deepfakes,’ fake pictures and videos that some political operatives predict will soon be indistinguishable from real ones, enabling miscreants to literally put words in their opponents’ mouths. Deepfakes have plagued politics for years, but with AI, savvy editing skills are no longer required to create them.⁴

Deepfakes are already being deployed to impact voters, and as technology advances, so does this threat. Allowing gambling on elections would exacerbate this, as now the fulfillment of an individual’s political goals would not only hang in the balance, but so would their money. Given the current environment where many Americans already question the integrity of U.S. elections, this would be adding fuel to the fire at the worst possible time.

With this incentive would also come the incentive to increase the flow of dark money in our political process. Since the Supreme Court’s disastrous decision in *Citizen’s United v. FEC*, we have witnessed the perverse and pervasive influence of large sums of undisclosed, unchecked and unregulated money in our political process. Kalshi’s proposal would likely exacerbate this in two ways. First, with payouts of up to \$100 million per contract, the proposal would incentivize the flow of funds to boost a candidate’s chances of winning an election and incentivize even higher spending on our elections. And, unlike a traditional campaign contribution, bets placed through the event contract would also provide the bettor – or in this case, a bettor and contributor – the added incentive of effectively recouping the amount of their donation as well as an additional profit. Allowing the personal financial gain of deep-pocketed donors and special interests – rather than the priorities of every day Americans – to dictate our nation’s policymaking agenda is squarely against the public interest.

Second, because the CFTC is not equipped or authorized to enforce election laws, the prospect of the Commission assuming the role of an “election cop” raises very serious concerns about the misalignment of such a role with the CFTC’s historic mission and mandate as established by Congress. While the additional spending related to Kalshi’s proposed event contract could increase the recognition or standing of a given candidate, it would likely not fall under the types of contributions regulated under existing campaign finance law. Absent the Federal Election Commission’s expertise in such forms of regulation, the money spent under the contract could be even more untraceable than existing forms of dark money. That result is clearly contrary to the public interest.

Finally, there is the potential for an event contract like Kalshi’s to increase incidents of terrorism or assassination, two of the categories that are expressly defined as “contrary to public interest.” Harassment, threats and violence against election workers and elected officials continues to rise. According to a 2023 survey conducted by the Brennan Center for Justice, nearly one third of election officials have been harassed, abused or threatened because of their job. Forty five percent of local election officials said they fear for the safety of their colleagues. The potential for monetary gain would only increase the possibility of these grave threats and further undermine the safety and integrity of our elections.⁵

⁴ *AI is Making Politics Easier, Cheaper and More Dangerous*, Bloomberg News (July 11, 2023) online at www.bloomberg.com/news/features/202307-11/chatgpt-ai-boom-makes-political-dirty-tricks-easier-and-cheaper?smd=premium&sref=mQvUqJZj.

⁵ *Poll of Election Officials Shows High Turnover Amid Safety Threats and Political Interference*, Brennan Center for Justice (Apr. 25, 2023) online at: <https://www.brennancenter.org/ourwork/analysis-opinion/poll-election-officials-shows-high-turnover-amid-safety-threats-and>.

No one should be able to wager the rights and opportunities of millions of individuals for his or her personal gain. Elections free from interference, abuse or the corrupting influence of money are in the public interest, as is the prohibition of activities that could reasonably incentivize individuals to interfere with our electoral process. For these reasons, we urge the CFTC to again recognize the dire implications of betting on elections and deny the Kalshi congressional control event contract.

Sincerely,



Representative John P. Sarbanes



Representative Jamie Raskin



COALITION FOR POLITICAL FORECASTING

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202-860-4995

24 July 2023

Submitted via CFTC portal
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

Re: Coalition for Political Forecasting response to CFTC's request for public comments on questions related to Kalshi's self-certified congressional control contracts

We are writing on behalf of the Coalition for Political Forecasting in support of Kalshi's proposal to list contracts on which political party will control the U.S. Congress.

The Coalition for Political Forecasting is a nonpartisan, nonprofit organization that aims to liberalize regulations on political betting in order to serve the public interest. The Coalition advocates for a community of researchers, traders, and philanthropists that sees real-money prediction markets and other betting platforms as advanced forecasting tools that can help humanity navigate an uncertain future by aggregating and refining predictions about political events. The Coalition seeks to advise the policymaking community on how betting on political events can improve democratic institutions, promote economic stability, and facilitate innovative research.

All three of us submitted comments to the Commission on this issue in September 2022. Our previous comments address most of the questions on which the Commission again seeks public comment. The views we expressed in those comments have not meaningfully changed. Indeed, the evolution of the political betting industry since the 2022 midterm elections has underscored to us the importance of allowing Kalshi to enter the space.

In this comment, we focus on providing answers to the Commission's questions that did not appear in its August 2022 request.

We hope the Commission will also find informative the attached July 2023 report, "Political Betting Regulation in the United States: Pathways to Liberalization" authored by Chougule and Sia under the auspices of the Coalition for Political Forecasting. We have integrated insights from the report into our responses below. Greater detail and citations for much of the data and information in our responses is available in the report.

Sincerely,

Pratik Chougule
Executive Director, Coalition for Political Forecasting

Flip Pidot
Board Member, Coalition for Political Forecasting

Solomon Sia
Board Member, Coalition for Political Forecasting

What role does the requirement that the contracts trade in multiples of 5000 and/or the position limits applicable to the contracts play in the analysis of whether the contracts involve, relate to, or reference gaming as described in Commission regulation 40.11(a)(1) and section 5c(c)(5)C) of the Commodity Exchange Act? Are the position limits reasonably enforceable?

The minimum order sizes and position limits are likely to deter traders interested in gaming while drawing a relatively greater degree of liquidity from skilled traders with motives other than gaming, such as hedging.

Of the three categories of traders delineated in Kalshi's proposal—individuals, entities, and eligible contract participants—individuals appear to us to be the most likely to enter the markets with gaming motives.

Our expectation is that the more money individuals are required to wager on the outcome of congressional elections, the more likely they are to approach these markets either with a long-term edge and/or with an understanding of how to use these markets for hedging and price-basing.

Evidence for our thesis can be found in data from the 2020 U.S. elections on PredictIt and UK-based markets. Many of the most irrational, speculative, and gaming-oriented bets we observed were on PredictIt, where the average first time deposit was \$216. Due to the betting limits on PredictIt, the markets had limited ability to correct small-scale speculators who wagered on highly improbable outcomes, such as the possibility that Trump would remain president despite losing the election. As the markets reached new heights of irrationality, the gaming frenzy often grew. Traders who were placing these types of bets were often highly vocal on social media, where they broadcasted their wagers in the hopes of eliciting reactions from fellow MAGA enthusiasts. Once the markets were settled against them, however, they were relatively absent from political betting circles.

On Betfair Exchange, by contrast, which does not have position limits, the biggest winners were smart whales who took advantage of mispriced odds driven by gaming-oriented retail traders. Although 46.6% of the money wagered in these markets was on Trump compared to 50.6% for Biden, the 10 largest bets placed on Betfair were for Biden. These include at least 7 bets on Biden of more than \$400,000.

The main challenge we foresee regarding the enforceability of Kalshi's position limits is the unlikely scenario that individual speculators will falsely claim to have a demonstrated established economic hedging need so that they can wager up to \$250,000 rather than being limited to \$125,000.

It would be reasonable of the Commission to request from Kalshi greater clarity on the precise "means and methods" it intends to use to exercise sole discretion in determining whether a member has demonstrated a sufficient economic hedging need. The number of individuals who could be expected to wager more than \$125,000 on Congressional control markets is relatively small, and only a small percentage of those would do so with a genuine hedging need. Especially as it works on building liquidity on its platform, Kalshi could be tempted to accept alleged hedgers with minimal scrutiny. More transparency on Kalshi's standard would also set a precedent for future market participants.

Overall, however, we see minimal concerns regarding enforceability. The main reason is that Kalshi's contracts create strong incentives for self-regulation. At least in terms of its political and election markets, Kalshi has one overwhelming comparative advantage vis-a-vis its competitors: the regulatory certainty it can provide traders by virtue of its status as a DCM and its strategy of hewing closely to CFTC regulations.

More so than the vast majority of other market operators in the political betting space, Kalshi, in our assessment, has a strong motive to take a highly conservative, risk-averse approach to regulation.

On the trader side, the small number of individuals seeking to wager more than \$125,000 on Congressional control markets can easily place bets on other platforms with far less scrutiny of their motives. Political bettors are already trading political contracts on a growing number of offshore platforms, which are increasingly keen on expanding election lines. As VPNs and other technologies advance and the reality becomes clearer that the government has a minimal capacity and political will to pursue enforcement actions against small-scale retail traders, this activity will likely continue to grow.

Does the requirement that these contracts trade in multiples of 5000 and/or the position limits applicable to the contracts affect the analysis of the hedging utility of the contracts?

We believe that the proposed changes to the contract trading requirements bring them closer in line to practices in futures markets, which increase their likelihood of serving price-basing and hedging functions.

Although the vast majority of political event contracts are used for speculation, we have seen cases of retail traders using these markets for hedging. We are aware of young professionals, for example, who use Kalshi to hedge their student loans. Our concern is that the order size and position limits will deter young, early adopters of political prediction markets from exploring their hedging use case with small amounts of money.

If Kalshi is proposing the order size and position limits at the request of the Commission, we urge the CFTC to grant Kalshi more leeway.

What is the price forming information for these contracts while the contracts are trading? If the price forming information includes polling and other election prediction information, is that information regulated? How does the price forming information compare to informational sources (e.g. government issued crop forecasts, weather forecasts, federal government economic data, market derived supply and demand metrics for commodities, market-based interest rate curves, etc.) that are generally used for pricing commodity derivative products within the Commission's jurisdiction?

The question of which party will control Congress is determined by so many factors that the price forming information is effectively the totality of the American and global political discourse.

The vast majority of price forming information in these markets cannot be regulated by the government. Polling illustrates why price forming information in election markets is nearly impossible to regulate. Polling is conducted by a wide array of sources with varying degrees of reliability and motivations. Even if the government were to find ways to regulate fraudulent polls, it would need to contend with the reality that it is often not polls themselves, but rather, the interpretation, analysis, and dissemination of polls that drive market prices. For example, predictive models that seek to turn polling data into quantified forecasts are the subject of trader debates due to the way they weight different pollsters.

Price forming information in election contracts tends to be based more on qualitative data points than the informational sources used for pricing commodity derivative products. Market odds of a party controlling the House and Senate are influenced not only by polls, election models, and other quantitative data, but also on news reports and political commentary related to national trends, individual races, and other potential signals. Opinions and analyses by a wide variety of experts, media personalities, and influencers on the rel-

ative strengths of weaknesses of parties and candidates contribute to narratives that drive movements in the markets. This is why market prices frequently seem to be incongruous with polling and other data.

Price information in Congressional control markets is more difficult to regulate than the information used for pricing other commodity derivative products because it is more clearly protected by the First Amendment. Predictions broadcasted by politicians, pundits, and other political commentators inform prices in election contracts. Even when these predictions may be misleading in the sense that they are intended to shape narratives and push agendas, they typically cannot be regulated because they are constitutionally-protected speech.

Should, and if so how would, the registered entity listing the contracts take steps to address possible manipulative and/or false reporting activity involving the price forming information for the contracts, while the contracts are trading?

Manipulative and/or false reporting activity is relatively unusual in markets on the control of Congress. It is more common in smaller scale, lower liquidity markets where there is less public, relevant information; more volatility; higher degrees of uncertainty; and short deadlines.

Insofar as these markets would be targeted for manipulation at all, we believe this would happen primarily through the dissemination of misleading news reports and polls. Given how quickly market participants themselves fact-check these sources, it would be difficult if not impossible for registered entities to address this type of manipulation more effectively than the markets.

The only scenario we can think of where manipulation would have a meaningful distorting impact on price forming information for the contracts would be on election day. In the event of a close election, when media reporting is unreliable and jittery traders are buying and selling in a state of panic, manipulators could cause major movements in the markets.

The easiest way a registered entity could address possible manipulation is by refusing to host discussion boards on their platforms. Comments sections have historically been among the most common vehicles for market manipulators to affect prices on PredictIt. The amount of activity in these comments sections makes it difficult for sites to police them.

Do Kalshi's limitations on market participation affect the susceptibility of the contracts and/or markets for the contracts to manipulation? Do the limitations affect the extent to which these markets could be used to influence perception of a political party or candidate or otherwise be implicated in an attempted election manipulation? Are the limitations reasonably enforceable?

In rare cases, political insiders buy or sell positions in prediction markets to manipulate the price at which a contract is trading. In every instance we have seen this happening, this manipulation is motivated by a desire to generate optimism in the broader political conversation about an individual underdog candidate's electoral prospects. Markets that are targeted for these efforts typically have limited liquidity, which makes market manipulation a cost-effective campaign and public relations strategy. We are highly skeptical that anyone would have sufficient motivation to spend the amount of money it would take to make it seem as if the Republicans or Democrats have a marginally higher chance of achieving overall control of the House or Senate.

The nine categories of individuals Kalshi would exclude are broad and diverse. The degree to which limitations on their participation can be enforced likely varies depending on their profile, employment, and compensation structure. The important point, from our perspective, is that Kalshi is endeavoring in the first place to limit market participation for the sake of advancing democratic norms. In the vast majority of other political betting platforms, market participants are restricted not out of concern for election integrity, but because they are winning accounts that generate more accurate odds at the expense of bookmaker profits.

Kalshi's decision to exclude a broad array of market participants speaks to the company's desire to work with regulators to assuage concerns about the threat election contracts might pose to democratic institutions. If the CFTC prevents Kalshi from offering these markets, the beneficiaries will be other platforms with fewer qualms about enabling election manipulation.

Should the Commission be responsible for surveilling, and enforcing against, possible manipulative and/or false reporting activity involving the price forming information for these contracts, while the contracts are trading?

As with the registered entity, surveillance and enforcement of market manipulation by the CFTC would generally be an exercise in futility. These attempts would serve little purpose given how efficiently Kalshi's highly liquid Congressional control markets would self-correct.

There is only one type of surveillance or enforcement we believe the Commission should take responsibility for: trading in these markets by CFTC staff. A strict policy prohibiting CFTC staff from trading in these markets might help to bolster the agency's credibility as a regulator. It would assuage doubts that Commission staff have a motive to engage in manipulation and/or false reporting activity in these contracts.

Could trading in the markets for the contracts obligate the Commission to investigate or otherwise become involved in the electoral process or political fundraising? If so, is this an appropriate role for the Commission?

Ever since Chairman Behnam raised the possibility of the CFTC turning into an "election cop" in his interview on the Odd Lots podcast, we have interviewed numerous elections and compliance officials to explore this issue.

We are not aware of anyone in Congress or the policymaking community who believes that the CFTC has authority to be an "election cop" in the electoral process or political fundraising. Indeed, this concern is so speculative that it provokes suspicion about whether it is merely a pretense for the CFTC to avoid decisions on political event contracts.

It is important to consider that the CFTC has had oversight over several political prediction markets that offered contracts for the 2000, 2020, and 2022 U.S. elections. In each of these years, election disputes were litigated across state and federal electoral apparatuses and courts. Notwithstanding the deep, widespread, and, in some cases, violent public reactions that these disputes engendered, they did not require any meaningful CFTC intervention in betting markets. Nor did they even generate any significant legislative or public demand for CFTC involvement.

The easiest way to prevent the Commission from becoming involved in the electoral process is to establish

clear settlement rules for the contracts. We believe that Kalshi and other political betting operators need to prepare for the possibility that election disputes could leave unresolved the question of which party controls Congress well after election day. It would be reasonable for the Commission to encourage Kalshi to develop and publicize contingency plans for this scenario. Clarity among traders and the public on precisely when and under what circumstances the contracts will pay out would prevent the types of outcomes that could invite CFTC involvement.

What other factors should the Commission consider in determining whether these contracts are “contrary to the public interest?”

Perhaps because political event contracts are so tightly regulated in the United States, debates on this issue are often defined by arguments that are theoretical and speculative in nature.

The UK would be a useful case study to explore the public interest implications of these markets as it has had a liberal regulatory regime on political betting for more than 60 years.

We would encourage the Commission to seek feedback from British policymakers, academics, and industry leaders on three main questions:

- Have theoretical concerns about the risks betting markets can pose to election integrity materialized in practice in the UK?
- Has the absence of position limits and other regulations facilitated hedging and price basing in British political betting markets?
- Have the purported benefits of political betting for the public interest been realized in the UK?

We would also recommend that the CFTC monitor deliberations in the UK related to the British government’s April 2023 white paper on the Gambling Act of 2005. Discussions regarding reforms on regulations and legislation governing the gambling sector may provide useful lessons for the American context.



COALITION FOR POLITICAL FORECASTING

Political Betting Regulation in the United States: Pathways to Liberalization

July 2023

A Report of the Coalition for Political Forecasting

By Pratik Chougule and Solomon Sia

Cover Design by Sumona Zaman

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About the Coalition for Political Forecasting

The Coalition for Political Forecasting is a nonpartisan, nonprofit organization that aims to liberalize regulations on political betting in order to serve the public interest.

The Coalition advocates for a community of researchers, traders, and philanthropists that sees real-money prediction markets and other betting platforms as advanced forecasting tools that can help humanity navigate an uncertain future by aggregating and refining predictions about political events.

The Coalition seeks to advise the policymaking community on how betting on political events can improve democratic institutions, promote economic stability, and facilitate innovative research.

The views expressed here are those of the authors.

Coalition Leadership

Pratik Chougule, Executive Director

Flip Pidot, Board Member

Solomon Sia, Board Member

Pratik Chougule and Solomon Sia

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Abstract

Regulations on political betting markets today are more uncertain than they have been at any point since 2014. The prediction market community has so far failed to persuade lawmakers and regulators that liberalization of the space serves the public interest. Arguments for doing so have been undermined by the mixed performance of prediction markets in recent elections, the national political environment, and ineffective business decisions by companies in the space. While the U.S. Congress or the courts could intervene to create safe harbors for election contracts, liberalization of the political prediction market space will likely require a long, expensive, and multifaceted advocacy campaign that is unlikely to bear fruit until after the 2024 U.S. presidential elections.

