



COALITION FOR POLITICAL FORECASTING

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8 August 2024

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

Re: Event Contracts, RIN number 3038-AF14

We are writing on behalf of the Coalition for Political Forecasting in response to the CFTC's request for comments on its proposal on event contracts.

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 Coalition submitted comments to the Commission on the issue of event contracts in July 2023. Except where noted in the comment below, the views we expressed in previous comments have not meaningfully changed. Rather than reiterating points that are applicable to the Commission's latest request for points, we have attached our previous comment below.

In line with the core interest of our organization, we focus, in this comment, on the amendments' implications for event contracts related to politics.

We hope that our arguments in this comment will encourage the Commission to modify the proposed amendments and take a deliberative approach to finalizing the proposal.

Sincerely,

Pratik Chougule
Executive Director, Coalition for Political Forecasting

Mick Bransfield
Research Director, Coalition for Political Forecasting

Solomon Sia
Board Member, Coalition for Political Forecasting

The Need for CFTC Rulemaking on Event Contracts

We support the Commission's decision to initiate a notice of proposed rulemaking on event contracts as a means of providing regulatory clarity, certainty, and stability in the space.

The CFTC remains the federal agency best-positioned to exercise jurisdiction over event contracts. Since 1992, when CFTC-registered exchanges increased their listing of event contracts, the Commission has gradually expanded its jurisdiction over the space. It is true that event contracts do not fall within the core regulatory remit of the CFTC. We agree, for instance, that key aspects of event contract regulation would be a better fit for a gaming regulator. But Congress addressed the CFTC's authority over event contracts as part of the Dodd-Frank Act, has looked to the Commission since then for leadership on the issue, and has shown little indication to roll back the Commission's jurisdiction.

The above point regarding the CFTC's authority over event contracts is critical considering how frequently the proposed rule raises concerns about the Commission's lack of specialized experience and jurisdiction on questions related to event contracts. Too often in the proposed amendments, the Commission cites perceived limitations in terms of its expertise and authority as a reason for curtailing event contracts. Ironically, as underscored by Commissioners Mersinger and Pham, the Commission may be overcorrecting by exceeding its legal authorities in restricting event contracts.

Given the absence of a better-situated agency, the Commission should instead err on the side of building the capacity within the agency to manage event contracts, and articulating to lawmakers and judges why an updated legal regime is necessary to regulate the evolving event contract space.

The CFTC should draw confidence from the way its historic regulation over event contracts has allowed the space to mature. Although the CFTC has taken a restrictive and cautious approach to regulating event contracts, it has also provided enough leeway for the space to develop. Even though the CFTC is bound by a regime in which the preponderance of federal and state law militates against event contracts, the agency is a relative outlier among its international counterparts in terms of how much it has permitted event contracts to be offered on regulated exchanges, platforms with no-action relief, and offshore sites. The Iowa Electronic Markets and PredictIt, as an example, would not have operated with regulatory certainty in the absence of the CFTC's no-action letters. The success of these projects has inspired entrepreneurs to build event contract platforms of greater sophistication and value for the public interest.

We disagree with those who believe that this rulemaking is inherently problematic for the event contract space in light of the Commission's reservations. Although we would favor a more laissez-faire approach to event contracts than what the Commission has pursued, we believe that a lack of regulatory certainty and clarity is perhaps as great an obstacle to the development of the event contract space as are regulations themselves.

The absence of clear rules has harmed the event contract space in three main ways.

First, it has deterred market entrants from participating in the space on the assumption that this decision would entail cost-prohibitive compliance measures, exposure to future enforcement actions, and poor returns on investment.

Second, regulatory ambiguity has encouraged market participants to offer and wager on betting lines with

dubious public interest benefit, thereby inviting not only regulatory scrutiny, but also negative public attention.¹

Third, attempts by both Commission staff and market operators in the space to interpret ambiguous rules and test their limits have escalated into policy reviews, notice and comment periods, lawsuits, and public discussion that have, in the aggregate, generated a backlash against event contracts.²

Avoiding Regulatory Backlash

The CFTC is not pursuing rulemaking in a vacuum. Laws, regulations, court rulings, and precedents are not the only factors shaping the Commission's decisions as they pertain to event contracts.

