

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 KALSHIEX LLC,

4 Plaintiff,

5 vs.

6 COMMODITY FUTURES TRADING
7 COMMISSION,

8 Defendant.

Civil Action

No. 1:23-cv-03257-JMC

May 30, 2024

1:00 p.m.

Washington, D.C.

9 TRANSCRIPT OF THE MOTION HEARING
10 BEFORE THE HONORABLE JIA M. COBB
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

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Official Court Reporter

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P R O C E E D I N G S

1
2 MR. ROTH: Good afternoon, Your Honor. Jacob Roth
3 from Jones Day on behalf of Kalshi. And with me at counsel
4 table is Amanda Rice, Josh Sterling, John Henry Thompson and
5 Sam Lioi.

6 THE COURT: Good afternoon.

7 MS. STUKES: Good afternoon, Your Honor. My name is
8 Anne Stukes for the Commodity Futures Trading Commission. And
9 with me at counsel table is Raagnee Beri, Margaret Aisenbrey,
10 and Conor Daly.

11 THE COURT: Good afternoon, everyone. So we are here
12 on the parties' cross motions for summary judgment. I don't
13 typically have oral argument, although I thought this was a
14 case where argument would be helpful to me in resolving the
15 motions.

16 I don't know who's arguing for plaintiff. Is there a
17 time sensitivity in this case? I know there's not a PI that's
18 been filed, but I'm just trying to understand.

19 MR. ROTH: It was actually the first thing I was going
20 to say was thank you for hearing argument on motions. We
21 haven't asked for a preliminary injunction but there is time
22 some time sensitivity because the contracts are tied to the
23 November elections. So what we would like, ideally, is a
24 resolution that would allow, if needed, for appellate
25 intervention so that the contracts can be listed prior to that

1 the sense that they can't prohibit trading on a regulated
2 exchange because of preemption principles. But the way I
3 understand what they're arguing is that they say, well, buying
4 and selling those contracts sort of amounts to a betting on an
5 election because you're staking something of value on the
6 electoral outcome. If you did that outside the context of a
7 regulated exchange, then it would violate these state laws and
8 therefore the trading of the contract relates to unlawful
9 activity.

10 So a couple problems with that. Number one, unlike
11 our interpretation, it doesn't align with the three that follow
12 it, because the key move that they're making there is instead
13 of looking at the underlying event and whether it is related to
14 the enumerated activity, they're looking at the trading of the
15 contract and whether it's related to the underlying activity.
16 That is a, sort of just a different focus of the analysis, and
17 it makes 1 sort of stand out relative to 2, 3 and 4.

18 THE COURT: Can I ask you about that, because I think
19 that this defendant made this point -- the government made this
20 point. Where it says "agreements, contracts or transactions
21 involved," what work do you argue "transactions" is doing in
22 the statute as it relates to involve?

23 MR. ROTH: As I understand it, the agreement, contract
24 or transaction sort of triplet, it appears throughout the
25 statute. It's just the way they refer to these types of

1 instruments when they define it. So I don't think that they
2 have independent significance. I think they're just capturing
3 any different way you might structure the arraignment.

4 THE COURT: So you're not reading transactions to
5 refer to the act of trading the thing, it's another way to say
6 contract agreement; it is the contract, itself.

7 MR. ROTH: It's the instrument, and I think that
8 follows from the fact that this is how it's used throughout the
9 statute, the three together.

10 And just to be clear, we're not saying that you
11 couldn't have a statute that said transaction involving X,
12 where what it meant was the act of contracting, it involves
13 that activity. It's not that that's semantically impossible.
14 It's grammatically appropriate, it makes sense; it's just that
15 it doesn't line up with the way the statute works for 2, 3 and
16 4, and so it makes it just an unusual, sort of strange way of
17 speaking.

18 The hypothetical I was thinking about as I was
19 preparing, you could say, my lunch generally involves a
20 sandwich, a salad, a pastry or robust conversation with my work
21 colleagues. You could say that, and yes, it could involve
22 those things, but putting them together in that way is weird.
23 It's not the way people normally speak.

