ECONOMIC POLICY

U.S. looks to ban election betting as traders flock to prediction sites

The CFTC’s crackdown on political futures contracts faces stiff resistance as some markets want to allow wagers of millions of dollars.

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Even before President Joe Biden had announced his exit from the 2024 election, thousands of voters flocked to the website PredictIt last month, hoping to place bets on the other candidates who might win in his stead.

It amounted to an active week of trading on the political prediction marketplace, which fashions itself as a more accurate alternative to public polls. And federal regulators are looking to outlaw it.

The U.S. government has embarked on a broad crackdown against election betting, relying on a mix of newly proposed rules and ongoing court cases to try to stamp out a nascent industry that critics call a potential threat to democracy.

To Democrats, these wagers on the outcome of a particular campaign invite more money into an electoral system that’s already rife with it. But the staunchest backers of political prediction marketplaces insist that the fears of election interference are overstated — and that the insights gleaned from their data serve a greater purpose.

“To me, it is enormous corruption,” said Sen. Jeff Merkley (D-Ore.), who expressed fear that well-heeled political or corporate interests could someday come to think, “Hey, I will spend millions of dollars smearing some candidate to make sure the candidate I bet on wins.”

The regulatory push is the work of the Commodity Futures Trading Commission (CFTC), whose chairman, Rostin Behnam, has pursued rules that would ban election-related betting on commercial exchanges under its watch. Citing a lack of staff and resources, the agency has argued it is not equipped to serve as an election watchdog and monitor political markets for fraud or manipulation.

The CFTC ratcheted up its crackdown two years ago, moving to halt election betting on PredictIt, a nonprofit that has continued to operate even as it squares off with the government in court. Federal regulators last year also rejected an application from KalshiEx, a regulated exchange that permits users to place bets on a wide variety of future events, such as inclement weather and SpaceX rocket launches. Kalshi had hoped to allow wagers — up to $100 million, in limited cases — on party control of Congress. Denied by the government, it filed its own lawsuit against the CFTC.

“There is already money in politics,” said Tarek Mansour, the chief executive and founder of Kalshi, stressing his organization is different because it is more transparent than campaign contributions.

He later added: “Anyone who actually looks below the surface … comes out thinking these are net positives for society.”

At the CFTC, federal regulators see it much differently. The roughly 50-year-old agency chiefly polices financial derivatives, a world of complicated investment products whose value is derived from something else. Derivatives involve everything from the future price of grain to swaps between businesses pursuing advantages in currency exchange rates — and, lately, the probability of certain events occurring.

Event contracts, as they are known, can include bets on the winner of the Super Bowl or Grammys or on the likelihood of temperature increases, the cost of hurricane damage and other extreme weather. For traders, the products offer a way to hedge against risk: A business that could be dramatically affected by new U.S. tariffs on foreign goods could bet on their imposition, for example, as a way to offset future revenue losses.

As part of its mandate to oversee these markets, the CFTC can intervene to deny exchanges from listing products it deems dangerous under a law that prohibits bets and payouts for predictions involving terrorism, assassination, war or gaming, or those that otherwise harm the public interest. Inundated recently with applications to offer event contracts, the agency unveiled rules in May that would explicitly outlaw many forms of them — including bets on election outcomes.

Behnam's proposal would classify election betting in particular as a form of gaming with no value to the public. In a statement this spring, the CFTC chairman predicted such bets would "ultimately commoditize and degrade the integrity of the uniquely American experience of participating in the democratic electoral process," while saddling the agency with the unlikely "role of an election cop." (He declined to comment for this article.)

The CFTC solicited public feedback on the proposal into August, drawing widespread opposition from users who enjoy placing wagers, academics who have used the data for research and firms that could someday profit if large institutional investors bet massive sums of money on U.S. elections.

Earlier this month, Kalshi told the government it would be wrong to prohibit election bets since the 2024 presidential race "is expected to have significant effects on the economy and personal finances of everyday Americans — and people are talking about how they can mitigate the potential impacts."

The company even argued that election betting and other event contracts are "most relevant to historically underserved communities," meaning a ban on some wagers would see the government "miss this opportunity to cater" to underrepresented groups' needs.