The core dilemma is that market demand for event contracts is growing at the same time that they face heightened scrutiny in the political arena.

The most politically sensitive event contracts—those pertaining to elections—are precisely the ones that tend to draw the most interest by market participants, the press, and researchers.

During previous reviews, the Commission was inundated with comments by members of Congress, grassroots organizations, and powerful lobbies opposing election contracts on DCMs. Their opposition speaks to the deep and widespread fears in American society about the intersection of betting and democratic institutions, as reflected in the strict laws that govern election betting at the state level.³

At the same time, the promise of event contracts is being realized in unprecedented ways. Event contracts related to elections and politics are thriving primarily due to the efforts of companies that are not registered as DCMs and/or that are not pursuing no-action relief from the CFTC. We believe that these markets would be more efficient if they operated with legal certainty and were more directly accessible to American users. But even with these limitations, the diversity of markets that are now available, and the volume, participation, and attention they are drawing would be impossible on a DCM even under the most laissez-faire of Commissions.

We continue to believe that event contracts on elections and other political events further the public interest.

However, we disagree with advocates of event contracts who are encouraging the CFTC to expend political capital, stretch its authority, and test the limits of the law by permitting a wide array of political event contracts. This is because the greatest threats to political event contracts no longer come from CFTC regulation. More concerning is the possibility that highly visible deliberations on the issue at the CFTC will harden legal precedents against event contracts and invite sweeping restrictions by Congress that usurp the CFTC's prerogative to promote responsible innovation in the event contract space. We fear, likewise, that enforcement arms of the U.S. government will seek to crack down not only against companies offering event contracts, but also users on these platforms.

1. See, for example, the past contracts identified in Pratik Chougule and Solomon Sia, Political Betting Regulation in the United States: Pathways to Liberalization, July 2023, pp. 34-36.

2. Chougule, host, "CFTC Cracks Down on Election Contracts," Star Spangled Gamblers (podcast), 2 June 2024, <https://starspangledgamblers.libsyn.com/cftc-cracks-down-on-election-contracts>; Chougule, host, "Labour Is Headed for a Landslide Victory," Star Spangled Gamblers (podcast), 25 June 2024, <https://starspangledgamblers.libsyn.com/labour-is-headed-for-a-landslide-victory>

3. Chougule and Sia, pp. 13-41.

Indeed, the highly restrictive legal regime in which event contracts are mired came about as a consequence of overzealous industries whose poor judgment provoked regulatory backlash in the form of laws such as the Unlawful Internet Gambling Enforcement Act of 2006 and Dodd-Frank.

We therefore encourage the Commission to propose amendments that are not only consistent with the law, but are also attuned to a political environment in which ignorance, strong moral intuitions, and unfavorable news cycle can lead to overreaction on emotionally-charged issues such as election betting.

Provided that the Commission adopts the revisions we detail below, we believe that the proposed amendments will prevent regulatory backlash, allow select event contracts to operate on DCMs, provide non-registered entities with space to innovate, and support industry actors in their efforts to navigate regulations in the space.

The Definition of Gaming

As noted in the proposed amendments, the definition of gaming as it pertains to event contracts is ambiguous. While we favor as a policy matter a relatively narrow definition of gaming, we believe that each of the Commissioners, as well as lawyers representing the CFTC, Kalshi, and various public interest groups have all offered reasonable arguments that will be adjudicated in the federal courts for the foreseeable future.

As these deliberations proceed, we would encourage the Commission to provide clarity on two of the most important types of event contracts that could be prohibited under an expansive definition of gaming.

Mention Markets

One is “mention” markets. Among the most important event contracts for the public interest are those that ask whether political leaders will say certain words on occasions such as debates and speeches. Mentions by political candidates of certain companies, legislation, and policy agendas can provide critical clues for market participants seeking to hedge or otherwise navigate economic risk. This is particularly true considering how sensitive financial markets can be to the words of political candidates. We would encourage the Commission to indicate clearly that these markets do not constitute gaming under the final approved amendments.