Background

In August of 2022, the Commodity Futures Trading Commission (CFTC) made two major announcements regarding the regulation of political prediction markets.

First, the CFTC withdrew PredictIt's no-action letter and ordered the site to shut down in February 2023.¹ The no-action letter, granted in 2014,² had allowed PredictIt to emerge as the most significant legal political betting exchange in the United States. A group of plaintiffs associated with PredictIt responded by suing the CFTC in an ongoing lawsuit.

Second, the CFTC announced that it would review the proposal of Kalshi, a Designated Contract Market (DCM) dedicated to event contracts,³ to offer markets on the U.S. mid-term elections. The agency set a self-imposed goal of completing its review by October

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1. CFTC, "CFTC Staff Withdraws No-Action Letter to Victoria University of Wellington, New Zealand Regarding a Not-For-Profit Market for Certain Event Contracts," 4 August 2022. <https://www.cftc.gov/PressRoom/PressReleases/8567-22>
 2. CFTC Letter No. 14-130, Division of Market Oversight, 29 October 2014, <https://www.cftc.gov/node/213146>
 3. Kalshi's DCM application is available at: CFTC, "Kalshi DCM Application," File Number: 21-00068, https://www.cftc.gov/FOI/foia_freqrequestinfo.html

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28, 2022, just days before the election. Although the CFTC staff reportedly advised the commissioners to reject Kalshi's application, the midterm elections came and went without a formal decision. Pursuant to section 40.11 of the regulations of the CFTC, Kalshi asked the agency to review its request to offer election markets on control of the U.S. Congress by May 22, 2023. When the CFTC missed multiple deadlines and ultimately did not respond, Kalshi withdrew the request.⁴

In June 2023, Kalshi notified the CFTC that it was self-certifying new control of Congress contracts under section 40.2(a) of the regulations of the CFTC. If approved, the contracts would have modified position limits, expanded trading prohibitions, and other revisions from the July 2022 contracts that Kalshi made based on feedback from the comments period.⁵ On June 23, the Commission announced that it had commenced a review of the contracts with a 30-day public comment period, pursuant to CFTC Regulation 40.11(c), and that Kalshi must suspend listing of the contracts during the review.⁶

The CFTC's decisions have diminished hopes that regulations on political betting markets will be eased quickly or even that the space will see greater legal clarity in the near future. Restrictions on political betting are more uncertain today than they have been

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4. See Kalshi filings at CFTC. "Trading Organization Products Associated Documents," <https://sirt.cftc.gov/sirt/sirt.aspx?Topic=TradingOrganizationProductsAD&Key=48820>
 5. Mick Bransfield, "CFTC Kalshi Cheat Sheet," 23 June 2023, <https://mickbransfield.com/2023/06/22/cftc-june-26th-kalshi-meeting-cheat-sheet/>; Chougule, host, "Another CFTC Review of Kalshi's Election Markets," Star Spangled Gamblers (podcast), <https://starspangledgamblers.libsyn.com/another-cftc-review-of-kalshis-election-markets>; Declan Harty, "Kalshi makes new play for big investors to wager on U.S. elections," *Politico Pro*, 14 June 2023, <https://subscriber.politicopro.com/article/2023/06/kalshi-makes-new-play-for-big-investors-to-wager-on-u-s-elections-00101851>; Letter from Xavier Sottile, Head of Markets, KalshiEX LLC, to Secretary of the Commission, Office of the Secretariat, CFTC, 12 June 2023, <https://kalshi-public-docs.s3.amazonaws.com/regulatory/product-certifications/CONTROL.pdf>; Twitter thread, 27 June 2023, 9:52 AM, https://twitter.com/mansourtarek_/status/1673690840995180546?s=20
 6. CFTC Release Number 8728-23, "CFTC Announces Review of Kalshi Congressional Control Contracts and Public Comment Period," 23 June 2023, <https://www.cftc.gov/PressRoom/PressReleases/8728-23>; Chougule, host, "Another CFTC Review of Kalshi's Election Markets"; Letter from Christopher Kirkpatrick to Sottile, 23 June 2023, <https://www.cftc.gov/sites/default/files/filings/ptc/23/06/ptc0623230001.pdf>

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since 2014, when PredictIt launched.

Since June 2022, we have been exploring how regulations on political prediction markets might be reformed to better serve the public interest. For reasons elaborated in our [comment](#) to the CFTC, we believe that political betting markets are an advanced forecasting and social consensus building mechanism, which, with time and space to mature, can help humanity navigate an uncertain future.⁷

Our work has been funded by a grant from the Long Term Future Fund.⁸ The fund aims to influence the long-term trajectory of civilization by addressing global catastrophic risks, in part by supporting initiatives that promise to improve society's ability to make and disseminate accurate forecasts.⁹

When we undertook the project, we did not know the extent to which regulations in the space would change in the coming months. In this sense, the timing of this project proved fortuitous. Against the backdrop of the CFTC's review, we conducted dozens of interviews with a variety of stakeholders in the political prediction market space. Some of our most informative conversations were with CFTC commissioners, lawyers, and staff.

This report summarizes our findings on the regulation of political betting in the United States.

Part I explains the different approaches political betting platforms have taken to navigate an uncertain regulatory regime, and the consequences they have had for the prediction market community.

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7. Sia, Comment for Industry Filing 22-002, CFTC, Comment No: 70745, 23 September 2022. <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=70745&SearchText=sia>
 8. "Grants Database," EA Funds, Centre for Effective Altruism, <https://funds.effectivealtruism.org/grants?fund=Long-Term%2520Future%2520Fund&sort=round>
 9. "Long-Term Future Fund," EA Funds, Centre for Effective Altruism, <https://funds.effectivealtruism.org/funds/far-future>

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Part II analyzes the main reasons why political prediction markets are highly regulated in the United States and why the trend line appears to be moving in the direction of stricter regulation.

Part III outlines pathways that could lead to the liberalization of political betting markets before the 2024 U.S. elections.

The report concludes with recommendations for those who share our interest in liberalizing regulations on political betting to serve the public interest.

Current Approaches to Navigating Regulations

Current debates over political prediction markets stem from the choices companies in the space have made to navigate a restrictive and uncertain regulatory landscape. To deal with regulatory challenges, they have pursued various approaches. Each has entailed tradeoffs for the companies as well as the prediction market community.

Operate Under a No-Action Letter

The Iowa Electronic Markets and PredictIt have been operating under no-action letters by the CFTC. Under the terms of the no-action letters they have agreed to operate as academic entities with limits on the types of markets they can offer, the total number and diversity of users they can accommodate, and the size of bets they can take.¹⁰ PredictIt's

10. CFTC Letter No. 93-66, Division of Trading and Markets, 18 June 1993 <https://www.cftc.gov/sites/default/files/idc/groups/public/%40rlettergeneral/documents/letter/93-66.pdf>; CFTC Letter No. 14-130; Andrew Corcoran, CFTC Letter to Professor George Neumann, CFTC Letter No. 91-04a, Division of Trading and Markets, CFTC, 5 February 1992, <https://www.cftc.gov/sites/default/files/files/foia/repfoia/foirf0503b002.pdf>; Corcoran letter to Neumann, CFTC Letter No. rf05-003, Division of Trading and Markets, CFTC, 18 June 1993, <https://www.cftc.gov/sites/default/files/files/foia/repfoia/foirf0503b004.pdf>; CFTC, No-Action Letters Concerning the University of Iowa's Iowa Electronic Markets, File Number RF05-003, 18 May 2005, https://www.cftc.gov/foia/repfoia/foirf05-003_1.htm

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decision to test the limits¹¹ of the 2014 agreement has been a factor in the CFTC's determination that the site "has not operated its market in compliance with the terms of the letter."¹²

The CFTC's March 2023 filing indicates that the Iowa Electronic Markets are on a more stable regulatory footing than PredictIt by virtue of its organization, compensation structure, and relations with the CFTC.¹³ The Iowa Electronic Markets, a money-losing venture, is limited to 2,000 participants who can place bets of between \$5 and above \$500.¹⁴ Unlike Predictit,¹⁵ the operators of the Iowa Electronic Markets are academics from the University of Iowa's Tippie College of Business and associated volunteers. These individuals have shown little inclination to offer political markets to a broad user-base, raise its maximum bet limit, or directly monetize the project.

Notwithstanding these limitations, the Iowa Electronic Markets and PredictIt, in a regulatory sense, are the most successful, modern political prediction markets in the United States. They have legally and continuously offered diverse political markets with meaningful liquidity, reasonably accurate price signals, and useful data for research purposes.¹⁶ The relatively benign positions the CFTC and other regulators have adopted toward these projects suggests that academia will remain a promising arena to build political prediction markets with public interest orientations that are on a stable legal foundation.

11. Letter from Vincent McGonagle, Division of Market Oversight, CFTC, to Margaret Hyland, Victoria University of Wellington, 2 March 2023, <https://twitter.com/CasinoOrgSteveB/status/1631838950300975105?s=20>

12. CFTC, "CFTC Staff Withdraws No-Action Letter to Victoria University of Wellington, New Zealand Regarding a Not-For-Profit Market for Certain Event Contracts," 4 August 2022, <https://www.cftc.gov/PressRoom/PressReleases/8567-22>

13. *Ibid.*

14. Jeff Sommer, "Forecasting the Future of Election Prediction Markets," *The New York Times*, 4 November 2022, <https://www.nytimes.com/2022/11/04/business/election-prediction-markets-mid-terms.html>

15. Letter from McGonagle to Hyland, 2 March 2023

16. "Research Opportunities," PredictIt, <https://www.predictit.org/research/>; "Iowa Electronic Markets," University of Iowa Henry B. Tippie College of Business, <https://iemweb.biz.uiowa.edu/about-iem/>

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Skirt Regulations

Polymarket tried to offer political contracts without registering with the CFTC as a DCM. Polymarket claimed that it is a decentralized platform that does not take custody of traders' funds. This approach allowed Polymarket to offer a wide array of markets and generate considerable volume on the site, reaching more than 4 billion shares within a year after its launch.¹⁷ However, the CFTC subsequently took action against the company. In a settlement announced in January of 2022 Polymarket paid a civil penalty of \$1.4 million and was forced to move offshore. The CFTC determined that Polymarket's event-based binary options contracts constituted swaps that were not fully decentralized.¹⁸ This has set a limiting precedent for new competitors in the space like Insight Prediction, which now effectively face the choice of remaining offshore, pursuing the onerous and seemingly stalled process of registering and operating as a DCM, or risking CFTC enforcement actions.

While Polymarket's most committed U.S.-based users still access the site by using VPNs or leaving U.S. territory, the CFTC's enforcement action has deterred liquidity on the site, curtailed its growth as a company, and undermined its ability to invest in the political prediction market community.¹⁹ The latter has been particularly problematic for the political betting community given that Polymarket, before the CFTC enforcement action, was a leader in building the space.²⁰ In April 2021, as an example, Polymarket launched a mi-

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17. Benjamin Bain, Sridhar Natarajan, and Liam Vaughan, "Crypto Venue for Bets on Trump, JLo and Covid Faces U.S. Probe," *Bloomberg*, 23 October 2021, <https://www.bloomberg.com/news/articles/2021-10-23/crypto-venue-for-bets-on-trump-jlo-and-covid-faces-u-s-probe>
 18. CFTC, "CFTC Orders Event-Based Binary Options Markets Operate to Pay \$1.4 Million Penalty," 3 January 2022. <https://www.cftc.gov/PressRoom/PressReleases/8478-22>
 19. Pat Crawley, host, "How to Trade Prediction Markets and Fade Political Hype," *Stock Market Stories* (podcast), 7 November 2022, <https://youtu.be/xJao6rHgiFE>; Alex Keeney and Chougule, hosts, "Meet Insight Prediction's Founder & CEO, Doug Campbell," *Star Spangled Gamblers* (podcast), 15 September 2022, <https://starspangledgamblers.com/2022/09/15/meet-insight-predictions/>; Ben Terris, *The Big Break: The Gamblers, Party Animals and True Believers Trying to Win in Washington While America Loses Its Mind*, New York: Twelve, 2023, 283.
 20. Andrew Eaddy and Clay Graubard, hosts, "Jason Trost, Smarkets Founder and CEO," *Crowd Money Cast* (podcast), 14 October 2021, <https://youtu.be/vySli47rBJw?t=105>

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crogrants program to help support content, community, and research projects within the prediction market community. The program offered grants of up to \$75,000 but has been curtailed significantly as the company's revenues have dried up.²¹ Polymarket has also been forced to lay off staff and suspend hires focused on political contracts.

Register as a DCM and Apply for Permission with the CFTC

Branding itself as the “first federally regulated exchange,” Kalshi has tried to hew as closely as possible to the CFTC’s guidelines.²² As Kalshi CEO Tarek Mansour has explained, the company’s regulatory posture as a DCM allows it to be “uniquely-positioned” to “build a full-scale exchange—one that can attract...institutions, and brokers, and market-makers.”²³

An important consequence of this regulatory strategy is that Kalshi is limited in the political markets it can provide. Kalshi sees election contracts, which it characterizes as the “holy grail of events trading,” as being “core” to its mission and identity.²⁴ Yet while

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21. Polymarket, “Introducing Polymarket Microgrants,” 19 April 2021, <https://blog.polymarket.com/introducing-polymarket-microgrants/>. An example of a project funded by the microgrants program and then discontinued is Pidot’s YouTube show “Polymarket Insiders,” which featured commentary and analysis on Polymarket’s prediction markets. The show’s archive is available at https://youtube.com/playlist?list=PLnkuV6troaf1X5sbeQ0Wtg_Pgry82NQu
 22. Chougule, host, “How to Bet the Trump Indictments + Julie Su’s Confirmation Problems,” Star Spangled Gamblers (podcast), 7 April 2023, <https://starspangledgamblers.com/2023/04/07/how-to-bet-the-trump-indictment-julie-sus-confirmation-problems/>; Jeff Joseph, host, “Kalshi: Bet on Everything (#42),” The Prediction Trade (podcast), 5 August 2021, <https://youtu.be/FITN1XQUhIU>; Connie Loizos, “This Sequoia- and Henry Kravis-backed prediction market wants to turn opinions into money,” *TechCrunch*, 31 August 2021, <https://techcrunch.com/2021/08/30/this-sequoia-and-henry-kravis-backed-prediction-market-wants-to-turn-opinions-into-money/>; Rex Salisbury, host, “Tarek Mansour, Founder & CEO at Kalshi: Building a Prediction Market,” 31 August 2021, <https://youtu.be/lmvGj1YExkl>
 23. Eaddy and Graubard, hosts, “Tarek Mansour and Luana Lopes Lara (Kalshi Co-Founders),” Crowd Money Cast (podcast), 15 September 2021, 28:20-28:32, https://youtu.be/M7CmVN3B_gI?t=1689.
 24. Chougule, host, “Did Kalshi Kill PredictIt and Polymarket? + Harvard Affirmative Action Case,” Star Spangled Gamblers (podcast), 22 February 2023, <https://starspangledgamblers.com/2023/02/22/did-kalshi-kill-predictit-and-polymarket-harvard-affirmative-action-case/>; Twitter post, 29 August 2022, 2:14 PM, <https://twitter.com/mansourtarek/status/1564315602184978435?s=20>

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some of Kalshi's markets are directly related to politics, most are in tangential areas such as economics, finance, law, pandemics, and transportation. Of the 17 markets on Kalshi that have ever reached trading volume greater than 500,000, none were on political as opposed to financial or economic topics.²⁵

Neither Kalshi's engagement with the CFTC, nor the high-profile comments that were submitted to the agency on its behalf,²⁶ have convinced the Commission to grant Kalshi approval to offer election markets.²⁷ In the absence of CFTC approval for election markets, Kalshi has struggled to determine the types of political markets it is permitted to offer.²⁸ Amid this ambiguity, Kalshi has chosen to refrain from offering markets not only on elections, but also on a wide variety of markets on political questions generally that are generating interest on other sites.

Seeing little prospect for liberalization under CFTC Chairman Rostin Behnam, Kalshi has scaled back efforts to influence the policy community. Along with other layoffs, Kalshi has not renewed contracts for certain political consultants and has not followed through

25. Bransfield, "Kalshi Turns Two," 1 July 2023, <https://mickbransfield.com/2023/07/01/kalshi-turns-two/>

26. For reporting on the comments, see Chougule, host, "Another CFTC Review of Kalshi's Election Markets"; Harty, "Political betting: Is it a 'gambling den' or 'better than polls'?" *Politico*, 28 October 2022, <https://www.politico.com/news/2022/10/28/inside-the-fight-to-legalize-election-betting-before-the-midterms-00063693>

27. The comments are available at CFTC, Comment for Industry Filing 22-002, <https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7311>. Letters from the Futures Industry Association, Jason Furman, former Chairman of the Council of Economic Advisers under President Obama, Robert Shiller, recipient of the Nobel Prize in Economic Sciences (joined by seven other academics in economics, law, and political science), and Christopher Hehmeyer, former Chairman of the National Futures Association and board member of the Futures Industry Association were specifically referenced by Mersinger in her dissent from the Commission's decision to commence a 90-day review of Kalshi's revised election contracts. CFTC, "Dissenting Statement of Commissioner Summer K. Mersinger Regarding Commencement of 90-Day Review Regarding Certified Derivatives Contracts with Respect to Political Control of the U.S. Senate and House of Representatives," 23 June 2023, n19, n3, <https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement062323>

28. Chougule, host, "Did Kalshi Kill PredictIt and Polymarket? + Harvard Affirmative Action Case," *Star Spangled Gamblers* (podcast), 22 February 2023, <https://starspangledgamblers.com/2023/02/22/did-kalshi-kill-predictit-and-polymarket-harvard-affirmative-action-case/>

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on some of its plans to engage Washington-based think-tanks in an effort to enlist support for election markets. Regarding the CFTC's current review of Kalshi's election contracts and the associated public comment period, Mansour announced on June 27 that Kalshi is "not going to spend a ton of time repeating an advocacy campaign for the same matter."²⁹

Kalshi's ability to contribute to the broader prediction market community has been constrained without permission to offer election markets and other political lines. Although Kalshi is focused on markets in the financial and economic spaces, U.S. election markets tend to generate particular interest among traders and political influencers. British gamblers, as an example, wager more money on American elections than those in their own country.³⁰ Superforecasters also have a particular interest in U.S. election markets, as they offer regularly-scheduled opportunities to train and build credibility and confidence in their long-term political forecasting methods. This interest in U.S. elections drives revenue and social currency for prediction markets and political betting more generally.