24 But I actually don't think that's the most problematic
25 aspect of the Commission's reading of the unlawful category. I

1 think the most serious problem with it and the one that really
2 is, I think, fatal is that it proves way too much, because as
3 the Commission observes elsewhere in the briefing, there are a
4 whole lot of states that prohibit betting on any contingent
5 event.

6 If we go to the second slide -- we've collected
7 them -- there's at least 29 that we've found that prohibit
8 staking something of value on an uncertain event or
9 contingency, and of course, that defines an event contract. It
10 would mean that every event contract falls within the scope of
11 Roman I and would involve unlawful activity, and that just
12 can't be right because it makes the other five enumerated
13 activities superfluous. And it defeats the whole purpose of
14 having enumerated activities in the first place because it
15 would allow the Commission to subject every event contract to
16 public interest scrutiny.

17 So every kind of interpretation tells us that's wrong,
18 and so does the statutory history, because sort of notably,
19 prior to 2000, that is how the statute worked. If we go to the
20 next slide, we have that language. They actually have to make
21 this public interest determination for every contract. That
22 was repealed in 2000, and then in 2010 Congress enacted this
23 more limit provision that singles out the categories. So I
24 think anything that covers the waterfront is necessarily an
25 erroneous interpretation. I think the Commission actually

1 admits that. They say on page 11 of their final reply brief
2 that, sure, you can't read any of these to cover everything,
3 that would not be tenable.

4 And so they try to explain why their interpretation
5 doesn't do that. And just to be candid, I don't really
6 understand what they're trying to do there. To me, if Kalshi's
7 contracts involve unlawful activity because some states
8 prohibit betting on elections, then all event contracts involve
9 unlawful activity because some states ban betting on contingent
10 events. So I think the bottom line on number 1 is our
11 interpretation is the only one that sort of makes sense in
12 context that gives this provision real work to do without
13 swallowing everything else.

14 THE COURT: Can you respond -- and apologies if it's
15 in your reply, the Commission gave an example of a circumstance
16 in which they would say a contract involved war without the
17 underlying event actually being about war. And I think the
18 example they gave is whether the Ukrainian military will
19 acquire certain munitions in 2024. Can you speak to that
20 example? They're saying, well, that would be, under their
21 broader reading, involve something that relates to war, but the
22 underlying event in the contract is not, itself, an act of war.

23 MR. ROTH: That may have been our example. I'm not
24 sure, because I think we agree with that. It may have been
25 theirs.

1 THE COURT: Maybe it was your example, sorry.

2 MR. ROTH: I'm not sure it's a point where the parties
3 disagree. I think it goes to the difference between "involve"
4 and "based on."

5 THE COURT: I think that was your example.

6 MR. ROTH: So "based on" would speak literally about
7 the underlying event. That's too narrow for this, this says
8 involve, so there's this broader scope. Our point is that the
9 broader scope is tethered around the event.

10 THE COURT: Okay.

11 MR. ROTH: So you're still looking at the event and
12 saying does the event relate to unlawful activity, does it
13 relate to war, does it relate to terrorism. So you can sort of
14 game it by circumventing -- by sort of making it technically
15 something that's just a proxy, it would capture this.

16 THE COURT: I just wanted you to flesh that out.
17 Okay.

18 MR. ROTH: Okay.

19 THE COURT: So when they say that you're reading or
20 using the word involved too narrowly, you would dispute that.
21 You're not disputing that involve means relate to -- all those
22 other dictionary definitions of involve. It's just relates to
23 the underlying event in the contract.

24 MR. ROTH: It's what has to involve. We don't
25 actually disagree on what involve means; we disagree on what

1 The law requires only that the Agency acted within a
2 zone of reasonableness. Here the CFTC reasonably considered
3 the relevant issues and reasonably explained its position and
4 no more was required under the APA. The APA gives the Agency
5 deference on its predictive judgments and on its public
6 interest determination.