Legal Markets

The second is markets on the outcomes of legal cases. We are pleased to see that the Commission permits Kalshi to offer markets on the outcome of court decisions, which are highly pertinent to the public interest.⁴ We are concerned, however, that an expansive reading of the amendments could interpret court cases as constituting a “contest of others”, thereby running afoul of the Commission’s definition of gaming.

The Commission should explicitly indicate which types of legal markets are permissible. Relatedly, it would be helpful for the Commission to explain why legal markets are acceptable, notwithstanding the perverse financial incentives they can create among a small number of highly influential insiders. Other event contracts are prohibited on these grounds despite the fact that the alleged perverse incentives to manipulate or degrade the integrity of democratic institutions are considerably weaker in these contexts, insofar as they exist at all.

4. On the public interest value of prediction markets on court cases, see Miriam A. Cherry & Robert L. Rogers, *Tiresias and the Justices: Using Information Markets to Predict Supreme Court Decisions*, 100 NW. U. L. REV. 1141, 1152– 58 (2006)

To be clear, we are not suggesting that the Commission should prohibit legal markets. To the contrary, we are hoping that the Commission will bring greater clarity and consistency by treating comparable event contracts under an intuitive regulatory framework.

Economic Purpose Test

We strongly disagree with the proposal’s resurrection of the economic purpose test, which has limited relevance to event contracts.

The proposal relies heavily on a colloquy between Senators Feinstein and Lincoln in 2010. There is little evidence that either these senators, or, for that matter, the staffers who may have inserted the language into the Congress Record, were contemplating dilemmas associated with event contracts in the political space. Indeed, they never even mentioned elections. The launch of PredictIt was more than four years away. Neither the technologies nor even the concepts on which crypto-based prediction markets exist today had been developed.

The economic purpose test’s emphasis on price basing and hedging utility may be relevant for traditional futures markets, but are incidental to event contracts. While political and election event contracts can be and are occasionally used for hedging and price basing, the vast majority of activity in these markets is speculation, often in furtherance of price discovery, risk calculation, and quantifying uncertainty.

Over the past two decades, the CFTC has received comments from distinguished academics and market participants on the myriad ways event contracts relate to the public interest. Being novel technologies, the applications of event contracts are continuously being explored and expanded by researchers, entrepreneurs, and market participants.

The Commission itself has previously noted (correctly, in our view), that event contracts have value as “information aggregation vehicles.”⁵ Likewise, in the current proposal, the Commission concedes that approval of the proposed amendments may result in the loss of “informational value.”

The question of how event contracts relate to the public interest calls for a test that is far more holistic, comprehensive, and nuanced than the economic purpose test.

Our recommendation is for the Commission to oversee a separate rulemaking process to determine an appropriate test on whether event contracts are contrary to the public interest. We believe that the rulemaking should convene after the 2024 U.S. elections. The Commission at this point would benefit from comments that draw on lessons learned from the performance of event contracts in elections with unprecedented activity and volume.

War, Terrorism, and Assassination Contracts

Considering the proposal’s strong denunciation of war markets, it makes little sense to us why the Commission is explicitly opting in the proposal not to define war.

5. CFTC, Concept Release on the Appropriate Regulatory Treatment of Event Contracts,” 73 Fed. Reg. 25,669 (2008), <http://www.cftc.gov/lawandregulation/federalregister/proposedrules/2008/e8-9981.html>

In many of the most consequential conflicts in the world, it is unclear whether a war is even occurring. Without a definition of war, event contract platforms will have little guidance on whether they can offer markets related to a wide array of current events.

Proposing a clear, narrow definition of war would help mitigate the possibility that a CFTC-regulated market would create a financial incentive to carry out an act of war. The CFTC, as an example, could define war as a type of conflict that could only be initiated by designated leaders of a country through formal, defined government processes. It is highly unlikely that political figures' decision-making at this level would be motivated by an opportunity to profit illicitly from a small investment in a DCM, in which they are not permitted anyway.