Kalshi's attempts to increase volume and liquidity in its political markets with generous incentives to traders are yielding limited success. The three-fold growth in trading volume Kalshi has seen from 2021 to 2023 has come disproportionately from its daily NASDAQ-100 and S&P 500 markets, which account for about a third of all volume on the site.³¹ A relatively small number of users, some working for the company, still account for a disproportionate amount of activity on its political order books.³² This weakens Kalshi's arguments to regulators about the ability of its political contracts to serve hedging and price-basing functions.

Notwithstanding the restrictions associated with operating as a DCM, PredictIt executives see this as a promising path forward in the current regulatory landscape. They are seeking

29. Twitter thread, 9:52 AM, <https://twitter.com/mansourtarek/status/1673690848574177281?s=20>

30. Tony Batt, "Nevada Looks to Follow UK's Lead On Election Betting," *Gambling Compliance*, 27 March 2013, <https://www.leg.state.nv.us/App/NELIS/REL/77th2013/ExhibitDocument/OpenExhibitDocument?exhibitId=3698&fileName=Article-Gambling%20Compliance.pdf>

31. Bransfield, "Kalshi Turns Two"

32. Chougule, host, "How to Bet the Trump Indictments + Julie Su's Confirmation Problems"

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to establish a DCM called PredictIt Exchange, which would operate separately from PredictIt. Whether PredictIt Exchange's DCM application, which was filed in October 2021 and is substantially complete, will be approved by the CFTC remains to be seen. Nor is it clear what types of markets PredictIt Exchange would be permitted to offer as a DCM. In a [note to users](#), PredictIt maintains that the effort is part of a plan to "offer new election markets for the current political season."³³ Yet PredictIt CEO John Phillips has [claimed](#) in a public interview that PredictIt Exchange would not be able to offer election markets due to CFTC precedents.³⁴

Avoid the Regulatory Net

Manifold has decided to use platform currency as opposed to fiat money or cryptocurrency, in part to avoid saddling its markets with regulatory challenges associated with facilitating real money bets. This approach has allowed Manifold to make considerable progress in building community, offering a diversity of markets, and experimenting with novel governance models. Manifold generates more traffic than many of its real-money competitors.³⁵ However, it remains unclear whether a lack of 'skin in the game' will ultimately impede the growth and efficiency of its markets.³⁶

33. Steve Bittenbender, "PredictIt to Liquidate Political Markets if Injunction Bid Fails, May Reinvent Itself," Casino.org, 20 January 2023, <https://www.casino.org/news/predictit-to-liquidate-political-market-if-injunction-bid-fails-may-become-a-dcm/>

34. Technology Policy Institute, host, "John Phillips and David Mason of Aristotle Discuss Political Prediction Markets," Two Think Minimum (podcast), 16 February 2023, <https://techpolicyinstitute.org/publications/miscellaneous/john-phillips-and-david-mason-of-aristotle-discuss-political-prediction-markets/>

35. Twitter thread, 24 May 2023, 1:54 p.m., <https://twitter.com/ManifoldMarkets/status/1661430510285979653?s=20>

36. Scott Alexander, "Play Money And Reputation Systems," Astral Codex Ten, 21 February 2022, <https://astralcodexten.substack.com/p/play-money-and-reputation-systems>; David Chee, "Reflecting on 2022," Above the Fold, 6 January 2023, <https://news.manifold.markets/p/above-the-fold-reflecting-on-2022>; Austin Chen, "Workshop: Forecasting | Austin Chen | EAG DC 22" Centre for Effective Altruism, 18 January 2023, <https://youtu.be/YfDI7C6UAPw>; Dwarkesh Patel, host, "Manifold Markets Founder - Predictions Markets & Revolutionizing Governance," Lunar Society (podcast), 5 May 2022, <https://youtu.be/XoRXrnHg084>; "Play-money efficacy," Above the Fold, 21 November 2022, <https://news.manifold.markets/p/above-the-fold-play-money-efficacy>; Twitter thread, 7 November 2022, 2:37 p.m., <https://twitter.com/ManifoldMarkets/status/1589703623935565826?s=20>

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While it is too early to draw firm conclusions, the 2022 U.S. midterm elections provide a mixed picture on the potential of Manifold and its regulatory model. Manifold's markets were slightly more accurate than those on Polymarket and PredictIt.³⁷ However, because they drew considerably less interest from traders, Manifold's markets have invited questions about their ability to aggregate the 'wisdom of the crowds.'

Over time, Manifold may provide an important test case of how platform currency markets relate to real money markets. In terms of producing accurate estimates, it is possible that Manifold's market prices will converge to within a few percentage points of similar markets with real money, or even consistently produce more accurate estimates on important questions. Experimentation on Manifold may also help the broader political betting community to improve its business models. The development of platform currency markets that generate meaningful liquidity, and produce accurate price signals on a broad, diverse array of questions could help fulfill the public interest potential of prediction markets without the regulatory scrutiny that has dogged real money political betting sites.

Innovate on the Traditional Prediction Market Model

Entrepreneurs are building political betting platforms that operate under different regulatory restrictions from real-money prediction markets yet provide many of their benefits. A notable example is the over-the-counter (OTC) swaps offered by the American Civics Exchange (ACE), which allow traders to bet on a wide array of political outcomes. Because ACE OTC operates as the sole counterparty and liquidity provider, it is subject to different regulatory restrictions from the event contracts on PredictIt and Kalshi which match orders to other traders. ACE OTC does not operate on an exchange model with an order book. Contracts have a \$500 minimum payout value, but no trading fees or fixed upper position limits. Unlike Kalshi and PredictIt Exchange, ACE OTC has not sought to register with the CFTC as a DCM.

37. Jack Chen, "What can we learn from scoring different election forecasts?" *First Sigma. Substack*. 20 November 2022. <https://firstsigma.substack.com/p/midterm-elections-forecast-comparison-analysis>

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While there is no regulatory limit on the size of bets allowed on the site, participation on ACE OTC is limited by statute to a small class of investors—generally institutions and high net worth individuals. Because the site can only serve U.S.-based eligible contract participants, as defined by the Commodity Exchange Act, the vast majority of retail traders have no legal way of opening an account, usually because they do not have an investment portfolio of more than \$10 million. The extent to which ineligible traders face the threat of sanction for using the site remains unclear. ACE verifies biographical information and requires users to affirm they meet eligibility requirements during the onboarding process. However, ACE does not do independent financial vetting of its customers beyond asking them to affirm that they understand the site’s terms of service and that they meet the legal specifications.³⁸ To date, neither the site, nor any of its users, have faced any kind of enforcement action.

Transactions on ACE OTC do not, in a pure sense, reflect the ‘wisdom of the crowd’ and are not as transparent as those on prediction markets.³⁹ However, prices of the OTC swaps may prove to be more accurate or informative than those in more democratized prediction markets with betting limits. This could be the case in particular on events that tend to attract irrational speculation in prediction markets by low-information and unskilled traders with minimal ‘skin in the game.’ The swaps also facilitate speculation and hedging on conditional and custom contracts, which are not typically offered in prediction markets.

Build Outside of the United States

The most vibrant political prediction markets such as Betfair Exchange, Polymarket, and Smarkets are operating outside of the United States. A challenge with this model is that it is difficult for American users to access these markets. The lack of an American user-base exacerbates challenges associated with running a profitable prediction market with suffi-

38. Chougule, host, “A New Way to Bet on Politics...Legally,” Star Spangled Gamblers (podcast), 7 February 2023, <https://starspangledgamblers.com/2023/02/07/a-new-way-to-bet-on-politics-legally/>

39. *Ibid*

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cient liquidity and knowledgeable traders about U.S. politics. This, in turn, deters investment in these companies, as well as media and research interest in their insights. It remains to be seen whether non-American companies will be able to expand into the United States, with all the legal and regulatory hurdles that entails. Insofar as they seek to offer political markets along with their more profitable sports betting lines, it will be difficult for them to focus on the most socially valuable applications of prediction markets.

Drivers of Regulation

We identified in our study several overlapping reasons why political prediction markets are highly regulated in the United States and why the trend line appears to be moving in the direction of tighter regulation.

Opposition By Elected Officials

Elected officials in the United States have shown little appetite for liberalizing regulations on political betting. Opposition by elected officials has been consistent over many decades even as regulations have liberalized on sports betting and gaming. At least 27 states explicitly outlaw betting on elections⁴⁰ and every state prohibits bookmakers from taking wagers on these events. Recent initiatives to permit election betting in Nevada and West Virginia were blocked by elected officials who feared that they would corrupt the democratic process and tarnish their state's reputations.⁴¹

Prohibitions on political betting and the treatment of election betting as gaming at the state level inform restrictions at the federal level. The CFTC's order to prohibit the North

40. "CFTC Faces Lobbying Blitz Over Bets on U.S. Elections," *Capitol Account*, 27 September 2022, <https://www.capitolaccountdc.com/p/cftc-faces-lobbying-blitz-over-bets>

41. David McIntire, "They Won't Take Your Bet On The Election In Las Vegas," *FiveThirtyEight*, 3 November 2016, <https://fivethirtyeight.com/features/they-wont-take-your-bet-on-the-election-in-las-vegas/>; Katherine Sayre, "West Virginia Approves, Then Disapproves, Betting on Elections," *Wall Street Journal*, 8 April 2020

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American Derivatives Exchange (Nadex) from offering election contracts under CFTC Regulation 40.11 in 2012 cited the fact that “several state statutes, on their face, link the terms gaming or gambling...to betting on elections.”⁴² In both their 2022 and 2023 questions for public comment on Kalshi’s Congressional control contracts, the CFTC asked whether it should consider if election betting is defined as gaming under state law and whether state laws permit betting on elections or political outcomes.⁴³

Attitudes of American politicians stand in marked contrast to those in the UK. Liberal regulations on political prediction markets were enacted by parliament in 1960 through the Betting and Gaming Act and have not been tightened meaningfully since then. Political betting has become part of mainstream British political culture. With the rise of online betting exchanges and sportsbooks, public interest in political betting has increased over the past decade.⁴⁴

A Complex Web of Legal Regimes

Political betting is regulated under a complex web of federal and state laws, federal agency regulations, and legal precedents, which create severe roadblocks for companies that seek to offer political prediction markets. Relevant restrictions on gaming and event contracts are codified in the Federal Wire Act of 1961, the Unlawful Internet Gaming Enforcement Act of 2006,⁴⁵ the Dodd-Frank Act of 2010, the Commodity Exchange Act,

42. In the Matter of the Self-Certification by North American Derivatives Exchange, Inc., of Political Event Derivatives Contracts and Related Rule Amendments under Part 40 of the Regulations of the Commodity Futures Trading Commission, Order Prohibiting the Listing or Trading of Political Event Contracts, 2. Note 1 in the order specifically cites statutes in Illinois, Nebraska, New Mexico North Dakota, Georgia, Mississippi, South Carolina, and Texas.

43. See CFTC Release Number 8578-22, questions 2 and 4; CFTC Release Number 8728-23, questions 3 and 5

44. Chougule, host, “Does Political Betting Threaten Democracy? Lessons from the UK,” Star Spangled Gamblers (podcast), 15 July 2023, <https://starspangledgamblers.libsyn.com/does-political-betting-threaten-democracy-lessons-from-the-uk>; “The UK Has a Long History with Political Betting,” *London Post*, 4 May 2021, <https://london-post.co.uk/the-uk-has-a-long-history-with-political-betting/>

45. Ye Li, “Online Information Markets and the Unintended Consequences of Internet Gambling Legislation,” *US-China Law Review* 11, no. 12 (December 2014): 1587-1608.

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CFTC regulations, and state gaming laws. All of these laws and regulations raise questions as to whether political event contracts constitute an illegal form of gaming, are contrary to the public interest, or are otherwise prohibited from being listed.

The CFTC faces difficult questions related to how political event contracts should be regulated under the Commodity Exchange Act. CFTC Rule 40.11 and agency precedents related to event contracts have been interpreted by CFTC commissioners in ways that curtail political prediction markets. The Commission has yet to allow a for-profit venture to offer election contracts. The Nadex decision has prompted a debate within the CFTC on whether the order creates precedents, broad limitations, or rules of general applicability that apply to Kalshi's applications to offer contracts on election markets.

Predictions that the legalization of sports betting since the Supreme Court's 2018 decision in *Murphy v. NCAA* would lead to a similar cascade in the political betting arena have not materialized.⁴⁶ In some respects, the opposite has occurred. Once the Court struck down the Professional and Amateur Sports Protection Act on federalism grounds, numerous states moved to legalize sports betting, undeterred by the possibility of future enforcement actions by the CFTC under the Commodity Exchange Act. Yet many of these same advocates of sports betting have refused to endorse political betting, fearing that the "taint" of political markets could undermine support for sports betting and other legal lines that generate far more profit than what political lines would bring in even under the most optimistic projections.⁴⁷ At the same time, concerns about the power, tactics, and agendas of the sports betting lobby have created a more skeptical outlook among politicians and regulators toward the gaming industry generally, further adversely impacting political betting interests.⁴⁸

46. Parallels between the liberalization of sports betting and political betting were discussed by Behnam in his October 2022 public remarks, available at: Chris Brummer, "DC Fintech Week 2022," 6th Annual DC Fintech Week, 11 October 2022, interview, 3:23:21-3:23:47, <https://www.youtube.com/live/Kzcb9cRIEpl?feature=share&t=12201>.

47. McIntire, "They Won't Take Your Bet On the Election In Las Vegas"

48. Chougule, host, "2024 Republican Longshots for President + Debt Ceiling Negotiations," Star Spangled Gamblers (podcast), 11 April 2023, <https://starspangledgamblers.com/2023/04/16/2024-republican-longshots-and-debt-ceiling-negotiations/>; Twitter post, 23 July 2023, 4:49 AM, <https://twitter.com/shadsy/status/1683036717203218433?s=20>

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The refusal of the states, the District of Columbia, and U.S. territories to follow suit on political betting leaves unsettled the question of whether the political betting industry could pursue a regulatory pathway similar to the one undertaken by the sports betting industry. Somewhat paradoxically, Casino.org reporter Steve Bittenbender, who has covered both the sports and political betting industries extensively, believes that the political betting industry might benefit from greater federal regulation of sports betting. This is because sports betting regulation could potentially fall under the purview of a single regulatory body. Such a body could, in turn, permit sports betting operators to offer political lines. The earliest Bittenbender foresees this happening is in the run-up to the 2028 U.S. elections.⁴⁹

Creating safe harbors for political betting in the current legal regime requires regulators and elected officials to adopt controversial positions and spend considerable political capital. Permitting election markets could expose the CFTC to the criticism that it had de facto preempted state laws without authorization from Congress. Federal and state legislators advocating for the liberalization of existing laws could face a great deal of blowback, likely without any commensurate political or financial upside for them or their constituents.

CFTC Decision-Making

Regulation of political event contracts at the federal level falls under the CFTC,⁵⁰ which is overseen by the House and Senate Agriculture Committees. Although the CFTC has provided more leeway to prediction market operators than any other federal or state regulator, the current commissioners, particularly the Democratic appointees, have moved to tighten regulations.⁵¹ In the absence of clear guidance from Congress, a combination of

49. *Ibid*

50. On the CFTC's oversight over political event contracts, see Brian Quintenz, Comment for Industry Filing 22-002, CFTC, Comment No: 70786, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=70786&SearchText=>

51. "Republican Congressional Takeover May Spur Biden's Regulators to Move Even Faster," *Capitol Account*, 7 November 2022, <https://www.capitolaccountdc.com/p/republican-congressional-takeover>

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personal conviction, legal precedent, and bureaucratic incentives appear to be steering the CFTC towards a restrictive approach on political event contracts. Although CFTC commissioners have not published thorough explanations of their views,⁵² there appear to be four primary considerations weighing on their calculus.

First, Behnam is disinclined to spend the political capital necessary to bring clarity to the space. In public remarks in October 2022, Behnam characterized prediction market regulation as “something that is high on my priority list.”⁵³ However, policywise, his higher priority as commissioner is to gain new funding and authorities for the CFTC, particularly jurisdiction over the regulation of digital assets. Delaying a decision on event contracts furthers his strategy of avoiding litigation or confrontation with Congress and the public while he pursues his priorities.

Second, CFTC officials are unpersuaded that they can allow companies to offer political and election markets in a way that is consistent with federal and state laws and that advances the public interest. Even where the CFTC has opened the door to political betting markets in limited ways such as on PredictIt and Kalshi, the CFTC has struggled to define the parameters of a “significant political event,” “meaningful political question,” and other tests related to the scope of allowable political event contracts. Division of Market Oversight (DMO) officials have offered differing interpretations of these tests since 2014, without formal regulatory changes. More constricted readings have prevailed at the agency in recent years.⁵⁴ Informing the CFTC’s deliberations in this respect is the fact that agency officials, in contrast to prediction market operators, have deemed markets on certain topics such as COVID-19 to be in “poor taste.”⁵⁵

52. For Behnam’s public remarks on political event contracts, see Brummer, “DC Fintech Week 2022,” 3:19:21-3:24:08, <https://www.youtube.com/live/Kzcb9cRIEpl?feature=share&t=11961>.

53. *Ibid*, 3:19:59-3:20:00

54. Chougule, host, “Did Kalshi Kill PredictIt and Polymarket?”; Chougule, host, “The Right’s Problems with Educated Voters,” *Star Spangled Gamblers* (podcast), 24 May 2023, <https://podcasts.apple.com/us/podcast/star-spangled-gamblers/id1437934639?i=1000614353172>; Letter from Steve Nightingale and Scott Barker, Buddle Findlay, to McGonagle, 6 April 2023, <https://az620379.vo.msecnd.net/static/files/docs/ffbf556e-977e-4931-b9dc-6948261e2e6a.pdf>.