7 Now, there are questions of statutory interpretation
8 in this case. And Your Honor finds herself maybe in the
9 unenviable position of having each party in this case tell you
10 the statute is unambiguous, that the plain meaning advocated by
11 each side supports each side.

12 I submit that the Commission has the better of the
13 argument on what the statute means and how it applies on
14 involve, gaming and unlawful under state law, that the Court's
15 review on the statutory interpretation questions is de novo.

16 I'll get into now the first of the four issues that
17 are before the Court that are briefed in the party's papers,
18 and that is the Commission's reading of the word "involve" to
19 have its ordinary meaning to relate to or affect, to relate
20 closely, to entail or to have as an essential feature a
21 consequence.

22 These are the ordinary dictionary definitions of the
23 term, and that is the definition that applies because the term
24 involved is the -- the term involve is not defined in the
25 statute. And so case law has held for a long time that when

1 contract could involve war but not involve an act of war have
2 to do, and I think both parties cite this kind of example,
3 will -- I hate to give these real world examples, will a
4 foreign body be able to use U.S. weapons on its enemy's soil,
5 something like that. That involves -- oh gosh, I don't want to
6 get too in the weeds -- will funding be allocated to a country
7 that's at war, that involves war.

8 THE COURT: I think they would say yes --

9 MS. STUKES: I actually don't think we're too off base
10 on that. I think the real dispute between the parties is what
11 are you looking at, what has to involve the enumerated
12 activities, and the real rub here is that the Commission
13 interprets the plain language of this statute to say if
14 transacting in the contracts, if the feature or purpose of
15 these contracts is one of the enumerated activities, gambling
16 is the one -- gaming, pardon me, is the one that comes to mind.
17 Is transacting in the contract, is that essential feature
18 gaming. And the Commission here said yes for gaming and for
19 unlawful under state law.

20 THE COURT: So what is your best argument for their
21 response that there are a lot of states, and they listed them
22 for me, that make any type of betting stakes on any contingent
23 event unlawful under state law such that that's what these
24 event contracts are? So every event contract should
25 theoretically -- if the transaction of the contract in and of

1 itself is what involve means and not the underlying activity at
2 issue in the contract, than just the mere transacting event
3 contracts would violate state law; how do you respond to that?

4 MS. STUKES: I want to say two things about that, and
5 I can jump to the discussion of how we analyzed unlawful under
6 state law. The Commission is not saying that involve in every
7 instance means anything other than its plain meaning. Let me
8 say that in a little more -- with a little better articulation.

9 Involve is a broad term. It's broad enough to cover
10 event contracts whose underlying is one of the enumerated
11 activities, and it's broad enough to cover an event contract
12 whose essential feature is one of the enumerated activities,
13 and here an essential feature of these contracts is betting or
14 wagering on elections.

15 THE COURT: But an essential feature of some other
16 contract could be betting or wagering on, fill in the blank.

17 MS. STUKES: Right. So your Honor's concern, I think,
18 is the plaintiff's argument: What do we do with this, what I
19 interpret as an extrapolation from what the Commission actually
20 said, to say, well, that would be absurd in another context
21 because other state laws say it's unlawful -- there are state
22 laws that say it's unlawful to wager on any contingent event.
23 And that would sweep in every event contract to a public
24 interest review.

25 THE COURT: Right.

1 MS. STUKES: So I'm just getting to my notes where I
2 have this.

3 THE COURT: Sure. Take your time.

4 MS. STUKES: The Commission had before it the question
5 of whether these contracts, which involve wagering on
6 elections, involve activity under state law. Here we have
7 numerous state laws that forbid wagering on elections, and that
8 was sufficient for the Commission to say state law forbids
9 wagering on elections. That's the essential feature of these
10 contracts, and we can stop there.

11 What the Commission didn't do is say state law forbids
12 or makes unlawful wagering on any contingent event. That was
13 not the basis of the Commission's reasoning, and even if you
14 can say if A is to B then C is to D, like some logical
15 extrapolation, that's not what the Commission did here. It
16 just said we see under state law that wagering on elections is
17 unlawful. And that's the essential feature of these contracts,
18 and that's enough. That's enough that we're in the zone of the
19 statute.

