

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

KALSHIEX LLC,

Appellee/Plaintiff,

v.

COMMODITY FUTURES TRADING
COMMISSION,

Appellant/Defendant.

No. 24-5205

(Appeal from Case No. 1:23-cv-03257)

APPELLANT CFTC’S MOTION FOR EXPEDITED SCHEDULE

Pursuant to Federal Rules of Appellate Procedure 2 and 27, and this Court’s Rule 27, appellant Commodity Futures Trading Commission (“CFTC” or “Commission”) requests that this Court enter an expedited schedule for briefing, argument, and consideration of the issues on appeal. In support of this motion, the CFTC states as follows:

The CFTC is appealing the district court’s order granting the appellee KalshiEx LLC’s (“Kalshi”) motion for summary judgment and denying the CFTC’s motion for summary judgment. The underlying dispute in this case relates to a Commission order that determined that certain election event contracts “involve” “gaming” and “activity unlawful under ... State law,” and prohibited

their listing and trading as contrary to public interest, pursuant to 7 U.S.C. § 7a-2. The contracts entail betting on the outcome of U.S. Congressional and Senate elections. Kalshi's lawsuit challenged the Commission's statutory interpretations and public interest determination under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C).

On September 12, 2024, the CFTC filed with this Court an Emergency Motion for Stay Pending Appeal and Immediate Interim Relief ("Motion for Stay"), seeking to stay the district court's judgment so that trading in the election contracts would not commence during the pendency of the appeal. On October 2, 2024, this Court denied the CFTC's motion without prejudice.

When this Court disposes of a motion for stay pending appeal, it may expedite the case to minimize the possible harm to the parties or the public. D.C. CIRCUIT HANDBOOK OF PRACTICE AND INTERNAL PROCEDURES 34 (2021). This Court may also expedite cases in which the public generally, or in which persons not before the Court, have an unusual interest in prompt disposition. *Id.*

The public's interest lies with prompt disposition of this appeal. As the Commission indicated in its Motion for Stay, the election contracts are susceptible to market manipulation. The Commission reasonably expects that the contracts pose a risk to election integrity or perceptions of election integrity, which would put the CFTC in the position of investigating such activities in election markets,

well outside of its traditional areas of responsibility. In addition, the Commission received hundreds of public comments expressing deep concern that election gambling impacts the integrity of United States elections, thus substantiating the Commission's fear that large-scale betting on elections will undermine public confidence in our democratic system. Finally, the Commission has proposed a regulation on event contracts that may be substantially impacted by this Court's decision on the merits.*

This Court has recognized that this case presents a “question on the merits [that] is close and difficult.” Oct. 2, 2024 Opinion at 8. Prompt consideration by this Court will provide clarity to the parties, other market participants, and the public on the legality of election gambling on federally regulated exchanges.

For these reasons, the CFTC respectfully requests that the Court consider this appeal on an expedited schedule and enter the following briefing schedule:

Brief for Appellant CFTC and Joint Appendix due: October 16, 2024

Brief for Appellee Kalshi due: November 6, 2024

Reply Brief for Appellant CFTC due: November 22, 2024

Oral Argument: Week of December 2, 2024

* *CFTC Issues Proposal on Event Contracts*, CFTC (May 10, 2024), <https://www.cftc.gov/PressRoom/PressReleases/8907-24>.

On October 2, 2024, counsel for the CFTC contacted counsel for Kalshi to ascertain whether Kalshi will agree to the proposed expedited schedule. Kalshi's counsel indicated that Kalshi will oppose this motion.

CONCLUSION

For the foregoing reasons, the CFTC respectfully requests that the Court grant the Commission's Motion for Expedited Schedule.

Dated: October 2, 2024

Respectfully submitted,

/s/ Raagnee Beri

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CERTIFICATE OF COMPLIANCE

I hereby certify under Fed. R. App. P. 32(g)(1) the following:

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), it contains 581 words, as counted by the word processing software Microsoft Word.
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word, in Times New Roman 14-point type.

Dated: October 2, 2024

/s/ Raagnee Beri

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2024, I served the foregoing Motion for Expedited Schedule on counsel of record using this Court's CM/ECF system.

/s/ Raagnee Beri