55. Donald Luskin, “The Feds Don’t Want You Betting on Elections,” *Wall Street Journal*, 1 November

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Third, CFTC officials are concerned that the regulation of political event contracts requires the agency to spend resources and expand its jurisdiction in ways that exceed its mandate. In his letter to Victoria University explaining why the DMO was withdrawing PredictIt's no-action letter, DMO Director Vincent McGonagle noted that the considerable time CFTC staff had spent on PredictIt "far exceeded the level of CFTC staff involvement contemplated by Letter 14-30 [the no-action letter]" and that, in the DMO's judgment, this is "not an appropriate use of taxpayer resources."⁵⁶ Behnam has warned that CFTC approval of election contracts could exacerbate this issue because it carries the risk of turning the CFTC into an "election cop" in ways that would extend beyond Congressional intent.⁵⁷

Finally, CFTC officials' conflicting views on process and procedure have made it difficult for the Commission to reach consensus on how to bring regulatory clarity to the political betting space. Commissioner Caroline Pham dissented from the CFTC's decision in August 2022 to review and impose a stay on Kalshi's Congressional control contracts, arguing instead for allowing Kalshi to operate the markets immediately.⁵⁸ Commissioner Summer Mersinger is reportedly among the more supportive voices at the CFTC for approving political event contracts, but she has expressed concern about the wisdom of relying on no-action letters for long periods of time without laying down predictable

2022, <https://www.wsj.com/articles/federal-wager-politics-cftc-predictit-no-action-letter-presidential-election-futures-contract-regulation-11667310803>; Jeff Solomon, "Why Prediction Markets are Better at Predicting Covid than Public Health Experts," Polymarket, <https://blog.polymarket.com/prediction-markets-better-predict-covid-health>; Twitter post, 4 January 2022, 9:17 AM, <https://twitter.com/TradeandMoney/status/1478370060083286018?s=20>. For details on PredictIt's deliberations regarding COVID markets, see James Altucher, host, "How to Supplement your Income with Money Betting with PredictIt.Org Co-Founder John Phillips," The James Altucher Show, 18 March 2020, 1:33:59-1:35:21, https://youtu.be/li_Dtc5RCR0?t=5639.

56. Letter from McGonagle to Hyland, 2 March 2023, <https://twitter.com/Bittenbettor/status/1631839206996680707/photo/2>
57. Joe Weisenthal and Tracy Alloway, hosts, "CFTC Chair Rostin Behnam on the Fight to Regulate Crypto," Bloomberg's Odd Lots (podcast), 18 May 2023, <https://omny.fm/shows/odd-lots/cftc-chair-rostin-behnam-on-the-fight-to-regulate>
58. CFTC, "Dissenting Statement of Commissioner Caroline D. Pham Regarding the Review and Stay of KalshiEX LLC's Political Event Contracts," 26 August 2022, <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement082622>

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rules.⁵⁹ CFTC no-action letters have not only allowed PredictIt to operate, but also enabled Kalshi to offer binary options on economic and commercial events without the Commission addressing whether these options are “consistent with any statutory or regulatory requirement.”⁶⁰

The Commission’s decision to initiate a 90-day review of Kalshi’s revised election contracts has also exposed process-related divisions among the Commissioners. Pham dissented from the decision based on the way the review arguably relates to the PredictIt lawsuit and due to her belief that it is unfair for PredictIt but not Kalshi to offer election contracts.⁶¹ Mersinger dissented on the grounds that the delay in approving the contracts is inconsistent with the Commodity Exchange Act, is a “fundamentally unfair” delay tactic, and amounts to a punishment of Kalshi for the Commission’s “failure to avail itself” of a “necessary and overdue” rulemaking process that would allow the CFTC “to give thorough consideration to the issue of DCM event contracts, including those related to political control.”⁶²

Amid these divisions, the Commission’s prevailing approaches have led to litigation with PredictIt, suspended Congressional contracts by Kalshi, stalled the approval process for other firms in the political event contract space seeking to register as DCM’s, and left the political betting community without regulatory clarity.

59. Mark Baker, “No-action action: Why Mersinger wants the CFTC to stop wasting its time,” *Euromoney*, 18 October 2022, <https://www.euromoney.com/article/2arpowssc9okk0f7m598g/capital-markets/no-action-action-why-mersinger-wants-the-cftc-to-stop-wasting-its-time>

60. CFTC Letter No. 21-11, 22 April 2021, <https://www.cftc.gov/LawRegulation/DoddFrankAct/CurrentlyEffectiveStaffLetters/index.htm>

61. CFTC, “Dissenting Statement of Commissioner Caroline D. Pham on Political Event Contracts,” 23 June 2023, <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement062323>

62. “Dissenting Statement of Commissioner Summer K. Mersinger Regarding Commencement of 90-Day Review Regarding Certified Derivatives Contracts with Respect to Political Control of the U.S. Senate and House of Representatives”; Harty and Zachary Warmbrodt, “A political betting revival?” *Politico Morning Money*, 30 June 2023, <https://www.politico.com/newsletters/morning-money/2023/06/30/a-political-betting-revival-00104355>. For background on CFTC rulemaking, see CFTC, “Commission Rulemaking Explained,” <https://www.cftc.gov/LawRegulation/Commission-RulemakingExplained/index.htm>

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Prediction Market Performance

A core thesis of prediction market enthusiasts is that the ‘wisdom of the crowds’ can disrupt a discourse characterized by poor forecasts, unreliable polling, and fake news. Variants of this argument, advanced routinely by Kalshi, Polymarket, and PredictIt,⁶³ have weighed on the CFTC. The possibility that these markets could become “better than polling,” Behnam acknowledged in his October 2022 remarks, is among the reasons why regulatory issues in this space are “a very important question.”⁶⁴

Even as liquidity has increased, however, market prices have not shown enough predictive value in recent elections to demonstrate that prediction markets are clearly superior forecasting tools to the polls, models, and expert analyses that are more familiar to political establishments.⁶⁵ The perceived failure of prediction markets in the last few election cycles to forecast accurately the outcomes in high-profile races has undercut the thesis

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63. See for example, Altucher, host, “How to Supplement your Income with Money Betting with PredictIt.Org Co-Founder John Phillips”; Richard Chen, host, “Polymarket with Shayne Coplan and Richard Chen,” 1confirmation (podcast), 9 February 2021, <https://youtu.be/WNturf2x18o>; Eaddy and Graubard, hosts, “John Phillips, PredictIt Co-Founder and CEO,” Crowd Money Cast (podcast), 9 December 2021, <https://youtu.be/xRxZ-lhniAc>; Joseph, host, “John Phillips: A-Bomb Kid Powers PredictIt,” The Political Trade (podcast), 17 April 2020, <https://youtu.be/LIPPZJLW-xw>; Keeney and Chougule, hosts, “Pod: Are We About to Become POLYMARKET Prophets?” Star Spangled Gamblers (podcast), 19 October 2020, <https://starspangledgamblers.com/2020/10/19/pod-are-we-about-to-become-polymarket-prophets/>; Keeney and Chougule, hosts, “PredictIt CEO: We’re Not Quitting,” Star Spangled Gamblers (podcast), 8 August 2022, <https://starspangledgamblers.com/2022/08/08/predictit-ceo-were-not-quitting/>; Luana Lopes Lara, Comment for Industry Filing 22-002, CFTC, Comment No: 70795, 25 September 2022, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=70795&SearchText=luana>; Andy Pickering, host, “The Information Market - Polymarket lets traders bet on real-world events,” Brave New Coin (podcast), 5 October 2020, <https://youtu.be/gggSgPUYGtc>; Polymarket, “Introducing Polymarket Microgrants”; Polymarket, “Why Prediction Markets are Good for Society,” Polymarket, <https://blog.polymarket.com/why-prediction-markets-are-good-for-society/>; Jacob Stern, “PredictIt Already Won,” *The Atlantic*, 14 November 2022, <https://www.theatlantic.com/technology/archive/2022/11/political-betting-elections-forecasting-future/672113/>; Terris, *The Big Break*, 104.
64. Brummer, “DC Fintech Week 2022,” 3:23:47-3:23:53; <https://www.youtube.com/live/Kzcb9cRIEpI?feature=share&t=12227>
65. Maxim Lott, “Deep Dive: Election Betting vs 538,” *Maximum Truth. Substack*. 28 November 2022. <https://maximumtruth.substack.com/p/deep-dive-on-predicting-elections>

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that these markets serve the public interest. Among the most conspicuous of these failures occurred in the November 2022 U.S. midterm elections. At a time when prediction markets were under heightened regulatory scrutiny, betting markets, unlike the polls, forecasted a large Republican wave that did not materialize. This mispricing was widely noted in coverage of the issue.⁶⁶

Much of the scrutiny from the policy community on prediction markets has been directed at PredictIt. Notwithstanding the attention PredictIt is receiving by virtue of its lawsuit against the CFTC, PredictIt executives have not provided a compelling defense of their markets' public interest value in the wake of the 2022 elections. David Mason, counsel to PredictIt's service provider Aristotle, hypothesized that PredictIt's performance can be blamed on the site's regulatory challenges, which allegedly drove away skilled traders.⁶⁷ This explanation, while plausible, does little to account for why UK bookmakers⁶⁸ and Polymarket also forecasted a large Republican victory. Phillips, meanwhile, simply asserted as recently as February 2023 that prediction markets are "notoriously more accurate than pollsters and pundits when it comes to forecasting election outcomes."⁶⁹

Election Integrity Concerns

66. Bransfield, "Did Bookmakers & Prediction Markets Fare That Badly in the 2022 Senate Races?" 18 December 2022, <https://mickbransfield.com/2022/12/18/did-bookmakers-prediction-markets-fare-that-badly-in-the-2022-senate-races/>; George Calhoun, "Prediction Markets Failed The Midterm (Election) Exams," *Forbes*, 14 November 2022, <https://www.forbes.com/sites/george-calhoun/2022/11/14/the-un-wisdom-of-crowds-prediction-markets-failed-their-midterm-exams/?sh=71f9099d179a>; Anthony Pickles, "A Republican bubble? How pollsters and pundits got the US midterms so wrong," *The Conversation*, 22 November 2022, <https://theconversation.com/a-republican-bubble-how-pollsters-and-pundits-got-the-us-midterms-so-wrong-194684>; Stern, "PredictIt Already Won"
67. Technology Policy Institute, host, "John Phillips and David Mason of Aristotle Discuss Political Prediction Markets"
68. Devin O'Connor, "Republicans Heavy Betting Favorites on Eve of 2022 Midterms," *Casino.org*, 7 November 2022, <https://www.casino.org/news/republicans-heavy-betting-favorites-on-eve-of-2022-midterms/>
69. Technology Policy Institute, "John Phillips and David Mason of Aristotle Discuss Political Prediction Markets"

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Concerns that political betting markets might corrupt the democratic process have deepened since the fallout of the 2020 elections. Accusations by prominent political leaders of widespread voter fraud and waning confidence in the integrity of elections have underscored fears that liberalized political event contracts would exacerbate risks to democratic institutions.⁷⁰ Former CFTC Commissioner Jill Sommers, who voted against Nadedx's application in 2012 to offer election contracts, stated in regard to Kalshi's proposal, "When we think about what happened in 2020, do we really want another excuse for the American people to question the integrity of our elections?...This is not something we want to be introducing into federally regulated financial markets."⁷¹ These arguments are resonating in particular in progressive circles.⁷²

While the overall impact of political prediction markets on the democratic process is a source of debate, critics of political prediction markets can point to numerous instances of market manipulation on PredictIt and in the UK markets. These include spending by political campaigns in prediction markets to inflate candidate prices, alleged death threats by traders against political candidates potentially related to betting lines, and the dissemination of fake polls to move market prices.⁷³ Some in the prediction market community believe that, at the end of 2022, it was a PredictIt trader who submitted a fake candidate filing to the Federal Election Commission. This was allegedly to profit in the PredictIt market on the issue of whether former Vice President Mike Pence would announce his candidacy for president before the end of that year. While none of this activity, to our

70. Harty, "Political betting"

71. Harty, "Washington weighs plan to let Americans wager on elections," *Politico*, 5 September 2022, <https://www.politico.com/news/2022/09/05/voters-betting-elections-trading-00054723>

72. Chougule, host, "When Will Biden Announce His Re-Election Bid," *Star Spangled Gamblers* (podcast), 2 March 2023, <https://starspangledgamblers.com/2023/03/02/when-will-biden-announce-his-re-election-bid/>

73. Chougule, host, "Bet Against Senator Feinstein Resigning," *Star Spangled Gamblers* (podcast), 10 June 2023, <https://starspangledgamblers.libsyn.com/bet-against-senator-feinstein-resigning>; Chougule, host, "Does Political Betting Threaten Democracy? Lessons from the UK"; Tom Harris, "The Curious Case of Brian Rose: Is the London Mayoral Candidate Betting on Himself?" 5 February 2021, <https://www.tomharris.org.uk/politics/the-curious-case-of-brian-rose-is-the-london-mayoral-candidate-betting-on-himself/>; Adam Sherman, Comment for Industry Filing 22-002, CFTC. Comment No: 69618, 30 August 2022, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69618&SearchText=>; Sia, Comment for Industry Filing 22-002

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knowledge, has meaningfully impacted the outcome of any event, some critics argue that they distort the political discourse enough to warrant criminal liability.⁷⁴ Phillips has acknowledged that the PredictIt comments boards are replete with “spinning and counter-spinning and bluffing,”⁷⁵ but the company has done little to prevent traders from using the comments sections on its site to manipulate market prices.⁷⁶

The intersection of political betting markets and election integrity concerns has caused the CFTC to tread cautiously in approving election contracts. In a May 2023 podcast, Behnam pointed to the possibility that allegations of election manipulation could lead to demands that the Commission police hardware, software, and news associated with CFTC-approved election contracts that are supposedly implicated in the alleged fraud. This type of scenario, in Behnam’s view, raises “a lot of legal questions and policy questions about whether or not you would want a financial regulator policing elections.”⁷⁷ Thirteen of the 41 questions the CFTC has requested public comments on in the context of Kalshi’s congressional markets—nine of which were among the 24 questions in the most recent batch—relate to election integrity concerns.

Economic Instability

Concerns that political prediction markets can exacerbate systemic financial risk have gained currency in light of the 2022 ‘crypto winter’ and FTX’s collapse. Critics have seized on the idea that political event contracts are similar to cryptocurrencies in that they

74. Tyler Yeagain, *Fake Polls, Real Consequences: The Rise of Fake Polls and the Case for Criminal Liability*, 85 Mo. L. Rev. (2020), <https://scholarship.law.missouri.edu/mlr/vol85/iss1/7>

75. Eaddy and Graubard, hosts, “John Phillips, PredictIt Co-Founder and CEO”

76. David Hill, “The Wolves of K Street,” *The Ringer*, 21 March 2018, <https://www.theringer.com/2018/3/21/17130490/predictit-politics-elections-gambling>; Brian Golden, “The Art of the Pump,” *Washington Monthly*, 3 April 2022, <https://washingtonmonthly.com/2022/04/03/the-art-of-the-pump>; Joseph, host, “John Phillips: A-Bomb Kid Powers PredictIt”; Twitter post, 5 August 2022, 11:26 AM, <https://twitter.com/Domahhhh/status/1555575894961446914?s=20>; Twitter post, 5 August 2022, <https://twitter.com/Domahhhh/status/1555575897553526785?s=20>; Twitter post, 5 August 2022, <https://twitter.com/Domahhhh/status/1555575900380487680?s=20>

77. Weisenthal and Alloway, hosts, “CFTC Chair Rostin Behnam on the Fight to Regulate Crypto”

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‘gamify’ finance and create losses for the majority of retail investors. Reports that FTX was offering tokens on Donald Trump’s electoral fortunes feed into this narrative.⁷⁸

Limited Advocacy Presence

While political prediction markets have drawn support from a distinguished group of Americans across industries, the political prediction market community generally has been poorly organized and suffered setbacks in advocating for its agenda.⁷⁹ A standing, Washington-based non-profit organization would help address many of these issues, but it would need sufficient funding to spearhead legal challenges, engage regulators and political leaders, convene working groups and conduct grassroots campaigns. To date, the political prediction market community has not shown the capacity to engage effectively in these activities.

Instead, retail traders, researchers, political leaders, and other users tend to rely on companies for advocacy efforts even though their interests often do not align with the broader community. Politicians and regulators, as a result, feel little constituent pressure to prioritize the issue.

When journalists, researchers, and regulators seek out information on political betting, they stumble upon the most conspicuous element of the community: gambling forums replete with toxic discourse. To an outsider’s eye, this status quo fuels skepticism about the wisdom empowering self-described ‘degens’ who seem more adept at trolling, fabricating polls, and pumping positions than forecasting elections or engaging the political process.⁸⁰

78. Sam Reynolds, “FTX’s TRUMPLOSE Token Isn’t Proof of an FTX-Democrat-Ukraine Conspiracy,” *CoinDesk*, 15 November 2022, <https://www.coindesk.com/markets/2022/11/15/analysis-ftxs-trumplose-token-isnt-proof-of-an-ftx-democrat-ukraine-conspiracy/>

79. Keeney and Chougule, hosts, “How PredictIt Got Knifed,” *Star Spangled Gamblers* (podcast), 4 August 2022, <https://starspangledgamblers.com/2022/08/04/how-predictit-got-knifed/>

80. For notable examples, see Stern, “PredictIt Already Won”: “Scrolling through the discussion forms that PredictIt hosts for each market, you will find the same unhinged trolling and rampant disinformation and culture-war battle cries that you will find most everywhere else online...You will find

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Negative public perceptions of FTX CEO Sam Bankman-Fried have further eroded the credibility of the political betting community. In large part, this is due to the corresponding reputational blow taken by the effective altruism movement, one of the few political actors that has been willing to invest meaningful resources to advocate on behalf of political prediction markets.⁸¹

Case in point is the controversy surrounding Data for Progress founder, former Kalshi consultant, and self-described effective altruist Sean McElwee. Prior to the FTX scandal, McElwee openly bet tens of thousands of dollars on PredictIt while building a progressive think-tank and polling firm. He encouraged his staff to do the same in order to “train heuristics” and “calibrate” political instincts. McElwee led weekly wagering sessions at Data for Progress in order to help his team “understand and engage with risk.”⁸²

bettors engaging in psychological warfare in an effort to tilt the markets in their favor (‘pumps’), and you will find bettors engaging in magical thinking because markets are not tilting in their favor (‘copium’). You will find some of the most extreme megalomania observable anywhere on the internet—which is saying something. As outcomes start to become clear, you will find gloating, endless gloating...And if you look hard enough, sprinkled in here and there, you will find a bit of genuinely astute analysis.”; Golden, “The Art of the Pump”: “To say that prediction markets reward truth is not to say they are immune from the poisonous political world they exist to reflect. The comments under any PredictIt market demonstrate this reality...PredictIt is, by its own admission, a male-dominated space, and the same casual racism, sexism, homophobia, obnoxiousness, juvenile idiocy, and outright irredeemable batshit nonsense exists here that subsumes many online spaces...As in many online spaces, the racist, lunatic fire just burns too hot for it to be completely put out.”