In 2020, Kalshi became the first-ever CFTC-regulated exchange focused solely on event contracts, a designation that its chief executive, Mansour, heralded at the time as a "new chapter in U.S. financial history." Today, the site allows participants to place bets on interest rate cuts, the price of bitcoin and the number of weeks that Taylor Swift's latest album will top the charts.

Setting its sights on politics, Kalshi initially hoped to enable investors to trade around predictions about party takeover of Congress. Under a proposal it filed with the CFTC last year, individuals could bet up to $125,000 on the outcome — while bigger investors with "demonstrated established economic hedging need" could stake up to $100 million.

"If the amounts are low, how can the markets fulfill their full hedging potential?" Mansour said in a recent interview, adding that "$10,000 is not going to be enough for you."

The idea spooked public interest groups and campaign finance watchdogs, which worried that Kalshi's proposal would permit powerful corporate and political interests to reap major financial gains from the elections they already seek to influence. Political ad spending alone this year is expected to exceed $12 billion, according to eMarketer.

"Right now, American democracy is already in a fragile state," said Cantrell Dumas, the director of derivatives policy for Better Markets, which opposed Kalshi's proposal. "If you're a politician, would you want someone to bet on your election?"

Ultimately, the CFTC denied a request from Kalshi last year to offer the contract, prompting the company to sue in November. Attorneys for Kalshi argued that the government "exceeds its statutory authority" by denying the public access to "high-quality, dynamic predictive data."

To academics, political prediction data can sometimes prove more accurate than polling, since traders who bet tiny sums on the election are likely to be more educated about a topic once they have money on the line.

"There's now a big accumulation of evidence that these markets yield prices that are pretty efficient," said Eric Zitzewitz, a professor of economics at Dartmouth College who studies political prediction data.

Supporters contend that the CFTC threatens to eliminate this key source of research, while pushing bets overseas to unregulated foreign prediction markets. On websites like Reddit, users already discuss openly how to mask their locations so that they can place election bets using cryptocurrency on Polymarket, which was penalized by the government in 2022 for operating as an unregulated exchange. Shayne Coplan, the chief executive of the company, did not respond to emails seeking comment.

The CFTC has not shunned every political futures market: The government in 1992 gave its blessing to the Iowa Electronic Markets, founded by faculty at the University of Iowa four years earlier as an academic exercise. Today, it doesn't advertise or turn a profit, and it caps traders to $500 investments — commitments it made to the CFTC as part of its mission to harness prediction data for political insights.

"For our markets, no one is going to lose their minds over $500," said Thomas Gruca, a marketing professor at the University of Iowa and the director of the IEM, raising concerns with the way the CFTC drafted its proposed rules.

"But when you start to talk about very, very large sums of money," he later added, "I think that's where the concern comes in."

To rally support, firms including PredictIt held a private roundtable for staff on Capitol Hill this year, founder John Aristotle Phillips said, adding that they have relationships to share data with more than 100 academics. In regulatory filings last week, the nonprofit blasted the CFTC for portraying election wagers as damaging to democracy, arguing that "if means existed to manipulate results [then] those would have been employed already."

Technically, PredictIt may not be subject to the CFTC's proposed rules, since it is not a registered exchange with the agency. The site is a subsidiary of Aristotle, a political data firm, run in conjunction with Victoria University of Wellington in New Zealand. To avoid regulatory missteps, PredictIt obtained a "no-action letter" from the CFTC in 2014, sparing it from federal enforcement so long as it capped the number of traders, limited their investments to $850 and refrained from taking a profit.

But the CFTC revoked its blessing in 2022, after finding PredictIt had grown too large and failed to keep its commitments, a move that threatened to shut down the popular marketplace. Attorneys for PredictIt soon sued the CFTC and won an initial victory last fall, when a judge ruled it could stay open while the two sides fought over the underlying law.

Michael Edney, an attorney for the company, stressed in a recent interview that PredictIt is “not a risk to anybody,” adding: “We don’t know why the CFTC is targeting us.”