20 THE COURT: Right, but --

21 MS. STUKES: And it's not unreasonable -- I'm sorry,
22 I've interrupted Your Honor.

23 THE COURT: I just wanted to -- because right now I
24 think we're talking about what the meaning of the terms in the
25 statute are, and their argument, as I understand it, is that

1 the Commission's reading doesn't make sense; this is otherwise
2 unambiguous and they're applying this word in a way that kind
3 of means one thing in one subsection and another in another
4 subsection.

5 And what they're saying is elections is not on this
6 enumerated list and that's full stop, end of case. And you're
7 saying, well, no, it fits under the first category because
8 betting on or wagering on elections violates many state laws.

9 And their response is wagering on any contingent event
10 violates many state laws. And if that were the reading, if
11 that's how the statute was read, that would mean that every
12 event contract would be subject to this two-step review, which
13 was not the intent when the statute was amended to streamline
14 this process and not make the DCM have to make an initial
15 showing that the contract was in the public interest.

16 So I'm just speaking more about the unlawful under
17 state law. What does that mean? Does that mean that the act
18 of trading the contract is unlawful under state law, in which
19 case that would -- might relate to many contracts or all event
20 contracts, or does the underlying activity -- for example, I
21 think plaintiff gave an example whether or not some crime was
22 going to occur, whatever it is, some specific criminal
23 activity, where the subject of the contract relates to,
24 involves something that is unlawful.

25 So I just want to understand the difference -- your

1 response to that, that your reading would put every event
2 contract under this inquiry.

3 MS. STUKES: Respectfully, I don't believe that what
4 the Commission held in this order would subject every event
5 contract because what the Commission said is only that
6 examining these contracts, whose essential feature is to bet on
7 elections, that involves activity that many state laws
8 prohibit.

9 What the Commission did not say is these contracts
10 involve wagering on a contingent event and many state laws make
11 wagering on a contingent event unlawful. Therefore, it is.

12 THE COURT: Hypothetically, let's say I'm a plaintiff,
13 I'm a DCM, I want to post my event contract about whether or
14 not a hurricane will hit in Florida. And the Commission came
15 back and said this is against public interest and it also falls
16 under -- I'm doing this out of order. It falls under category
17 one because in Florida and elsewhere the state law prohibits
18 people from posting or making bets or wagering on contingent
19 events, and a hurricane is a contingent event and this contract
20 involves a wager on a contingent event, so we're not going to
21 allow it. Would that be allowed under this statute? Would
22 that work?

23 MS. STUKES: I think it would be an unusual reading of
24 the statute.

25 THE COURT: And why?

1 MS. STUKES: And it's because this statute sets forth
2 in broad terms the categories that are the subject of public
3 interest review, and none of those categories on their face
4 suggest that Congress intended to capture all event contracts.
5 And it --

6 THE COURT: Right, that's their point. I think that's
7 exactly what they're saying.

8 MS. STUKES: I think, actually, the parties agree. I
9 think where we're off is the Commission doesn't agree that
10 that's what it concluded in this case. It concluded that state
11 laws forbid wagering on elections, and that's an important
12 state interest that Kalshi is asking the Commission to
13 undermine by allowing these contracts to trade on a
14 federally-registered exchange -- a federally-regulated
15 exchange.

16 To be clear, the Commission's order didn't find
17 that -- like if these contracts were allowed, it didn't find
18 that purchasing one of Kalshi's congressional control contracts
19 would be illegal in jurisdictions that prohibit betting on
20 elections by statute or common law.

21 Kalshi argues that the Commission was arbitrary and
22 capricious or fell afoul of the law because it can't be illegal
23 under state law to offer the contracts on a market regulated by
24 the CFTC because Fransha (ph.). But that, as the Commission
25 held in its order, misses the point.