81. On effective altruism investment in political prediction market infrastructure, see, for example, Long-Term Future Fund grants at “Long-Term Future Fund.” For authors’ discussion of the effective altruism movement’s interest in political prediction markets, see Keeney, host, “The Behind the Scenes Battle at the CFTC,” Star Spangled Gamblers (podcast), 27 October 2022, <https://starspangledgamblers.com/2022/10/27/the-behind-the-scenes-battle-at-the-cftc>
82. Zac McCrary, host, “Politics According to Sean McElwee,” Pro Politics (podcast), 16 August 2022, <https://podcasts.apple.com/bb/podcast/politics-according-to-sean-mcelwee/id1554218352?i=1000576216809>; Terris, *The Big Break*, 105-6; Terris, “This site bet big on political gambling. Regulators want it shut down.” *The Washington Post*, 24 January 2023, <https://www.washingtonpost.com/lifestyle/2023/01/24/predictit-gambling-on-politics>. For McElwee’s views on prediction markets, see McElwee, “Why Prediction Markets Make The World A Better Place,” *Medium*, 26 October 2022, <https://medium.com/@SeanMcElwee/why-prediction-markets-would-make-the-world-a-better-place-ceded9760846>.

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McElwee's practices have raised eyebrows within progressive circles, particularly due to perceptions that he had conflicts of interest. McElwee disclosed to *Washington Post* reporter Ben Terris that he "make[s] a lot of bets that would make progressives cry"—that is, bets against progressive candidates, sometimes informed by privileged data he would acquire from doing polling work for them.⁸³

Nevertheless, McElwee's alignment with the effective altruism community bolstered his credibility as an advocate in the political prediction market space. Gabe Bankman-Fried, who hired McElwee to assist him with effective altruism advocacy, viewed McElwee political betting activities as a "really good practice" that enhanced his ability to defend claims.⁸⁴ This support in turn helped McElwee to mobilize prominent progressive leaders, including Congressman Richie Torres, in an advocacy campaign on behalf of election prediction markets.⁸⁵

The FTX scandal generated criticisms of McElwee's ties to the Bankman-Frieds and his political betting.⁸⁶ The air of controversy allowed critics of McElwee's engagement with political betting markets an opportunity to oust him as executive director of Data for

83. Terris, *The Big Break*, 3-4, 7-8.

84. *Ibid*, 160-1.

85. Harty, "Ritchie Torres and a group of progressive advocates are urging regulators to let Americans bet on U.S. elections, arguing it would help build public trust in democracy." *Politico*, 1 November 2022, <https://www.politico.com/minutes/congress/11-1-2022/torres-leads-election-bet-push/>

86. Ed Burmila, "How Trump Left Washington Even Swampier," *The New Republic*, 21 May 2023, <https://newrepublic.com/article/172475/trump-left-washington-even-swampier>; "Adherents of 'Effective Altruism' claim that betting on political outcomes is a for of reinforcing one's beliefs, a kind of putting money where one's mouth is. Maybe so. But it comes off more as simply frattish behavior, a big kid with a big pot of money, blowing it on online poker with supreme confidence that there will always be more of someone else's money with which to play."; David Freedlander, "Fall of the Progressive Boy King," *New York Magazine*, 22 December 2022, <https://nymag.com/intelligencer/2022/12/sam-bankman-fried-and-sean-mcelwees-fateful-alliance.html>; Jeet Heer, "Sean McElwee's Betting Against Democracy," *The Nation*, 1 May 2023, <https://www.thenation.com/article/politics/sean-mcelwee-democracy-betting/>; Kaleigh Rogers, "How The Cool Kid Of Progressive Politics Gambled It All Away," *FiveThirtyEight*, 23 February 2023, <https://fivethirtyeight.com/features/how-the-cool-kid-of-progressive-politics-gambled-it-all-away/>

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Progress and institute at the organization a new “Gambling and Wagering Policy” prohibiting employees from betting on events related to Data for Progress clients or projects.⁸⁷ Subsequent investigations by Data for Progress and FiveThirtyEight found no evidence that McElwee manipulated polls for financial gain⁸⁸—an accusation McElwee categorically denies.⁸⁹ Nevertheless, FiveThirtyEight banned polls conducted under McElwee’s direction from its polling averages, database, and forecasts. FiveThirtyEight’s rationale is that “a pollster betting on politics can be akin to insider trading,” and that “pollsters having a financial stake in these markets raises questions about their polls’ intent and the integrity of their design and results.”⁹⁰

Limited Market Interest and Revenues

Political betting lines are relatively unprofitable for both retail traders and companies in the space. Traders struggle with the relative infrequency and inconsistency of political events that lend themselves to betting with a sustained edge. Paul Krishnamurty, as an example, one of the most prominent political gambler in the world, recently estimated that only about five percent of his winnings as a professional gambler over the past 20 years have come from politics, the rest being from sports.⁹¹ While sportsbooks make money off political lines, in large part by banning accounts perceived to have an edge, companies offering traditional prediction markets often lose money on political markets and justify

87. Ryan Lizza, Rachel Bade, and Eugene Daniels, “Inside the scramble to trace SBF’s dirty money,” *Politico Playbook*, 22 December 2022, <https://www.politico.com/newsletters/playbook/2022/12/22/inside-the-scramble-to-trace-sbfs-dirty-money-00075128>; Rogers, “How The Cool Kid Of Progressive Politics Gambled It All Away”; Terris, *The Big Break*, 294-6.

88. Rogers, “How The Cool Kid Of Progressive Politics Gambled It All Away”

89. Chougule, host, “When Will Biden Announce His Re-Election Bid.”

90. Nathaniel Rakich and Mary Radcliffe, “Why We’re Preemptively Banning A Pollster—And Not Banning Another,” *FiveThirtyEight*, 23 February 2023, <https://fivethirtyeight.com/features/why-were-preemptively-banning-a-pollster-and-not-banning-another>.

91. Chougule, host, “Is DeSantis Definitely Running for President?” *Star Spangled Gamblers* (podcast), 15 March 2023, <https://starspangledgamblers.com/2023/03/15/is-desantis-definitely-running-for-president>. For background on Krishnamurty, see Krishnamurty, “How I Became A Pro Gambler,” *SL.Man*, 11 April 2020, <https://slman.com/life/how-i-became-pro-gambler>; Pete Ling (host), “Episode #43—Paul Krishnamurty/Political Betting Expert,” *The Smart Betting Club Podcast*, October 2022, <https://open.spotify.com/episode/0P6X8k2dH19yk5oGGKTcEo?si=Ej pzA5q9Qfmz-VuSbXC4VPg>; Adam Payne, “Meet the professional gambler who has made a living betting on Brexit

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their costs as loss leaders, academic endeavors, or as a public service. Even state legislators who favor legalized election betting acknowledge that revenues from political lines would be relatively small. In a state like Nevada, with a mature gaming industry, political bets would amount to a “tiny” subset of sports betting revenues.⁹²

Conservative forecasts about the commercial viability and revenue generating potential of political prediction markets have been borne out to some extent by publicly available data on PredictIt’s users and finances. In their filing to the CFTC, plaintiffs associated with PredictIt tout the fact that, between 2014 and 2022, more than 120,000 participants have traded on the site.⁹³ Activity on PredictIt peaked in the run-up to the 2020 U.S. presidential election, when close to \$150 million was traded on the site. This is the only time in the site’s history when PredictIt revenues exceeded its expenses.⁹⁴ In the run-up to the 2022 U.S. midterm elections, the site averaged around 80,000-100,000 users, 30,000 of which PredictIt described as active traders.⁹⁵ While an increase from 22,000 users in 2016,⁹⁶ the site has not grown its user base much since 2018.⁹⁷ Additionally, only a small

and Corbyn,” *Business Insider*, 8 September 2016, <https://www.businessinsider.com/paul-krishnamurty-political-betting-gambling-labour-corbyn-us-election-2016-9>; “The Political Gambler,” <https://www.politicalgambler.com>; Alex Vella, host, “Politics Betting,” Trademate Sports Betting Podcast, 23 July 2021, <https://youtu.be/A0eor5Bo2Kk>

92. Katy Steinmetz, “Bet on Red! Nevada May Legalize Gambling on Federal Elections,” *Time*, 27 March 2013, <https://swampland.time.com/2013/03/27/bet-on-red-nevada-may-legalize-gambling-on-federal-elections/>

93. Complaint for Declaratory and Injunctive Relief at 16, Kevin Clarke, in his individual capacity, Trevor Boeckmann, in his individual capacity, Corwin Smidt, in his individual capacity, PredictIt, inc., a Delaware corporation, Aristotle International, Inc., a Delaware v. Commodity Futures Trading Commission (2022), 1:22-cv-00909-LY, <https://www.courthousenews.com/wp-content/uploads/2023/02/predictit-versus-commodity-futures-trading-commission.pdf>

94. Letter from Nightingale and Barker to McGonagle, 6 April 2023

95. Danny Funt, “Betting on Elections Can Tell Us a Lot. Why Is It Mostly Illegal?” *The New Yorker*, 3 November 2022, <https://www.newyorker.com/news/the-political-scene/betting-on-elections-can-tell-us-a-lot-why-is-it-mostly-illegal>; Golden, “The Art of the Pump”; Joseph, host, “Palin, PredictIt & Political Wagering,” *The Prediction Trade* (podcast), 14 April 2022, <https://www.podcastone.com/episode/Palin-PredictIt--Political-Wagering-48>

96. Chougule, “Volume and Liquidity on PredictIt,” *Political Prediction Markets*, <https://politicalpredictionmarkets.com/volume-and-liquidity-on-predictit/>

97. David Hill, “The Wolves of K Street,” *The Ringer*, 21 March 2018, <https://www.theringer.com/2018/3/21/17130490/predictit-politics-elections-gambling>

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percentage of PredictIt users trade on a weekly or monthly basis, and most do not appear to trade large amounts of money. In 2020, the average first time deposit was \$216.⁹⁸ PredictIt's no-action letter requires the site to limit each market to 5,000 participants, but that number is typically only reached in a handful of marquis election markets close to election day. As a consequence, PredictIt's expenses have exceeded revenues over the history of the site's operation.⁹⁹

Currently, PredictIt's user base and revenues are almost certainly below its 2022 levels. Beyond the fact that engagement on the site drops in non-election years, PredictIt has seen an exodus due to its regulatory constraints and uncertainties. PredictIt's counsel disclosed before the Fifth Circuit that 14,478 traders held positions in 75 contracts on the site that were expected to expire after February 15, the deadline the CFTC gave PredictIt in August 2022.¹⁰⁰ In the months following the August 2022 notice, many of the site's highest-volume, prominent traders withdrew funds, particularly after the November 2022 midterm elections and the December 7 Georgia run-offs. Between August and December 2022, traders withdrew \$18 million from PredictIt; 7,500 traders withdrew all of their funds and shut down their accounts. More than 4,700 of these traders did so between November and December.¹⁰¹ By December, trading volume on PredictIt lost more than 75% of the volume it had before the CFTC's August 2022 announcement.¹⁰² Exacerbating doubts about the site's future has been PredictIt's refusal to clarify how it would resolve existing markets if their legal appeals fail. PredictIt's decision not to create new markets or even, until late June 2022, add new candidates to its election market has further diminished interest in the site. Lingering traders have been left with low liquidity, highly vola-

98. Altucher, host, "How to Supplement your Income with Money Betting with PredictIt.Org Co-Founder John Phillips"

99. Letter from Nightingale and Barker to McGonagle, 6 April 2023

100. Clarke et. al. v. CFTC, 22-51124, Plaintiffs-Appellants' Opening Brief, (5th Circ. 26 January 2023), 7, https://mickbransfield.com/wp-content/uploads/2023/02/A40_Appellant_Brief.pdf

101. Declaration of John Phillips, 31 December 2022, in Clarke et. al. v. CFTC, 22-51124, Appendix to Plaintiffs-Appellants' Opposed Motion for Injunction Pending Appeal or, in the Alternative, Petition for a Writ of Mandamus, (5th Circ. 3 January 2023), 117, https://mickbransfield.com/wp-content/uploads/2023/02/22-51124_Documents.pdf

102. *Ibid*, 118.

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tile markets.¹⁰³

Evidence from the UK suggests that the limited interest and profitability of political betting in the United States is only partly related to regulation. On the one hand, in the absence of restrictive regulations, major political events—notably U.S. presidential elections—have been among the largest single and most profitable betting events for UK bookmakers.¹⁰⁴ Compared to \$261 million (\$281.9 million adjusted for inflation) in the 2016 U.S. election, \$744 million was bet on Betfair Exchange alone on the 2020 U.S. presidential election, making it the largest betting event in the site’s history. These sums far surpassed comparable sporting events. For comparison, the August 2017 fight be-

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103. Bittenbender, “PredictIt Founder Gets More Time to Respond to CFTC Claims as Lawsuit Continues,” Casino.org, 21 March 2023, <https://www.casino.org/news/predictit-founder-gets-more-time-to-respond-to-cftc-claims-as-lawsuit-continues/>; Chougule, host, “2024 Republican Longshots and Debt Ceiling Negotiations”; Chougule, host, “Argentina’s Upcoming Presidential Elections,” Star Spangled Gamblers (podcast), 30 April 2023, 45:36-52:03, <https://starspangledgamblers.com/2023/04/30/argentinas-upcoming-presidential-elections/>; Declaration of Clarke, 18 November 2022, in Clarke et. al. v. CFTC, 22-51124, Appendix to Plaintiffs-Appellants’ Opposed Motion for Injunction Pending Appeal or, in the Alternative, Petition for a Writ of Mandamus, (5th Circ. 3 January 2023), 66-, https://mickbransfield.com/wp-content/uploads/2023/02/22-51124_Documents.pdf; Joseph (host), “This Part-Time (Profitable) Political Trader Shares His Midterm Bets,” The Prediction Trade (podcast), 18 August 2022, <https://www.tastylive.com/shows/the-prediction-trade/episodes/this-part-time-profitable-political-trader-shares-his-midterm-bets-08-17-2022>. Trader pessimism about PredictIt’s prospects can be seen through the prices on markets offered by Insight Prediction, Polymarket, and Manifold about questions such as how long the site will continue operating, and whether it will release new contracts. For details, see Bransfield, “Prediction Markets Bet On PredictIt Surviving in the Short Term,” 31 January 2023, <https://mickbransfield.com/2023/01/31/prediction-markets-bet-on-predictit-surviving-in-the-short-term/>; Bransfield, “Remaining PredictIt Markets with 75 Days Left,” 2 December 2022, <https://mickbransfield.com/2022/12/02/remaining-predictit-markets-with-75-days-left/>; Chougule, host, “CFTC Makes Its Case Against PredictIt,” Star Spangled Gamblers (podcast), 25 March 2023, <https://starspangledgamblers.com/2023/03/25/cftc-makes-its-case-against-predictit/>; Keeney and Chougule, hosts, “PredictIt CEO: We’re Not Quitting”, 42:45-43:12. In June 2023, PredictIt, without explanation, added Robert Kennedy Jr. to its market on the Democratic nominee for president in 2024, and Chris Christie and Vivek Ramaswamy to its market on the Republican nominee for president in 2024.
104. Chougule, host, “Is DeSantis Definitely Running for President?”; Devin O’Connor, “2020 Presidential Election Setting Betting Records, \$1B in Wagers Possible,” Casino.org, 28 October 2020, <https://www.casino.org/news/2020-presidential-election-betting-records-1b-wagers-possible/>

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tween Conor McGregor and Floyd Mayweather, the most-bet-on sporting event Betfair had offered to date, brought in \$71.5 million.¹⁰⁵ On Betonline.ag, more money was bet on the 2020 election than that year's Super Bowl.¹⁰⁶

The absence of betting limits appears to have drawn 'smart whales' to take advantage of mispriced odds driven by retail traders. Although 46.6% of the money wagered was on Trump compared to 50.6% for Joe Biden, the 10 largest bets placed on Betfair were for Biden. These include a \$1.3 million bet on Biden, which was the third largest wager in Betfair history, and at least six other Biden bets of more than \$400,000.¹⁰⁷

Nevertheless, election betting revenues in the UK pale in comparison to lines such as horse racing and soccer, which present far more repeatable betting opportunities than elections.¹⁰⁸ The limited profitability potential of current affairs markets is compounded by the fact that operators must hire experts who can write complex rules for infrequent, unrepeatable events that can be understood by traders well enough to avoid ambiguous settlement situations.¹⁰⁹ The UK-based betting exchange Smarkets, as an example, was founded by an American CEO, Jason Trost, who became interested in the space after learning about political prediction markets. However, the economics of the industry have led Smarkets to treat current events markets as a niche "passion project" subsidized by sports and other lines more likely to see growth.¹¹⁰ Because Smarkets's goal of produc-

105. Charles Riley, "The person who bet \$1.3 million on a Biden win hasn't been paid yet," *CNN*, 9 November 2020, <https://www.cnn.com/2020/11/09/business/biden-betfair-wager/index.html>; Darren Rovell, "2020 Election Odds: Record \$564 Million Bet on Trump vs. Biden Presidential Race at Betfair, Double 2016 Election," *Action Network*, 14 December 2021, <https://www.actionnetwork.com/politics/2020-election-odds-trump-vs-biden-presidential-race-sportsbook-rovell>.