The proposal does not sufficiently consider that event contracts related to war could be designed in ways that would be highly beneficial to the public interest as information sources and decision-making instruments, without meaningful perverse incentives.⁶ For example, migrant flows driven by international conflicts are a source of economic risk. It is difficult to see how an event contract on a question like the number of refugees entering a country would create incentives for market participants to carry out a "heinous act" in this domain, much less how they would act on these incentives. Yet these contracts would facilitate price basing, hedging, and other useful information in furtherance of the public interest. We assume this is why the Commission already permits Kalshi to offer a contract on the number of "credible fear" asylum cases.

The ongoing conflict between Russia and Ukraine illustrates the above dilemmas. Whether or not the conflict had escalated into a "war" was a matter of debate in the early years of the conflict when Russian president Vladimir Putin referred to the country's intervention as a "special military operation." Event contracts could have been offered on the question of when, if ever, Russia or an international body would refer to their intervention in Ukraine as a "war." Furthermore, as a consequence of the conflict, there are public interests at stake in questions such as how long Putin, Ukrainian president Volodymyr Zelensky, and other influential world leaders in the conflict will remain in power, and how many refugees from Russia and Ukraine will enter neighboring countries.

Before approving the proposed amendments, the Commission should offer guidance on the definition of "war" and the type of events that can be offered without running afoul of the rule's prohibition on war, terrorism, and assassination markets.

We also urge the Commission to clarify that event contracts related to political leaders' tenure in office would not be prohibited due to the Commission's opposition to terrorism, war, and assassination markets. Event contracts on when and for how long political leaders will remain in office are highly pertinent to the public interest. In the vast majority of cases, political leaders leave office due to factors incidental to war, terrorism, and assassination. At the same time, these factors could impact the length of any political leader's exit—a reality traders in these markets need to consider even if they are difficult to quantify.

We are concerned that overzealous regulators will categorically ban event contracts on political leaders' tenures in office on the grounds that they might create perverse incentives related to war, terrorism, and assassination. To that end, the Commission should clarify under what circumstances, if any, political leader markets would run afoul of the rule's prohibition on terrorism, war, and assassination markets.

6. For background on war markets, see Manifold Markets, "Predicting War Markets by Douglas Campbell and Abhishek Kylasa" YouTube video, 11 October 2023, <https://youtu.be/YrhsSohbRO4?si=NZZ7HVuOgOcFyaOJ>

Election Integrity

In our September 2022 comment, we cited UK political betting markets as evidence that concerns about the impact of election contracts on democratic institutions are overstated:

The Commission may find inspiration in the way the UK has approached the regulation of election contracts. Many of the concerns that animate the Commission’s deliberations today weighed on British regulators in the mid-20th century in the context of political betting shops. The UK’s thriving election markets, which have enriched British public life without threatening the integrity of the country’s institutions, speaks to their potential in the United States.

Recent events in the UK weaken these arguments.

Reports that the UK Gambling Commission was investigating senior officials for betting on the timing of the elections—potentially with the benefit of inside information—have affected, at a minimum, perceptions of election integrity.⁷

The UK investigation provides an ideal case study to consider the relation between election integrity and political betting, and draw appropriate lessons for the United States.

We believe it would be prudent for the Commission to wait for the UK Gambling Commission to release its findings so that the Commission can consider them before approving the amendments. We recommend that the Commission convene roundtables and other opportunities for experts to testify on the UK investigation, its fallout, and lessons for the CFTC’s regulation of the space.

Discerning Between Retail Traders and Billionaires

Public comments in support of this rule are focused on how “billionaires” could take advantage of prediction markets. What these comments ignore is that this rule targets retail traders. Billionaires would be largely unaffected. Wealthy individuals (i.e. “Eligible Contract Participants”) are allowed to engage in swaps under the Commodity Exchange Act (CEA), and would be unaffected by this rule. And billionaires can easily afford to travel to another country where betting on American politics is legal and without limit. Moreover, for large investors, the zero-sum nature of event contracts makes them less attractive than equities closely correlated to election outcomes like health care or defense stocks.

Misinformation and Manipulation of Election Event Contracts

The proposed rule fails to put in proper context the incentives that election event contracts create regarding misinformation and inaccurate information.