1 The CEA is a federal statutory regime for the
2 regulation of commodities derivatives markets, and it does
3 preempt state laws that prohibit the trading of commodities
4 contracts. No state law can ban a contract that's lawfully
5 listed on a CFTC-regulated market. But what Kalshi asks the
6 Commission to do here and what Kalshi is asking the Court to do
7 is to order the CFTC to permit these contracts, when Kalshi's
8 own website cites news articles that characterize them
9 repeatedly as election gambling, betting on elections, when
10 under state law it's illegal to gamble on elections.

11 And this, by the way, is the reason we're here. If
12 Kalshi could lawfully offer election-betting contracts on CFTC
13 markets, it could ignore any state law that disallows election
14 gambling. Even states that allow gambling prohibit betting on
15 elections. And that indicates that the concern is not so much
16 gambling but election integrity. You can't place a bet on an
17 election in Las Vegas or Atlantic City:

18 For the CFTC to allow the contracts, it would have had
19 to undermine these important state interests. And so when the
20 Commission concluded in its order that, in considering whether
21 a contract involves activity under state law, it considered
22 whether the activity is unlawful under state laws that are not
23 otherwise preempted by the CFTC, laws that go to state interest
24 that are not overlapping with the CEA's regulatory authority.
25 And when the Commission considers that it can consider whether

1 the CFTC's exclusive jurisdiction over federal commodities
2 markets, federal commodities derivatives markets, should be
3 used to subvert important state interests.

4 So this question of -- well, it's frustrating to me --
5 well, I'm an advocate, I should be frustrated by my opponent's
6 arguments. But what's frustrating to me about that is this
7 concept that the Commission's interpretation of the statute
8 doesn't make sense because some state laws make it illegal to
9 place a wager on any contingent event, it's a distraction.
10 It's not what the Commission held here.

11 The Commission went as far as it needed to go because
12 this is an informal adjudication. It's one case. Under a
13 different set of facts and a different proposed contract, it
14 might look to that language. It would be an unusual reading of
15 the statute to say because many state laws prohibit wagering on
16 any contingent event, that all event contracts are unlawful, it
17 would be an usual reading of a statute that sets forth only
18 enumerated categories.

19 THE COURT: I think they would agree with that.

20 MS. STUKES: Right. I think we agree on that.

21 THE COURT: Well, I don't think you want to agree
22 on -- if you do want to agree on that, I think you want to
23 distinguish that from the election.

24 MS. STUKES: No. What I am saying is the Commission
25 didn't base its decision on the existence of state laws that

1 make wagering on any contingent event unlawful. The Commission
2 based its decision on the existence of state laws that make
3 election wagering unlawful. It didn't consider in its decision
4 and it didn't base its decision on the existence of these other
5 broader state laws.

6 And so it doesn't even factor in to the review here.
7 Whether they exist or not, it wasn't the basis for the
8 Commission's decision. And even if you can extrapolate what
9 the Commission was not doing here -- the Commission wasn't
10 ruling here. It went only as far as it needed to go to decide
11 the issue before it. I hope that that is coming through to
12 Your Honor.

13 So here, because these contracts have as their
14 essential feature not that they're wagering on any contingent
15 event but they are wagering on the outcome of elections, and
16 wagering on elections is unlawful under numerous state laws,
17 the Commission was reasonable in its determination that these
18 contracts fit within that category of unlawful under state law
19 to render them at least in the statute in subsection I.

20 I can move on to talk about gaming, unless you want to
21 talk about --

22 THE COURT: Let's talk about gaming.

23 MS. STUKES: Okay. Again, with the term "gaming," the
24 Commission applied the ordinary meaning of the term "gaming" to
25 conclude that these contracts would fall within that enumerated

1 about one of these awards would fall under the gaming or
2 gambling prong?

3 MS. STUKES: First of all, I don't want to get ahead
4 of my Commission which -- the Commission didn't define it --
5 didn't define -- didn't talk about whether the -- in this order
6 didn't get into other examples because it was sufficient to
7 determine that elections fall within this ordinary definition
8 of staking something of value on a contest of others.