106. Chris Bumbaca, "2020 U.S. presidential election expected to involve more than \$1 billion in wagers," *USA Today*, 3 November 2020, <https://www.usatoday.com/story/sports/gambling/2020/11/02/2020-election-betting-odds-donald-trump-joe-biden/6128882002/>.

107. Riley, "The person who bet \$1.3 million on a Biden win hasn't been paid yet"; Rovell, "2020 Election Odds"

108. Batt, "Nevada Looks To Follow UK's Lead on Election Betting"

109. Eaddy and Graubard, hosts, "Jason Trost, Smarkets Founder and CEO"; Star Sports, "#BettingPeople Interview MATTHEW SHADDICK Smarkets Head of Politics 2/4," 19 October 2021, Interview with William Kedjanyi, <https://youtu.be/zcjGZsJLuOE?t=607>

110. Eaddy and Graubard, hosts, "Jason Trost, Smarkets Founder and CEO"; Keeney and Chougule, hosts, "Smarkets CEO Jason Trost Joins the Boys for 2020 Political Picks," *Star Spangled Gamblers*

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ing a publicly-available, “very accurate set of probabilities” with “social utility” requires the site to attract “clever, clued-up, informed” bettors, Smarkets deprioritizes profitability considerations for its current events lines and welcomes long-term winning accounts even as their competitors restrict them.¹¹¹ Nevertheless, Trost concedes that he “wouldn’t put too much stock” in Smarkets’s political markets as an “information source” because they are “thinly-traded” and lack “critical mass” and a sufficiently “diverse group of bettors.”¹¹²

While the 2020 elections point to a favorable trend for political betting, the awareness they have generated for political betting may prove to be a fleeting phenomenon.¹¹³ Industry veteran Matthew Shaddick has cautioned that recent spikes in political betting involvement, which crossed \$1 billion globally in 2020, may largely stem from the unique “worldwide fame and notoriety and interest” that Trump personally engenders. Shaddick questions whether more conventional politicians would produce comparable levels of “excitement” in the betting markets.¹¹⁴ These doubts make it difficult for companies to expand product development, hire talented specialists in the political prediction betting space, and invest in the lobbying, public relations, and research efforts needed to influence regulators and build the political forecasting community.¹¹⁵ Even when they do occur, such investments tend to be inconsistent, as this area is one of the most obvious and immediate targets when companies are forced to cut costs.

(podcast), 29 July 2020, https://youtu.be/hnxwn2_9EyE; Star Sports, “#BettingPeople Interview MATTHEW SHADDICK Smarkets Head of Politics 2/4”

111. Eaddy and Graubard, hosts, “Jason Trost, Smarkets Founder and CEO”; Star Sports, “#BettingPeople Interview MATTHEW SHADDICK Smarkets Head of Politics 2/4”

112. Eaddy and Graubard, hosts, “Jason Trost, Smarkets Founder and CEO,” <https://youtu.be/vySli47rB-Jw?t=2168>

113. Star Sports, “#BettingPeople Interview MATTHEW SHADDICK Smarkets Head of Politics 2/4”

114. Mack DeGeurin, “Is the U.S. Ready for Election Betting? We’re About to Find Out,” *Gizmodo*, 28 October 2022, <https://gizmodo.com/election-betting-sports-betting-midterm-elections-1849715401>; Pierre Lindh, host, “Podcast #30 - Matthew Shaddick, Head of Politics GVC (Topic: US election predictions),” iGaming NEXT (podcast), 30 October 2020, https://youtu.be/klvu_NKDpck. On the relation between Trump and interest in political betting, see also Ling (host), “Episode #43—Paul Krishnamurty/Political Betting Expert”

115. Eaddy and Graubard, hosts, “Jason Trost, Smarkets Founder and CEO”

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Industry Missteps

Companies seeking to offer political prediction markets have made strategic choices that have yielded limited success in liberalizing the regulatory climate.

The choices these companies have made have led regulators to approach the space with a skeptical eye. The ways that they have navigated the regulatory environment are not only questionable in retrospect, but have been criticized consistently and prophetically by a wide cross-section of the political betting community. An irony of their missteps is that they are replete with the same types of forecasting errors and overreliance on experts that their products are ostensibly aimed at correcting. A full catalog of their dubious decisions is beyond the scope of this report, but the case studies of PredictIt and Kalshi described below are illustrative.¹¹⁶

It is little surprise that the CFTC withdrew PredictIt's no-action letter in light of how cavalierly the company managed its relations with the agency. Indeed, while we are sympathetic to PredictIt's mission and its team, our research into the topic left us wondering how PredictIt even managed to retain no-action relief for as long as it did. PredictIt's agreement with the CFTC makes clear that the Commission was granting PredictIt regulatory relief in order to operate a non-profit, educational experiment overseen by university faculty, which would offer only limited political event contracts. Whether or not PredictIt violated the letter of its agreement as the CFTC alleges, it is difficult to understand why the seasoned Washington operatives managing PredictIt concluded that the company's business practices were consistent with the spirit of its understanding with the CFTC. Nor is it clear why PredictIt persisted in many of these practices even after being confronted repeatedly by CFTC officials who claim unilateral authority to rescind its no-action letter.¹¹⁷

116. For Chougule's insights on the regulatory approaches of Kalshi and PredictIt, see Keeney and Chougule, hosts, "Yikes! Trump (& PredictIt) Raided By the Feds," Star Spangled Gamblers (podcast), 11 August 2022, <https://starspangledgamblers.com/2022/08/11/yikes-trump-predictit-raided-by-the-feds>

117. Chougule, host, "CFTC Makes Its Case Against PredictIt"

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The no-action letter permits PredictIt to charge fees necessary to cover regulatory compliance and operating costs for a non-profit, academic venture. In this sense, the rationale behind PredictIt's fee structure is unclear. On the one hand, PredictIt claims to be operating at a loss. At the same time, PredictIt charges fees on trades and withdrawals that are so high they distort the research value of its data and deter investors from opening accounts on the site.¹¹⁸ In an interview on *Star Spangled Gamblers* in October 2021, Phillips conceded the market distorting impact of the fees but refused to lower them.¹¹⁹ Nor has the fee structure satisfied CFTC concerns about whether PredictIt is adhering to the terms of its no-action letter. A potential explanation for why PredictIt persists with this fee structure is that it is part of a scheme in which PredictIt monetizes its markets and its users in coordination with data analytics firm Aristotle and its affiliates. Considering that Victoria University has not made money from PredictIt, collecting payments of just \$2,000 per month for a university subsidiary, Aristotle's business model raises questions about the extent to which PredictIt is in fact a non-profit venture.¹²⁰ Court rulings and journalistic investigations may shed greater light on the details of PredictIt's finances.

In terms of the contracts on the site, PredictIt has offered betting lines that bear little relation to the public interest. In its court filing before the Fifth Circuit, the CFTC specifically lists 17 markets PredictIt has offered that are "outside of the bounds" of the no-action letter.¹²¹ One is a market on the number of times U.S. Representative Alexandria Ocasio-Cortez would tweet in a random week in March.¹²² Victoria University maintains that "all markets" identified by the CFTC are "within a reasonable and good faith interpreta-

118. Crawley, host, "How to Trade Prediction Markets and Fade Political Hype"

119. Keeney and Chougule, hosts, "PredictIt's CEO Answers All Your Questions," *Star Spangled Gamblers* (podcast), 28 October 2021, <https://starspangledgamblers.com/2021/10/28/predictits-ceo-answers-all-your-questions/>

120. Bittenbender, "CFTC's PredictIt Claims Focus on Relationship Between Aristotle and New Zealand University," *Casino.org*, 6 March 2023, <https://www.casino.org/news/cftcs-predictit-claims-focus-on-relationship-between-aristotle-and-new-zealand-university/>; Chougule, host, "The Right's Problems with Educated Voters"; Letter from Nightingale and Barker to McGonagle, 6 April 2023; Victoria University Statement in "PredictIt Announcements," PredictIt, <https://www.predictit.org/platform-announcements>

121. Letter from McGonagle to Hyland, 2 March 2023.

122. *Ibid.*

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tion of the scope of contracts approved by the NAL [no-action letter].¹²³ For example, the market on Ocasio-Cortez’s tweets is justified by the university on the grounds that the “volume of her Tweets both constitute and relate to significant political events.”¹²⁴ The CFTC could have included even more dubious markets PredictIt has offered in the past. An infamous example is the market PredictIt offered on whether Trump would dance with Caitlyn Jenner at the White House ball. In another case, PredictIt markets may have led to death threats against presidential candidate Andrew Yang from someone with a stake in the number of times he would tweet.

Frequent warnings by PredictIt users about the way the company was navigating its political risk were dismissed by PredictIt’s management. As early as February 2016, Domer, one of the most prominent political bettors in the world,¹²⁵ began emailing PredictIt his concerns about how the site was handling regulatory risk with the CFTC. Domer argued that PredictIt was “far too cavalier in blurring the line between predicting politics and gambling.”¹²⁶ The following year, the chief counsel of the CFTC’s Division of Market Oversight questioned Aristotle about “how contracts predicting the number of candidate tweets were political event contracts.”¹²⁷ Chougule echoed these points in a series of tweets in 2019 and 2020. He reported that PredictIt’s markets on the number of times politicians were tweeting were controversial to the CFTC, likely because they were not the type of markets that “regulators had in mind when they permitted PredictIt.” Chougule warned that these markets would “invite regulatory scrutiny” and that “regulators would use them as an excuse to crack down on PredictIt broadly.” Rather than pursuing markets that “casts doubt on PredictIt’s claim that it is an academic research project,” Chougule counseled “a more cautious regulatory approach that leads to eventual deregulation of

123. Letter from Nightingale and Barker to McGonagle, 6 April 2023

124. *Ibid.*

125. For background on Domer, see Aaron Fifield, host, “The Information Edge: Winning in Prediction Markets w/ Domer,” Chat with Traders (podcast), 26 May 2022, <https://youtu.be/TEBeRDMD-3mI>; Golden, “The Art of the Pump.” See also Domer’s appearances on Star Spangled Gamblers at <https://starspangledgamblers.com/?s=domer>.

126. Twitter post, 4 August 2022, 6:29 p.m., <https://twitter.com/Domahhhh/status/1555320074524770304?s=20>.

127. Letter from Nightingale and Barker to McGonagle, 6 April 2023

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political prediction markets.”¹²⁸ Around the same time, prominent PredictIt user James Altucher publicly questioned Phillips on the “random” nature of Trump tweet markets in an interview. Phillips defended the markets without mentioning the regulatory scrutiny they were inviting.¹²⁹

Eventually, the CFTC did indeed prohibit the tweet markets as part of a broader review of PredictIt’s compliance with its no-action letter. This review culminated in an agency order to shut down the site. Among the reasons cited by the DMO was that PredictIt’s “listing of contracts well outside of the scope of Letter 14-130 creates the false impression that DMO staff has determined that these contracts are acceptable.”¹³⁰

Kalshi’s strategy, meanwhile, was centered around overconfident assumptions that misread the political environment in Washington. Encouraged by their success in gaining approval to offer event contracts as a DCM,¹³¹ Kalshi’s leadership expressed confidence that the CFTC, even under a new Democratic presidential administration, would approve their application to offer election markets.

In their appeals to the CFTC, Kalshi drew attention to the fact that their competitors were allowed to operate similar markets without being registered as DCMs.¹³² Kalshi may have

128. Twitter post, 19 May 2020, 5:14 a.m., <https://twitter.com/pichougule/status/1262672924831625216>; Twitter post, 1 June 2020, 1:46 p.m., <https://twitter.com/pichougule/status/1267512917831962633?s=20>; Twitter post, 1 June 2020, 1:52 p.m., <https://twitter.com/pichougule/status/1267514286454251525?s=20>; Twitter post, 18 May 2020, 10:06 p.m., <https://twitter.com/pichougule/status/1262565225460641794?s=20>. For Chougule’s reflections on these warnings, see Keeney and Chougule, hosts, “How Predictit Got Knifed.” For background on Chougule’s involvement in political betting, see Chougule, *How to Make Money from Political Predictions: A Guide to Generating High, Steady Returns on PredictIt*, 2016, <https://a.co/d/1t7YYQm>; Crawley, host, “How to Trade Prediction Markets and Fade Political Hype”

129. “How to Supplement your Income with Money Betting with PredictIt.Org Co-Founder John Phillips”

130. Letter from McGonagle to Hyland, 2 March 2023

131. Harry Stebbings (host), “Kalshi CEO Tarek Mansour: How to Build Moats Against Incumbents; How to Hire Engineers,” 20VC (podcast), 8:59-9:57, <https://youtu.be/h7IUgHnOb28?t=539>

132. See for example Eli Mishory to Secretary of the Commission, Office of the Secretariat, CFTC, 19 July 2022, <https://www.cftc.gov/sites/default/files/filings/ptc/22/08/ptc082422kexdcm001.pdf>:

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calculated that they would gain first mover advantage as a DCM in a growing election market space¹³³ once the CFTC approved their application and their competitors' business models were scrutinized by regulators. Instead, Kalshi's strategy not only failed to win approval for the company in its bid to offer election markets, it pushed the CFTC to act more urgently and aggressively against a status quo in which Polymarket and PredictIt were offering political lines of questionable legality.

Kalshi's failure to address forthrightly its role in the CFTC's actions against Polymarket and PredictIt has undermined not only its standing in the political betting community, but also its arguments to regulators.¹³⁴ In the 2022 CFTC comments period, at least six comments raised concerns about Kalshi's lobbying regarding its competitors and cited this as a rationale for the CFTC to deny Kalshi's election contracts while the agency was revoking PredictIt's no-action letter.¹³⁵

"Contracts on political control of Congress available to US participants have been trading for nearly a decade. Since 2014, a similar contract has been available for trading on an unregistered trading venue that purports to operate under a No-Action Letter that was issued by the Division of Market Oversight in 2014 and granted relief to operate without complying with a number of aspects of the Commodity Exchange Act and Commission Regulations."

133. On Kalshi's competition, see Graubard and Eaddy, hosts, "Jason Trost, Smarkets Founder and CEO"

134. Alexander, "The Passing of PredictIt," Astral Codex Ten, 15 August 2022, <https://astralcodexten.substack.com/p/mantic-monday-81522>; Christopher Brunet, "Kalshi Murders PredictIt," *Karlstack Substack*. 7 August 2022. <https://www.karlstack.com/p/a-textbook-case-of-regulatory-capture>; Chougule, host, "Another CFTC Review of Kalshi's Election Markets"; Chougule, host, "CFTC Makes Its Case Against PredictIt"; Bennett Conlin, "Did Kalshi Kill PredictIt? Friday's Decision On Election Wagering Will Be Revealing," *USBets*, 26 October 2022, <https://www.usbets.com/did-kalshi-kill-predictit/>; Keeney and Chougule, hosts, "How PredictIt Got Knifed"; Keeney and Chougule, hosts, "Yikes! Trump (& PredictIt) Raided By the Feds"; Nuño Sempere, "Forecasting Newsletter: August 2022," *Forecasting Substack*. 10 September 2022. <https://forecasting.substack.com/p/forecasting-newsletter-august-2022>; Twitter post, 5 August 2022, 12:05 AM, <https://twitter.com/mansour-tarek/status/1555404658541305856?s=20>. Although we were in close touch with the Kalshi team throughout the course of our study, Kalshi did not respond to our request for comment on the role of the company and its lobbyists and lawyers in the CFTC's enforcement action against Polymarket. Kalshi has likewise consistently refused to respond to questions on these issues from journalists.

135. Sarah Abhishek, Comment for Industry Filing 22-002, CFTC, Comment No. 69607, 29 August 2022, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69607&SearchText=>; Bryce, Comment for Industry Filing 22-002, CFTC, Comment No: 69611, 30 August 2022, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69611&SearchText=>; Peter Henderson,

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Of the many factors that help explain why companies have mismanaged the regulatory challenge, one is particularly noteworthy. Executives at the major companies have placed inordinate confidence in Washington-based lawyers and lobbyists.¹³⁶ While we are not entirely privy to the counsel they have received, we believe that the lawyers and lobbyists they retained sold these companies on the idea that they had sway with members of Congress and regulators, that their arguments would be well-received in the current political climate, and that a low-profile, secretive approach would prove the most prudent course of action.¹³⁷

Kalshi's lawyers and lobbyists¹³⁸ facilitated meetings with members of Congress and the CFTC. Between late 2021 and August 2022 alone, Kalshi had some 36 meetings with CFTC commissioners and staff.¹³⁹ However, these meetings not only failed to convince

Comment for Industry Filing 22-002, CFTC, Comment No: 69605, 29 August 2022, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69605&SearchText=>; Trevor Kelton, Comment for Industry Filing 22-002, CFTC, Comment No: 69630, 31 August 2022, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69630&SearchText=>; Alan Phillips, Comment for Industry Filing 22-002, CFTC, Comment No: 69598, 29 August 2022, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69598&SearchText=>; Nathan Prime, Comment for Industry Filing 22-002, CFTC, Comment No: 69599, 29 August 2022, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=69599&SearchText=>

136. For discussion on the companies' reliance on lawyers and lobbyists, see Chougule, "7 Thoughts on the CFTC's Polymarket Settlement," *Star Spangled Gamblers*, 3 January 2022, <https://starspangledgamblers.com/2022/01/03/polymarket-cftc-7/>; Chougule, host, "Another CFTC Review of Kalshi's Election Markets; Keeney and Chougule, hosts, "PredictIt CEO: We're Not Quitting"; Keeney and Chougule, hosts, "How PredictIt Got Knifed"; Keeney and Chougule, hosts, "Yikes! Trump (& PredictIt) Raided By the Feds"; Stebbings (host), "Kalshi CEO Tarek Mansour"

137. See for example, Conlin, "Did Kalshi Kill PredictIt? Friday's Decision On Election Wagering Will Be Revealing"; "Gambling on Politics: An Inside Look at the Issue That's Driving the CFTC Crazy," Capitol Account, 20 October 2022, <https://www.capitolaccountdc.com/p/gambling-on-politics-an-inside-look>; Keeney and Chougule, hosts, "PredictIt CEO: We're Not Quitting"; Vaughan and Bain, "A New Prediction Market Lets Investors Bet Big on Almost Anything, 26 May 2022, <https://www.bloomberg.com/news/features/2022-05-26/kalshi-s-stock-market-of-the-world-let-s-you-bet-on-anything>.