7. William Booth and Karla Adam, “What an election betting scandal says about British politics and culture,” Washington Post, 27 June 2024, <https://www.washingtonpost.com/world/2024/06/26/what-an-election-betting-scandal-says-about-british-politics-culture/>; Philip Conneller, “UK Election: Betting Scandal Helps Propel Keir Starmer to Historic Win,” Casino.org, 5 July 2024, <https://www.casino.org/news/uk-election-betting-scandal-helps-propel-kier-starmer-to-historic-win/>

The proposed rule claims that “false reporting or other misinformation—such as inaccurate polling, voter surveys or false news reporting—could be used to distort the information underlying price formation.”

In footnote 125, the Commission acknowledges counter-arguments that were offered repeatedly in previous comments: “event contracts involving occurrences in connection with political election contests could serve as a check on misinformation and inaccurate polling, stating that market-based alternatives tend to be more accurate than polling or other methods of predicting election outcomes.” The Commission responds by noting “research suggesting that election markets may incentivize the creation of ‘fake’ or unreliable information in the interest of moving the market.”

It is true that political event contracts incentivize both attempts at manipulating markets with misinformation, as well as attempts to correct inaccurate information.

However, available evidence suggests that incentives to correct inaccurate information are considerably stronger than incentives to spread misinformation, as seen by how quickly markets self-correct after reacting to these sources.

The Commission has never provided evidence to the contrary. In the DC federal court hearing in Kalshi v. CFTC, for example, Judge Cobb asked about the economic benefits of election contracts. CFTC attorney Anne Stukes responded that, “the Commission determined in its discretion that those were not outweighed by the very serious public interest” stakes regarding election integrity. Neither Stukes nor the proposed amendments explain what precise balancing test the Commission used to determine the relative interests on both sides.

Rather than prohibiting election contracts on the basis of its manipulation concerns, we believe that the Commission should develop a balancing test on whether incentives to create inaccurate information are outweighed by incentives to promote truthful information of value to the public interest. The proposed amendments on event contracts should not be finalized until the public has had an opportunity to comment on this balancing test.

A well-conceived balancing test would encourage registered entities to create lines that further the public interest, and traders and other market participants to engage these contracts with integrity.

Implementation Timeline

We strongly encourage the Commission to avoid submitting the final rule amendments for publication until after the 2024 U.S. elections.

Event contracts on the 2024 U.S. election will provide unprecedented data and insights that should inform the Commission’s deliberations. We recommend that the Commission provide the public with an opportunity to comment on the proposed amendments based on an understanding of how political betting markets performed in the elections.

For the amendments to achieve their stated goal of creating regulatory clarity, they will need a strong, bipartisan political mandate. This will be difficult to achieve without knowing the outcome of the 2024 presidential elections. This election is unique in the sense that one of the major party candidates is a former president whose administration oversaw landmark reforms in the regulation of event contracts. President Trump is exceptional

among major party presidential candidates in the way he openly and frequently references political betting odds on the campaign trail. More so than any recent presidential election, a contest between Trump and Kamala Harris would be a referendum on how the American people see the issue of political event contracts.

Differences among the current Commissioners fuel perceptions that the Commission is divided on the issue of event contracts along partisan lines, and that reforms in the space are subject to change depending on the partisan makeup of the Commission. While we agree with Commissioner Goldsmith Romero's sentiments in the Open Meeting that the Commissioners do not think about these issues through partisan filters, the reality is that the historically non-partisan issue of event contract regulation has in fact become more ridden by partisan divides in recent years, as seen by the comments the Commission has received from Congress. We believe that it will be easier for the Commission to find greater consensus on the issue after the 2024 elections regardless of the outcome.

The Commission is more likely to garner public approval for the amendments and lay the groundwork for a durable regulatory regime if it waits for the outcome of the 2024 election, integrates lessons from the elections, and drives greater consensus among the Commissioners.

A Lack of Comparative Analysis

In his statement in Appendix 2, Chairman Behnam asserts that political event contracts "degrade the integrity of the uniquely American experience of participating in the democratic electoral process." Behnam has used similar terms in interviews he has conducted on the issue.