9 THE COURT: Right. I'm trying to make sure that I
10 understand what the terms mean in the statute. So it's
11 certainly relevant for me to understand how this would apply
12 even beyond this case, while I know I'm only looking at the
13 order in this case.

14 So based on what you said, an event contract about any
15 kind of contest, like an award show, Academy Award, Grammy's --

16 MS. STUKES: It's not a game. It seems like a
17 contest.

18 THE COURT: That would fall under the gaming prong.

19 MS. STUKES: Wagering on it, it sounds look it might,
20 yeah.

21 THE COURT: Keep going.

22 MS. STUKES: So one of the criticisms that Kalshi
23 levies at the Commission's decision here is they say that the
24 definition is gerrymandered because it includes only wagering
25 something or staking something of value on a contest of others.

1 And gaming can be so much more than that. Gaming can be games,
2 gaming can be so much more than that.

3 What the Commission did, however, is it looked at what
4 are these contracts. These contracts are staking something of
5 value on the outcome of elections. Does that fit in an
6 ordinary definition of gaming? We submit yes. Because gaming
7 is interchangeable with gambling and ordinary meaning of
8 gambling is to stake something of value on a contest of others,
9 and an election is a contest by its plain meaning.

10 Dictionary definitions define "contest" to include
11 elections. The examples that we cite in our brief talk about
12 the presidential election as a contest, the presidential
13 contest, meaning an election.

14 So "gaming" reasonably and plainly includes by its
15 plain meaning staking something of value on the outcome of the
16 contest of others. This might not be to the exclusion of other
17 types of gaming and gambling that were not at issue in this
18 particular matter. But these contracts are designed to wager
19 on the outcome of congressional elections.

20 THE COURT: But the definitions don't change based on
21 the contract at issue, right? The statute says what it says.

22 MS. STUKES: The statute says what it says.

23 THE COURT: And it's your role to determine whether --
24 if you undertake this type of review under the statute, then
25 you decide or make a decision as to whether or not the contract

1 fits the definition. So the definition doesn't change; it's
2 whether the contract fits the definition.

3 So it can't be -- I'm not going to find gambling means
4 contest here and then in another case be given a different
5 definition from the Commission about what gambling might mean
6 based on the contract at issue there. That's not what you're
7 suggesting.

8 MS. STUKES: What I am suggesting is that because this
9 is not a rule making, that the Commission's determination of
10 whether these contracts fit within the ordinary meaning of
11 "gaming" did not require the Commission to define "gaming's"
12 entire universe for it to determine that these contracts fit
13 within an ordinary meaning of "gaming."

14 THE COURT: I guess that's what I'm having difficulty
15 with because what I'm hearing you say is that there could be
16 many definitions and we pick the one applicable here. If there
17 are many definitions -- I hope no one is asking me to find this
18 is an ambiguous statute. This is not the time to deal with
19 ambiguities in statutory interpretation.

20 So I guess -- I mean, I hope that the Commission is
21 taking the position that "gaming" means X and that this
22 contract fits X because of whatever argument. You're not
23 saying that you're adding a contest here, but in other
24 circumstance you'd use another dictionary definition. There
25 should be a definition that applies that's unambiguous.

1 MS. STUKES: What the Commission found here is an
2 ordinary definition of "gaming" includes wagering on a contest
3 of others, because -- and that's not, as Kalshi puts it,
4 gerrymandering.

5 THE COURT: I can accept that.

6 MS. STUKES: That's deciding what's before it.

7 THE COURT: I can accept that in the dictionary there
8 may be one, two, three, and if it fits any of those prongs. I
9 just want to know the extent of what the definition of
10 "gambling" is under the Commission's view. So what you're
11 saying is it includes this contest of others. And so because
12 an election, in your view, is a contest of others, then betting
13 or wagering on that violates that provision of the statute.

14 MS. STUKES: Or at least brings it into that
15 enumerated category of the statute, yes.

16 THE COURT: Okay. But if there are other definitions
17 of gambling -- and I'm losing track of whether I saw it myself
18 or whether it's in the papers, but that would just say, for
19 example, you might have said it earlier, betting or wagering on
20 a contingent event.