138. To date, Kalshi has spent at least \$290,000 on lobbying expenditures. "Client Profile: Kalshi Inc," Open Secrets, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2023&id=D000098069>

139. CFTC, "Dissenting Statement of Commissioner Caroline D. Pham Regarding the Review and Stay of KalshiEX LLC's Political Event Contracts"

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the agency, they may have contributed to a blowback by the Commission against the political prediction market industry. In a meeting on August 1, 2022 about the Commission's decision to shut down PredictIt, Behnam told Phillips that he's "tired of getting pressure from others who want to do what you do."¹⁴⁰

While failing to achieve their regulatory goals, reliance on these insiders has saddled the political betting industry with allegations of cronyism. These perceptions are fueled by the fact that many of the lawyers and lobbyists for political prediction market companies previously worked in senior roles at the CFTC.¹⁴¹ At a time when CFTC commissioners are facing criticisms that the agency is too indulgent of industry interests, acquiescing to the requests of Kalshi, Polymarket, and PredictIt—all of which retained former CFTC officials—risks inviting further allegations of regulatory capture.

The advice these companies received from their legal and political advisors likely played to the instincts of executives who were prone to misjudging the regulatory landscape and

140. Terris, "This site bet big on political gambling. Regulators want it shut down."

141. See, for example, Abhishek, Comment for Industry Filing 22-002; Brunet, "Kalshi Murders PredictIt"; Bryce, Comment for Industry Filing 22-002; Henderson, Comment for Industry Filing 22-002; David L, Comment for Industry Filing 22-002, CFTC, Comment No: 70744, 29 September 2022, <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=70744&SearchText=>. The former CFTC officials include Kalshi Regulatory Strategy lead Jeff Bandman, Kalshi outside counsel Daniel Davis and Jonathan Marcus, Kalshi lobbyist De'Ana Dow, Kalshi Chief Regulatory Office and General Counsel Mishory, Kalshi board member Quintenz, PredictIt adviser Richard Shilts, Polymarket advisory board chairman Christopher Giancarlo, and Polymarket counsel James McDonald. See Letter from Davis, Katten, to Mishory, 31 May 2022, <https://www.cftc.gov/sites/default/files/filings/documents/2022/orgkexkalshiexhibitsff1221102.pdf>; Letter from Marcus, Reed Smith, to Sebastian Schott, Acting Deputy Director, Product Review Branch Division of Market Oversight Commodity Futures Trading Commission, 25 May 2022, <https://www.cftc.gov/sites/default/files/filings/documents/2022/orgkexkalshiexhibitsff1221102.pdf>; Kalshi, "Former CFTC Commissioner Brian Quintenz Joins Our Board," Kalshi Learn, 16 November 2021; Sridhar Natarajan, "Crypto Betting Service Polymarket Taps Ex-CFTC Head as Chair After Agency Probe," *Bloomberg*, 19 May 2022, <https://www.bloomberg.com/news/articles/2022-05-19/polymarket-names-cryptodad-board-chair-months-after-cftc-probe#xj4y7vzkg>; Twitter thread, 4 January 2022, 9:17 AM, <https://twitter.com/TradeandMoney/status/1478370047735341056?s=20>; Twitter thread, 19 May 2022, 4:25 PM, https://twitter.com/shayne_coplan/status/1527384974239748097?s=20.

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who showed little interest in leading grassroots advocacy campaigns on behalf of political betting. CFTC commissioners, lawyers, and staff, as an example, made frequent public appearances in forums in which they were available for questions and conversation. These events proved to be among the most insightful sources of information during our study. They provided opportunities for candid, off-the-record exchanges with those close to the decision-making process as well as with those in the policy community and in the public with an interest in the topic. Yet representatives of the companies rarely attended these events. Based on our conversations with executives and lawyers in the space, our impression is that they were too quick to assume that CFTC officials were not engaging transparently and in good faith in their public appearances, and that engagement in these forums was pointless in light of the inside tracks they believed they had.

At the same time, the companies have failed to invest sufficiently in their advocates in the prediction market community. They have provided relatively little support to traders, content creators, and analysts in the prediction market community, even though they have broken news with limited resources, their analyses have proven prophetic, and their advocacy has drawn favorable attention in national media.¹⁴² Company executives are rarely transparent about their regulatory situation. While asking users for information and support, they tend to treat user feedback on regulatory matters as more of a chore to manage than an invaluable resource. What could have been a hand-in-glove partnership between companies and stakeholders in the prediction market space all too often has turned into an acrimonious relationship. Resentments and distrust aired on social media and Discord groups have spilled into the inboxes of reporters and regulators. Company executives have seethed when their users publicly criticized them. User complaints, while sometimes impolitic, have proved prescient in the sense that they foresaw how prediction market companies' ill-fated regulatory approaches would backfire against the entire community.

While companies in the space are taking some encouraging steps to engage the prediction

142. For coverage of the prediction market community, see for example Golden, "The Art of the Pump"; Courtney Rubin, "Inside the wild subculture of traders who bet on elections," *Fast Company*, 7 November 2022, <https://www.fastcompany.com/90796054/inside-the-wild-subculture-of-traders-who-bet-on-elections>; Terris, "This site bet big on political gambling."

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market community, the aforementioned dynamics generally have not changed.

Pathways to Liberalization Before the 2024 Elections

Regardless of how regulations evolve in the space, retail traders will have opportunities of varying legal risk to place bets on political outcomes. Offshore, online betting sites and sportsbooks are increasingly offering political lines that are accessible to Americans.¹⁴³ If political betting continues to be one of the most rapidly growing categories, offshore sites and sportsbooks may emerge as the largest destination for 2024 election bets.

From a public interest perspective, it would be an unfortunate development if retail traders gravitate to offshore books. The business models and incentives of offshore sites make it difficult for them to serve the public interest in ways comparable to prediction markets. Many bookmakers move aggressively to restrict or prohibit gamblers from taking positions on political lines if they appear to have an edge in the market. In this respect, anti-money-laundering, know-your-customer, and other regulations work to the benefit of bookmakers. This is because these regulations give bookmakers the ability to deter traders with a perceived edge from using their sites by burdening them with onerous, intrusive requests to verify their income, identity, and other information. While there are offshore books that are committed to political betting and take high volumes for their political lines such as Star Sports and BetOnline, the tradeoff is often big margins and prices that are considerably different from the ‘crowd wisdom’ in prediction markets. The transparency, liquidity, and community that allow prediction markets to facilitate price discovery, hedging, and other public interest benefits are generally lacking with offshore books.¹⁴⁴

The question facing regulators is not whether Americans will have the ability to bet on

143. Chris Blain, “Political Betting Online: Odds, Elections and Events,” 9 November 2021, <https://www.thesportsgeek.com/political-betting/>

144. For a discussion of the tradeoffs between political lines in sportsbooks and political prediction markets, see Chougule, host, “Is DeSantis Definitely Running for President?”

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politics, but rather, whether prediction markets will be the main outlet for this activity. Liberalization of regulations on political prediction markets before the 2024 elections will likely require either an intervention from Congress or the courts, or unprecedented reforms across state legislatures.

Detailed below are pathways for how this could occur.

Lawsuits

There are several scenarios in which the courts could intervene to liberalize regulations on political prediction markets.

Plaintiffs associated with PredictIt are suing the CFTC, alleging that the Commission's decision to withdraw PredictIt's no-action letter violates the Administrative Procedure Act. Plaintiffs are asking the courts to allow the site to "resolve in an orderly manner" its existing contracts, such as its 2024 presidential election markets. The Fifth Circuit Court of Appeals provided PredictIt with an injunction, allowing the site to continue operating while the appeals process plays out.¹⁴⁵ In February 2023, the Fifth Circuit convened a hearing to assess the case on the merits.¹⁴⁶ Victoria University and Aristotle have requested no-action relief to offer new markets with higher limits. Meanwhile, the CFTC has revoked its 2022 letter that vacated PredictIt's no-action letter. In doing so, the agency filed a motion to render the injunction moot and have the appeal by plaintiffs associated with PredictIt dismissed.¹⁴⁷ On May 1, the Fifth Circuit denied the motion and clarified that the CFTC is enjoined from "closing the PredictIt Market or otherwise prohibiting

145. Bittenbender, "PredictIt Gets Reprieve, for Now, as February 15 Liquidation Deadline Halted," Casino.org, 26 January 2023, <https://www.casino.org/news/predictit-gets-reprieve-for-now-as-feb-15-liquidation-deadline-halted/>

146. Clarke v. CFTR, 22-51124 (5th Cir. 2023), https://www.ca5.uscourts.gov/OralArgRecordings/22/22-51124_2-8-2023.mp3

147. Bittenbender, "CFTC PredictIt Claims Focus on Aristotle-Victoria U. Relationship," Casino.org, 6 March 2023, <https://www.casino.org/news/cftcs-predictit-claims-focus-on-relationship-between-aristotle-and-new-zealand-university/>; Bittenbender, "CFTC Says PredictIt Founder Will Get Fair

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or deterring the trading of Market contracts until 60 days after a final judgment in this matter.”¹⁴⁸ On July 21, the Fifth Circuit ruled that the “CFTC’s rescission of the no-action letter was likely arbitrary” and remanded for the district court to enter a preliminary injunction for PredictIt while considering the case.¹⁴⁹

Although the outcome of the case is uncertain as of this writing, the Fifth Circuit’s order has had important consequences for political prediction markets. PredictIt is adding new names to its contracts on the Republican and Democratic nominees for president in 2024 and now seems to have permission to roll out new markets. The Fifth Circuit’s order may also be deterring the CFTC from a confrontational approach with Kalshi that could lead to litigation. This is because, as Pham notes in her recent dissent, the Fifth Circuit’s order “may prevent the Commission from suspending or prohibiting the listing or trading” of Kalshi’s certified congressional control contracts because PredictIt lists the same contracts.¹⁵⁰

If administrative appeals do not succeed in the courts, PredictIt and its market service provider could consider constitutional challenges. Plaintiffs could argue that political prediction markets constitute protected expression under the First Amendment. This argument has been advanced by legal scholars dating back at least to 2008¹⁵¹ and, argu-

Chance to Refute Allegations Against Exchange,” Casino.org, 24 March 2023, <https://www.casino.org/news/cftc-says-predictit-founder-will-get-fair-opportunity-to-refute-allegations-against-exchange/>; Bittenbender, “CFTC Takes New Direction in Attempt to Shut Down PredictIt,” Casino.org, 3 March 2023, <https://www.casino.org/news/cftc-takes-new-direction-in-attempt-to-shut-down-predictit/>; Bittenbender, “PredictIt Founder Gets More Time to Respond to CFTC Claims as Lawsuit Continues”; Chougule, host, “How to Bet the Trump Indictments + Julie Su’s Confirmation Problems”; Chougule, host, “CFTC Makes Its Case Against PredictIt”; Letter from McGonagle to Hyland, 2 March 2023.

148. Clarke v. CFTR, 22-51124 (5th Cir. 2023), Unpublished Order, 1 May 2023, <https://az620379.vo.msecnd.net/static/files/docs/ecf879d1-e837-4d16-8bf8-492f842c8db8.pdf>

149. Clarke v. CFTR, 22-51124 (5th Cir. 2023), Unpublished Order, 21 June 2023, <https://www.ca5.uscourts.gov/opinions/pub/22/22-51124-CV0.pdf>

150. “Dissenting Statement of Commissioner Caroline D. Pham on Political Event Contracts”

151. Miriam Cherry and Robert L. Rogers. 2008. “Prediction Markets and the First Amendment.” University of Illinois Law Review 3.

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ably, received support in the Supreme Court's recent decision in *Citizens United*, which extended free speech protections to political campaign contributions.¹⁵²

A decision by the CFTC on Kalshi's congressional contracts could also prompt litigation. If the CFTC denies its application, a lawsuit by Kalshi would likely contend, among other things, that the CFTC ruled incorrectly in its Nadex ruling.¹⁵³ If, on the other hand, the CFTC approves Kalshi's contracts, consumer advocacy group Better Markets would contemplate a lawsuit. A lawsuit by Better Markets would likely challenge the hedging and price discovery value of the contracts, claim that they are illegal gaming, and argue that they threaten democracy.¹⁵⁴

An outcome of these lawsuits could be that the courts limit the CFTC's jurisdiction over political event contracts and create a roadmap for how companies can offer election contracts.

While the issue merits further legal analysis, our research indicates that, in the current political environment, regulators would pursue ways to restrict these markets regardless of how the courts rule on the CFTC's powers. This is especially true if, as a consequence of these legal challenges, election markets fall under the jurisdictions of even more heavy-handed regulators than the CFTC.¹⁵⁵

152. Nico Perrino, host, "Eugene Volokh and new frontiers in the First Amendment," So to Speak: The Free Speech Podcast (podcast), 18 May 2017, <https://www.thefire.org/news/so-speak-podcast-eugene-volokh-and-new-frontiers-first-amendment>; Sia, Comment for Industry Filing 22-002

153. Harty, "Political betting"; Paul Kiernan, "Betting on Elections Could Return to U.S. in Time for Midterms, if Regulators Approve," *Wall Street Journal*, 26 October 2022, <https://www.wsj.com/articles/regulators-weigh-whether-to-allow-betting-on-midterms-11666782001>; "Republican Congressional Takeover May Spur Biden's Regulators to Move Even Faster," *Capitol Account*, 7 November 2022, <https://www.capitolaccountdc.com/p/republican-congressional-takeover>

154. Harty, "Political betting"

155. On the CFTC's jurisdiction over event contracts, see CFTC, Concept Release on the Appropriate Regulatory Treatment of Event Contracts," 73 Fed. Reg. 25,669 (2008), <http://www.cftc.gov/law-and-regulation/federalregister/proposedrules/2008/e8-9981.html>; Federal Register Comment File: 08-004, <https://www.cftc.gov/LawRegulation/PublicComments/08-004.html>; Letter from Erik Sirri, Division of Trading and Markets, Securities and Exchange Commission to David Stawick, Secretary,

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CFTC Review

In January 2023, the Office of Information and Regulatory Affairs released the Fall 2022 Unified Agenda of Regulatory and Deregulatory actions. Among the contributions related to the CFTC is a notice that the CFTC staff “expects to recommend that the Commission propose amendments on the regulation of event contracts under Regulation 40.11.”¹⁵⁶ In the context of the Unified Agenda’s relation to event contracts, Behnam publicly announced that the agency would “tackle this issue and get a little more prescriptive in terms of clarity about what contracts can be listed and what contracts can’t be listed.”¹⁵⁷

The contracts Kalshi self-certified in June 2023 have meaningful differences from the ones it proposed in 2022. The contracts have different position limits for individuals, entities, and eligible contract participants, and permit higher limits for those with a “demonstrated established economic hedging need.” Traders would only be permitted to purchase these contracts in multiples of 5,000 at a time. Nine categories of political insiders are prohibited from trading, including pollsters and Congressional and campaign staff.¹⁵⁸ According to Mansour, the “analysis and framework” of its revised Congressional contracts are informed by the Commission’s “feedback” and its “willingness to engage on what are perceived to be difficult issues,” as well as the “valuable information that the public provided during the comment period.”¹⁵⁹

CFTC, 3 September 2008, <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/frcomment/08-004c028.pdf>; Sullivan & Cromwell LLP, “Event Contract Markets,” 9 May 2008

156. <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=3038-AF14>

157. Brummer, “DC Fintech Week 2022,” 3:23:05-3:23:17

158. Lydia Beyoud, “Hedge Funds Could Bet \$100 Million on US Election in Kalshi Plan,” *Bloomberg*, 16 June 2023, <https://www.bloomberg.com/news/articles/2023-06-16/hedge-funds-could-bet-100-million-on-us-election-in-kalshi-plan>; Bransfield, “CFTC Kalshi Cheat Sheet”; Bransfield, Comment for Industry Filing 23-01, Comment No: 71115, 23 June 2023, <https://comments.cftc.gov/Public-Comments/ViewComment.aspx?id=71115&SearchText=>; Chougule, host, “Another CFTC Review of Kalshi’s Election Markets”; Harty, “Kalshi makes new play for big investors to wager on U.S. elections”; Letter from Sottile to Secretary of the Commission.

159. Beyoud, “Hedge Funds Could Bet \$100 Million on US Election in Kalshi Plan”; Harty, “Kalshi makes new play for big investors to wager on U.S. elections”

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How the CFTC's review will impact the regulatory landscape remains unclear as of this writing. On the one hand, CFTC staff appear to be receptive to engagement on the issue. CFTC staff have proposed the idea of convening public roundtables about election event contracts, reportedly after being influenced by the advocacy campaigns of retail traders and others who weighed in on Kalshi's behalf.¹⁶⁰ Consistent with these reports, Behnam stated in a May 2023 podcast that the Commission "has to dig in and get stakeholder input" on political event contracts.¹⁶¹ Some of the 24 questions the CFTC has put forward for public comment have not been raised in previous comment periods and speak to genuine dilemmas weighing on the Commissioners and staff. Examples include questions related to the enforceability of position limits, price forming information in election contracts, and the Commission's role in cases of suspected market manipulation.¹⁶² The current 90-day review may mark a step forward in a path that leads to a rulemaking process on event contracts.

On the other hand, if the current CFTC leadership's actions to date are any indication, the agency's willingness to deliberate on the issue is little guarantee that it will ultimately be disposed toward political event contracts or inclined to spend political capital to ease regulations in this space.¹⁶³ In her dissent, Mersinger raises the possibility that the actual purpose of the 90-day review "may be simply to give those opposed to the contracts a second chance to make their case" and "to suggest additional grounds of attack for commenters opposed to the contracts."¹⁶⁴ Mersinger also notes that the review is effectively a

160. "CFTC Looks to Soften the Blow From Its Coming Rejection of Political Betting," *Capitol Account*, 31 October 2022, <https://www.capitolaccountdc.com/p/cftc-looks-to-soften-the-blow-from>.