Behnam's point merits criticism in the context of the Commission's proposal. While American democracy has unique characteristics (as every other democracy does), participation in democratic electoral processes is hardly unique to the American experience.

Many countries—including liberal democracies with legal regimes, electoral processes, and political cultures similar to the United States—have undertaken thoughtful reviews of how political event contracts relate to their electoral processes. Some, such as the UK and Australia have adopted relatively permissive regulations on political event contracts while others have taken a more stringent approach.

Behnam's dubious claim speaks to a larger issue that has undermined the Commission's deliberations on event contracts. The totality of the Commission's reviews on event contracts have been undertaken with a conspicuous lack of curiosity about the experiences of other countries. Not surprisingly, the proposal does not even make passing reference to markets outside of the United States.

We believe that the Commission should convene roundtables with experts from around the world who can speak to how their countries have weighed dilemmas associated with the relation between political event contracts and democratic institutions. This exercise would be beneficial to the Commission generally given its growing participation in international initiatives. Comparative analyses should not only inform any amendment in this space, but should be explicated by the Commission.

Constitutional Objections

Throughout the Commission's review of event contracts, critics have raised constitutional questions that the Commission has refused to address.

In our previous comments, we have raised concerns that the Commission's regulations on political event contracts violate the First Amendment.

Commissioner Pham, in her dissent, raises compelling arguments pertaining to the Tenth Amendment and the Supreme Court's preemption doctrine.

The Commission ought to address these constitutional objections as part of any final proposal.

Responding to Comment Letters

Throughout its review of event contracts, the Commission has not engaged sufficiently with arguments raised in public comments.

The only indication we have seen that the Commission contended with our arguments came not through the Commission's notice and comment periods, but rather, at the DC federal court hearing in Kalshi v. CFTC, where Jones Day attorney Amanda Rice referenced our comment.

All of us have used our platforms to encourage the public to submit comments to the Commission on the assumption that the agency will consider them in good faith. The Commission's failure to respond directly to the comments that we and others have provided has been noted by high-profile participants in the event contract space. One prominent market participant told us that he now regards the CFTC's requests for comment as little more than "public theater" and is looking to the judiciary to provide clarity.

Before issuing a final rule, the Commission should respond directly to the comments it has received. Doing so is not simply a matter of good government, it will help build a political mandate for the Commission's final amendments.

Markets Correlated with Elections

Even if the Commission finalizes the amendments, demand will not diminish for election markets. This creates an incentive for registered entities to offer event contracts that are ostensibly about economic or financial indicators, but are so highly correlated with elections that they function as proxies for election contracts.

The Commission should clarify what its current position is on this issue and how the proposed amendments would speak to this question.

Given the ease with which correlated markets can be offered and marketed, we are skeptical that the Commission could effectively regulate them out of existence, at least in a resource-efficient manner. At most, a restrictive CFTC rule on the matter might create transaction costs for market operators in reaching low-information retail traders.

Enforcement

The proposed amendments would provide clarity for the relatively small number of market operators that are committed to playing by the CFTC's rules, inclined to err on the side of caution in their self-regulatory responsibilities, and willing to expend the resources necessary to seek Commission approval.

In our estimation, there is currently only one market operator, Kalshi, that fits this profile. An irony of the CFTC's approach to event contracts is that Kalshi, more than any other market operator in the space, has been stymied by the Commission. Those platforms that have chosen not to register with the CFTC and avoid or evade Commission rules have been among the biggest winners in the space.

The demand for event contracts creates incentives for market operators to facilitate investments of dubious legality by offering the maximum number of markets possible and by engaging in minimal efforts when it comes to enforcing requirements related to fraud, false reporting, manipulation, market integrity, and other CFTC concerns. This dynamic is among the factors that led to litigation between the CFTC and PredictIt.

While finalizing the rule would impact the event contract space, the ways that the rule is enforced, in our judgment, will prove to be the more significant factor affecting how event contracts influence the public interest.

Discussion of enforcement is conspicuously absent in the proposed text.