21 MS. STUKES: On any contingent event.

22 THE COURT: On any contingent event. Would that mean
23 that every event contract involves gambling and, thus, gaming?

24 MS. STUKES: That's not what the Commission held here
25 and it's unlikely to be what the Commission would hold in

1 another context if it came up. But that wasn't the question
2 presented here.

3 So what was presented here was: Do these contracts,
4 which are routinely characterized as election-betting
5 contracts, fall within the ordinary meaning -- an ordinary
6 meaning of "gaming," where gaming is synonymous with gambling
7 and gambling includes wagering on a contest of others and a
8 contest of others includes elections. And that was enough --

9 THE COURT: Okay.

10 MS. STUKES: -- to be a reasonable interpretation of
11 the plain meaning of the statute.

12 We've talked about gaming and unlawful under state law
13 and involve, and unless Your Honor wants to talk further about
14 any of those subissues, I can move on to the public interest.

15 THE COURT: Sure. Yes, please.

16 MS. STUKES: Okay. So having determined that Kalshi's
17 proposed contracts involve two enumerated activities under the
18 statute, the Commission proceeded to determine that the
19 contracts are contrary to public interest and, therefore, are
20 prohibited from trading. And in making this determination, the
21 Commission considered the contract's economic purpose as well
22 as other factors. So I'll start with the economic purpose
23 evaluation.

24 So the parties point this out in our briefs, but our
25 statute here, the CEA, codifies two public interests in

1 So for all of these reasons, the CFTC submits that
2 Your Honor should deny Kalshi's motion for summary judgment and
3 grant judgment to the CFTC.

4 THE COURT: Okay. Thank you.

5 Any brief rebuttal?

6 MR. ROTH: Very brief. Very, very brief.

7 THE COURT: Yes.

8 MR. ROTH: I appreciate the Court's time. I will be
9 very, very brief. Three quick points. First Your Honor asked
10 about the catchall category, why they didn't rely on the
11 catchall.

12 THE COURT: Yes.

13 MR. ROTH: The catchall requires a rule making. It's
14 by rule or regulation. They haven't done a rule making. And
15 so that's -- they couldn't rely on the catchall.

16 THE COURT: They could not rely on the catchall.

17 MR. ROTH: Yes. So they would first have to do a rule
18 making to determine some activity is similar to the others.
19 They have not done that. So that's the answer to that.

20 THE COURT: Thank you. I appreciate that.

21 MR. ROTH: On unlawful, I still did not really hear a
22 theory as to why their reading doesn't sweep in everything.
23 What I heard was, you don't have to worry about that because
24 that's not this case. That's not how statutory interpretation
25 works. We need to understand what the statute means. Counsel

1 admitted that's a de novo question for this Court to consider.
2 And, of course, in considering what the statute means, the
3 Court is going to look at how it would apply in other contexts.

4 That doesn't mean you need to figure out the answer to
5 every other hypothetical case that might exist. But the
6 Supreme Court, whenever it's considering a question of
7 statutory interpretation, looks at how it's going to apply
8 elsewhere, and if it's going to be absurd in a wide variety of
9 other cases that means it's a bad interpretation. That, I
10 think, covers unlawful.

11 The only thing I'll say about gaming, to add to
12 earlier, Your Honor asked if their interpretation of contests
13 would sweep in anything that isn't a game other than elections.
14 And counsel's response was potentially awards shows, like who's
15 going to win the Emmy or the Oscar, which I thought was a
16 fascinating example because Kalshi offers those and has offered
17 those for a long time, and they have never subjected those to
18 the review process.

19 And I think that really underscores the sort of
20 outcome-driven aspect of this. It's not a good-faith statutory
21 interpretation. It's an attempt to get it in without a real
22 coherent theory of what the statute means.

23 That's all I have, Your Honor, unless you have further
24 questions.

25 THE COURT: No. Thank you. I appreciate the briefs