161. Weisenthal and Alloway, hosts, "CFTC Chair Rostin Behnam on the Fight to Regulate Crypto"

162. Question on the KalshiEx, LLC Congressional Control Contracts, available at CFTC Release Number 8728-23

163. For further discussion on the regulation of political event contracts by the CFTC, see Chougule, host, "How to Bet the Trump Indictments + Julie Su's Confirmation Problems"; Chougule, host, "CFTC Makes Its Case Against PredictIt," Chougule, host, "Did Kalshi Kill PredictIt and Polymarket?"; Chougule, host, "PredictIt Survives for Now and Brian Golden's Perfect Midterm Picks," *Star Spangled Gamblers* (podcast), 1 February 2023, <https://starspangledgamblers.com/2023/02/01/predictit-survives-for-now-and-brian-goldens-perfect-midterm-picks/>

164. "Dissenting Statement of Commissioner Summer K. Mersinger Regarding Commencement of 90-Day Review Regarding Certified Derivatives Contracts with Respect to Political Control of the U.S. Senate and House of Representatives"

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substitute from a rulemaking process that would “build a foundation for evaluating event contracts.”¹⁶⁵ In Mersinger’s view, the “unmistakable take-away for DCMS” in the absence of a rulemaking process, “is not to expend resources developing innovative event contracts because the Commission may randomly subject them to a public interest analysis without providing any certainty as to the definitions and standards it will apply in doing so.”¹⁶⁶

Congress

Congress could pass legislation clarifying its position on prediction markets. The most likely opportunity for Congress to act will be in 2023 as part of its deliberations on digital asset regulation. A more permanent, though highly improbable, legislative solution would involve repeals of pertinent aspects of the Federal Wire Act, Unlawful Internet Gaming Enforcement Act, Dodd-Frank Act, and Commodity Exchange Act.

Particularly in light of the FTX fallout, we see little incentive for members of Congress to complicate legislation on digital asset regulation and other pressing issues for the sake of a contentious debate over political betting markets. These markets generate a relatively miniscule amount of economic activity, campaign contributions, and lobbying pressure when compared to other industries. Kalshi appears not to be making a strong lobbying push in this respect, as it was previously considering, and the grassroots activism that currently exists on behalf of prediction markets is likely insufficient to overcome inertia in Congress.

Insofar as there is appetite on Capitol Hill to act on this issue in the new Congress, we believe that the initiative would need to come from the House and Senate Agriculture Committees as well as from Massachusetts Senator Elizabeth Warren given her clout in the Biden administration and the Democratic Party on related issues. Kalshi’s advocacy as well as the comments that were submitted on behalf of its proposed contracts appear

165. *Ibid*

166. *Ibid*

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to have overcome some doubts among Agriculture Committee members and staff about the wisdom of approving congressional control markets. The possibility, however, that Senator Warren will publicly denounce political event contracts is among the factors that creates political risk around any effort to advocate for liberalization of the space. The extent to which the Biden administration has been influenced by Senator Warren and her office on issues related to financial regulation, consumer protection, and executive branch appointments suggests that her position on political event contracts could prove consequential during this presidency.¹⁶⁷ Short of a legislative fix, members of the Agriculture committees and other influential members of Congress could pressure the CFTC to liberalize regulations on political event contracts through the leverage they enjoy via their oversight, appropriations, and confirmation powers.

The States

Initiatives at the state level could introduce political betting within certain areas of the country. This effort would require legislative action to revisit laws and norms against election betting, which, in some cases, date back to the 19th century. It would also require a baseline level of support from important political actors such as state attorneys general, secretaries of state, gaming boards, and lottery commissions.

Recent attempts to offer election betting in West Virginia provides a case study on the challenges at the state level. In 2020, West Virginia was poised to become the first state to allow betting on U.S. elections when the state's lottery commission allowed FanDuel to post odds on the presidential election. Fifteen minutes later, the West Virginia Lottery

167. On Warren's influence in the Biden administration, see Perry Bacon, "Joe Biden is in the Oval Office. So are Elizabeth Warren's ideas." *The Washington Post*, 29 December 2022, <https://www.washingtonpost.com/opinions/2022/12/29/elizabeth-warren-ideas-biden-presidency/>; Jess Bidgood, "Elizabeth Warren's influence in Washington rises as allies take Biden administration posts," *Boston Globe*, 6 February 2021; Kara Voght, "How Elizabeth Warren's Acolytes Infiltrated Biden-world," *Mother Jones*, 11 March 2021, <https://www.motherjones.com/politics/2021/03/how-elizabeth-warrens-acolytes-infiltrated-bidenworld/>; Zachary Warmbrodt, "'Most influential voice': Warren's network spreads throughout Biden administration," *Politico*, 15 March 2021, <https://www.politico.com/news/2021/03/15/elizabeth-warren-aides-biden-administration-475653>

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suspended its approval. Realizing that reports of legalized election betting were more than a “joke”, Governor Jim Justice lambasted the decision as “humorous” but “absolutely ridiculous.” Lingering hopes were quashed when the Secretary of State issued a statement that betting on presidential elections would violate state law dating back to 1868. “Gambling on the outcome of an election,” the statement added, “has no place in our American democracy. Not today. Not tomorrow. Not ever. This is a terrible idea.”¹⁶⁸ Rather than challenging state officials, the West Virginia Lottery Director apologized for the “mistake,” asserting that he lacked the “authority” to approve the betting line.¹⁶⁹

Non-Enforcement

Although incumbents in the political prediction market space have been stymied by regulators, entrepreneurs are innovating faster than law enforcement and tax bureaucracies can respond. They are seeking new jurisdictions, not only offshore, but in areas that present novel legal questions such as internet sites with a physical presence on Indian reservations.¹⁷⁰ They are facilitating political bets through creative legal structures, such as the over-the-counter swaps offered by the American Civics Exchange. Meanwhile, the increasing cohesiveness of the political betting community allows traders to place side bets with each other with ease. These bets are often publicized on social media.¹⁷¹ The govern-

168. “‘Are You Kidding Me?’: Presidential Betting Gets Axed Fast In West Virginia Katherine Sayre,” *CBS News Pittsburgh*, 8 April 2020, <https://www.cbsnews.com/pittsburgh/news/presidential-betting-gets-axed-fast-in-west-virginia/>; “West Virginia Approves, Then Disapproves, Betting on Elections,” *Wall Street Journal*, 8 April 2020, <https://www.wsj.com/articles/west-virginia-approves-then-disapproves-betting-on-elections-11586384497>

169. David Li, “West Virginia became the first state to offer bets on politics - then quickly retreated,” *NBC News*, 8 April 2020, <https://www.nbcnews.com/news/us-news/west-virginia-became-first-state-offer-bets-politics-then-quickly-n1179391>

170. An intriguing possibility is that a prediction market could be created in the Catawba Digital Economic Zone, which would raise interesting questions about the jurisdiction of the CFTC. See Tom W. Bell, *The Catawba Digital Economic Zone: A Native American SEZ* (August 21, 2022). 3 J. Special Jurisdictions 25 (2022), Available at SSRN: <https://ssrn.com/abstract=4283973>

171. Chougule, host, “DeSantis’s Weirdness and Why He’s Overpriced,” *Star Spangled Gamblers* (podcast), 10 June 2023, <https://starspangledgamblers.com/2023/06/10/desantiss-weirdness-and-why-hes-overpriced/>; Chougule, host, “Trump Nicknames for DeSantis,” *Star Spangled Gamblers* (podcast), 30 June 2023, <https://starspangledgamblers.libsyn.com/trump-nicknames-for-desantis>

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ment has shown little inclination to crack down against retail traders who are using VPNs to trade in offshore political prediction markets like Polymarket and Insight Prediction. Political prediction markets with a diversity of contracts could become an accepted fact of life, notwithstanding formal legal regimes, if governments prove incapable or unwilling to take enforcement actions in this space.¹⁷²

Recommendations on the Long Game

Liberalizing regulations on political prediction markets in the United States and creating regulatory certainty in the space, in all likelihood, will require a long, uncertain, and potentially expensive campaign. Achieving this goal by the 2026 midterm elections could be a reasonable target, but it also could take considerably longer depending on an array of factors.

Below are areas we suggest prioritizing for those who are committed to the challenge.

Contribute to CFTC Public Comment Periods

In the current regulatory framework, the CFTC is the agency best-situated to liberalize regulations on political prediction markets. Public comment periods commenced by the CFTC on event contracts, gaming, and related issues provide opportunities to deliver arguments on behalf of political betting markets directly to the most powerful regulators with jurisdiction over the issue. CFTC comment periods are the rare occasions on which senior officials in the U.S. government dedicate time and resources to engage on this issue, which is typically niche and rarely breaks into the news cycle. That the CFTC is staffed disproportionately by lawyers helps ensure that even long, complex comments are considered by government officials who have the training and inclination to engage complicated issues deliberately. The questions on which the CFTC seeks public comment are highly specific and indicative of the concerns weighing on regulators—concerns that,

172. Crawley, host, “How to Trade Prediction Markets and Fade Political Hype”

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otherwise, are often not publicized.

Even during periods when the CFTC leadership is inclined toward inaction, the process of submitting comments contributes to the long-term effort to liberalize regulations. Formulating responses to the CFTC's questions spurs dialogue and collaboration, which leads the political betting community to refine arguments and explore areas of both consensus and disagreement. The comments generate earned media. And in the absence of clear polling and other metrics, the quantity, quality, and sources of the comments are treated as a barometer of public sentiment on the issue.

The totality of public comments submitted to the CFTC on event contracts, notably in 2008 and 2022, are arguably among the most influential body of work that the political betting community has produced for the direct consumption of regulators. As seen by Mersinger's June 2023 dissent, the comments are already generating momentum for a rulemaking process that could legalize political event contracts with more regulatory certainty.

Pursue Freedom of Information Act (FOIA) Requests and Litigation

A small number of bureaucrats with limited democratic accountability play an outsized role in shaping regulation in this space. Recent history has shown that prediction market companies tend to try to influence them quietly and outside the public eye, even when this is not the most promising approach. In their correspondence to the CFTC, for example, attorneys for both Kalshi and Aristotle have requested FOIA confidential treatment.¹⁷³ Understanding the dynamics that are influencing regulation of this area will require the prediction market community to have greater insight into these deliberations. Previous FOIA requests have led to the release of the Iowa Electronic Markets no-action letters

173. Paul Architzel to Assistant Secretary of the CFTC for FOIA Matters, 29 July 2021, <https://www.cftc.gov/sites/default/files/filings/documents/2022/orgarstAppConfPetReg220223.pdf>; Keeney and Chougule, hosts, "How PredictIt Got Knifed"; Mishory to Assistant Secretary of the Commission for FOI, Privacy and Sunshine Acts Compliance, U.S. Commodity Futures Trading Commission, <https://www.cftc.gov/sites/default/files/filings/ptc/22/08/ptc082422kexdcm002.pdf>

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from the CFTC, Kalshi's DCM [application](#), and Victoria University's [correspondence](#) with the CFTC related to PredictIt.¹⁷⁴ Unredacted documents related to the CFTC decision-making process on PredictIt, Polymarket, and Kalshi would be particularly illuminating for today's debates. FOIA requests are a promising route to acquiring these documents, but meaningful disclosure could entail litigation.

Invest in New Prediction Market Platforms

To realize the public interest potential of political prediction markets, we believe that platforms will need to solve five main challenges:

- Manage regulation
- Build reliable technology with appealing products
- Keep fees low and competitive
- Offer meaningful lines with sufficient liquidity
- Cultivate community

No company, university, or non-profit in recent decades has achieved all five.

The suboptimal business decisions that PredictIt, Polymarket, and Kalshi have made, in our assessment, may have stemmed from the fact that they lacked competitive pressure in the market. Each company, in different ways, tried to gain first mover advantage among a small pool of competitors in an uncertain regulatory environment. Their strategies were understandable but proved imprudent. Greater competition will allow for more innovation in all respects, including in the management of political and legal risk. If the number of market participants with a diverse array of legal structures grows beyond a certain point, enforcement actions in the space will test the limits of regulator capabilities. Greater competition from platforms with different models may also, in the aggregate, help realize

174. CFTC, "Kalshi DCM Application"; CFTC, "Material Released Pursuant to FOIA Requests Which has Been, or is Likely to Be, the Subject of Future FOIA Requests," https://www.cftc.gov/foia/repfoia/foirf05-003_1.htm; CFTC, "Request for No-Action by Victoria University of Wellington," File Number: 21-00011, https://www.cftc.gov/FOI/foia_freqrequestinfo.html; CFTC, "Victoria University Communications," File Number: 19-00088, https://www.cftc.gov/FOI/foia_freqrequestinfo.html;

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public interest goals in ways that no individual platform can reasonably do so.¹⁷⁵

Support Content Creators

Considering the limited resources at their disposal, content creators in the political betting space have made remarkable gains in helping the community realize its own potential. They have organized the political betting community, broken news, shared information, generated earned media, filed lawsuits, and improved the quality of forecasts emerging from traders.¹⁷⁶ Even as political betting analysis breaks into the mainstream discourse, the day-to-day coverage content creators in the space provide is unlikely to be matched by those outside the community who are not wagering their own money, who are guided by myriad incentives, and who possess limited forecasting skills and relevant expertise. As of now, the most prominent media assets in the political prediction markets space have garnered loyal followings but have not grown enough to conduct a meaningful degree of field research, polling, or investigative journalism. This in turn has limited their revenues and political clout.

It would be worth exploring how to increase the number, quality, and reach of content creators in the political betting community. The community is a diverse ecosystem that includes traders, platform operators, researchers, and forecasters. There is ample opportunity to increase cohesiveness of the community and its ability to share and disseminate information.

175. On the potential fragmentation of political prediction markets, see Eaddy and Graubard, hosts, "Jason Trost, Smarkets Founder and CEO"

176. See for example Richard Hanania, "Why I'm Suing the Federal Government over PredictIt," *Richard Hanania's Newsletter. Substack*. 28 September 2022, <https://www.richardhanania.com/p/why-im-suing-the-federal-government>; Keendawg, "URGENT: Tell the CFTC Why Elections Matter," *Star Spangled Gamblers*, 29 August 2022, <https://starspangledgamblers.com/2022/08/29/urgent-tell-the-cftc-why-elections-matter> (Keeney, who was the editor of *Star Spangled Gamblers* in 2022, estimates that the *Star Spangled Gamblers* podcast and blog alone led to the submission of close to 1,000 comments to the CFTC through the Save PredictIt campaign.); Twitter post, 18 May 2023, 3:36 PM, <https://twitter.com/ManifoldMarkets/status/1659281738726555649?s=20>; vandemonian, "The Base Rate Times, news through prediction markets," *LessWrong*, 6 June 2023, <https://www.lesswrong.com/posts/DfQ3Ls45WnYuguqfc/the-base-rate-times-news-through-prediction-markets>.

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Sponsor Research on the Regulation of Prediction Markets

Although data from PredictIt has furthered academic research on political prediction markets,¹⁷⁷ the novel dilemmas associated with the regulation of political prediction markets remains an understudied area. Research and polling on key questions in this space would give the prediction market community greater insights and guidance on how to influence the political process.

Below is a research agenda we recommend prioritizing:

Public Opinion: Why has American public opinion remained resistant to the liberalization of political prediction markets even as legalized gaming is expanding in other areas? Why is betting on politics often regarded as unseemly? What are the similarities and differences in American public attitudes compared to those in other countries like the UK, which have more permissive regulatory regimes? What is the source of perceptions that political prediction markets impact the integrity of elections? Do concerns about political prediction markets differ meaningfully at the federal and state levels?

Legal and Regulatory Reform: What factors influence the ways Congress, the CFTC, and the states approach the issue of political prediction markets? What legal strategies stand the greatest chance of moving the debate forward? Is there a First Amendment or other constitutional challenge that stands a reasonable chance of inviting judicial intervention on behalf of political prediction markets? What can be done to ensure that individuals and movements friendly to political prediction markets are represented in key regulatory bodies? Are there regulatory reforms that would lend themselves to better regulation of prediction markets? Are there jurisdictions that should be explored as safe harbors for political prediction markets?

Economic Purpose: How can political prediction markets be used more widely for their

177. Letter from Nightingale and Barker to McGonagle, 6 April 2023; "Research Opportunities," PredictIt, <https://www.predictit.org/research>

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price discovery and hedging functions? What prevents traders and other market participants, even in highly liquid markets, from using political prediction markets to hedge risk? Can political prediction markets be designed so that political event contracts play more of a role in price-basing for commercial transactions? Can political prediction markets be created that clearly meet the CFTC's economic purpose test by enabling price discovery and hedging in the manner of a traditional derivatives market? To what extent is it inevitable that retail speculation comprises the overwhelming percentage of market activity in political prediction markets?

Prediction Market Community: Who trades in prediction markets? Who uses insights from these markets? Who researches them? What motivates these groups? Where do they organize? What impact have they had on the regulation of political prediction markets?

It is critical that these studies involve a broad array of researchers who can disseminate findings to stakeholders across the policy community. Cutting-edge research from the academic community has not fully penetrated the political discourse, which may account for why regulators still have a limited understanding of these markets' impact on the public interest. Part of the solution may involve partnerships between academics and think-tanks, advocacy groups, and content creators who are better situated than academics in shaping the political discourse.

Engage in Political Campaigns

The political prediction market space needs elected officials at the federal and state levels who believe in this cause enough to spend time, resources, and political capital on the issue without the promise of electoral benefits. A PAC and other vehicles would need to be established and funded to recruit like-minded candidates, brief them, and provide them with the support they need to get elected. Priority should be placed on electing a U.S. president and House and Senate Agriculture committee members who will appoint and confirm executive branch officials with a mandate to liberalize regulations on political betting.

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About the Authors

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Pratik Chougule is the Executive Director of the Coalition on Political Forecasting. He has been involved with political betting for more than twenty years as a trader, political analyst, and content creator. He is the host of *Star Spangled Gamblers*, a podcast focused on political betting. His commentary and analysis on political prediction markets has appeared in a variety of publications including *Forbes*, *The Washington Post*, and *Vice News*. Chougule was previously a consultant for Insight Prediction. He graduated Phi Beta Kappa from Brown University and holds a J.D. from Yale Law School. Chougule is an 'Oracle' on PredictIt, the highest echelon of trader on the site.

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