As seen from the Commission's open meeting on May 10, it is not just market participants, but also the Commissioners themselves that lack clarity on the enforcement implications of the rule. We agree with Commissioner Goldsmith Romero that the refusal of the CFTC enforcement division to attend the meeting is "very disappointing", "unacceptable", and a "dereliction of their duties." As Commissioner Goldsmith Romero indicated, the brief statement that the enforcement division submitted did not allow for adequate opportunity for question and follow-up.⁸

The enforcement division's absence speaks to larger issues with the proposal. Generally, it seems to legitimate the points Commissioner Pham made in the open hearing as well as her dissent about the need for reform in terms of how the Commission is handling rulemaking processes.

Specific to event contracts, it indicates that the Commission is riven with internal disagreement. This is neither surprising, nor problematic per se, given the complexities and uncertainties associated with the issue. Indeed, the absence of disagreement would point to a more concerning lack of reflection.

The lack of agreement within the agency does, however, call for the Commission to take a slower, more deliberative approach to the proposed amendments. Without a consensus between the Commissioners, the staff, and the enforcement division of the CFTC, the Commission will not be able to generate enough buy-in for the proposal to create stability in the space.

8. CFTC, "Copy of CFTC to Hold a Commission Open Meeting May 10," YouTube video, 20 May 2024, https://youtu.be/u4p-7jdfRQvQ?si=_sdWRW3y2hqhUY7P&t=4518

Event contract regulation will instead be seen as a tentative, political question that is up for grabs depending on the outcome of elections and the make-up of the Commission at any given point.

Relying on tips and referrals from market participants for the underlying information sources needed for enforcement actions presents its own dilemmas. In a fledgling but competitive, somewhat zero-sum industry, this type of enforcement regime creates incentives for market operators and aggrieved traders to bring opportunistic complaints to the Commission in pursuit of market advantage. We believe that these dynamics have been at play in Kalshi's repeated decision to draw the regulatory attention to the practices of its competitors—a business strategy that dragged the entire event contract space into a political quagmire.

Enforcement actions and corresponding litigation in the event contract space are a poor use of the Commission's resources. While the Commission should underscore to market participants their responsibilities related to self-regulation, it should also set realistic expectations with Congress and the public about the Commission's limitations in the enforcement sphere. While reliance on self-regulation can expose the public to risks, these challenges will be far worse if the Commission encourages the event contract space to migrate offshore and/or to black markets.



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24 July 2023

Submitted via CFTC portal
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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)(5C) 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

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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. midterm 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_frequestinfo.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/%40lrl ettergeneral/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-midterms.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/>

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>

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

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=PLnkuV6troaAf1X5sbeQ0Wtg_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/fiTNIxQUhjU>; 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/lmvGj1YExkI>

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/OpenExhibit-Document?exhibitId=3698&fileDownloadName=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

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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>

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>

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 Smarts 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*

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

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,

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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>

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>

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 Nadex'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

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 Yeargain, *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/155557589755326785?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”

‘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-ceced9760846>.

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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 form 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-sbf-s-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=EjpzA5q9Qfmz-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](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-

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

112. Eddy 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. Eddy and Graubard, hosts, “Jason Trost, Smarkets Founder and CEO”

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-3ml>; 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/pjchougule/status/1262672924831625216>; Twitter post, 1 June 2020, 1:46 p.m., <https://twitter.com/pjchougule/status/1267512917831962633?s=20>; Twitter post, 1 June 2020, 1:52 p.m., <https://twitter.com/pjchougule/status/1267514286454251525?s=20>; Twitter post, 18 May 2020, 10:06 p.m., <https://twitter.com/pjchougule/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/1t7YYOm>; 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/ptc082422kexdc001.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/mansourtarek_/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-lets-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/orgkexkalshiehibitsff1221102.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/orgkexkalshiehibitsff1221102.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.

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."

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?”

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. CFTC, 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. CFTC, 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. CFTC, 22-51124 (5th Cir. 2023), Unpublished Order, 21 June 2023, <https://www.ca5.us-courts.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-andregulation/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,

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"

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 minuscule 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*

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>

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>

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”

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>

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;

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, Smarts 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>.

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>

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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