

April 30, 2026

Chairman Michael S. Selig
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

RE: Advance Notice of Proposed Rulemaking on Prediction Markets, 91 Fed. Reg. 12516, RIN 3038-AF65

Dear Chairman Selig:

The undersigned coalition of civil society organizations focused on consumer protection, democracy protection, and financial reform are writing in response to the Commodity Futures Trading Commission's (CFTC) request for public comment on its Advance Notice of Proposed Rulemaking (ANPRM) on Prediction Markets published on March 16, 2026.¹

We submit this letter to establish that the CFTC does not have, and cannot have, legal jurisdiction over what are essentially gambling bets that are regulated by the states and tribal authorities and to document the extraordinary harms that so-called prediction markets, where such bets are traded, pose to consumers and businesses, the financial system, and our democracy.

I. What This Rulemaking Is About and Why It Matters to Every American

As background for our grassroots members and supporters, the CFTC has served for decades as the federal cop on the beat for derivatives — financial contracts whose value is derived from another item like a commodity (such as wheat, oil, gas, soybeans, and cattle), stock, or currency. These financial markets were originally designed for commercial economic purposes, like helping crop farmers protect against drought, enabling airlines to lock in the price of jet fuel, and allowing shipping companies to hedge against fluctuations in freight prices for transporting cargo. These markets help keep the prices of food, fuel, and basic consumer goods stable and predictable. The downstream effects reach ordinary people every day when they buy groceries, fill up their car with gas, or shop online.

The CFTC's mission is to properly regulate and police these financial markets to ensure that commodities at fair prices in the right amounts and at the right times are available in American commerce. But today, Wall Street and Silicon Valley are attempting to exploit a major change in the CFTC's political control and the nation's political climate to transform what are known as "prediction markets" for "event contracts" into unfettered digital casinos that only the CFTC may regulate — and then regulates as little as possible.²

¹ Commodity Futures Trading Comm'n, Advance Notice of Proposed Rulemaking on Prediction Markets (Mar. 16, 2026), 91 Fed. Reg. 12516, <https://www.federalregister.gov/documents/2026/03/16/2026-05105/prediction-markets>.

² For another lay explainer, see, e.g., Better Markets, "Prediction Markets," Gambling, the CFTC & Regulation: Facts, Fiction & The Law (Mar. 10, 2026), <https://bettermarkets.org/analysis/prediction-markets-gambling-the-cftc-regulation-facts-fiction-the-law/>.

Prediction markets are platforms that typically operate online where users can buy and sell contracts whose value is tied to the outcome of real-world events. These are known as "event contracts." On platforms like Kalshi and Polymarket,³ an event contract typically poses a simple yes-or-no question: *Will a particular event happen?* Participants who believe the answer is "yes" buy one side of the contract; those who believe "no" take the other side. Each contract is usually priced between one cent and one dollar, with the price supposedly implying what probability the market participants collectively assign to it (e.g., a belief of a 65 percent likelihood of the event occurring if the contract trades at 65 cents). If the event occurs, holders on the winning side are paid one dollar per contract; if the event does not, they receive nothing.

Online prediction markets have surged in recent years, with \$12 billion traded on Kalshi and Polymarket in December 2025 alone — an estimated 400 percent increase from a year prior.⁴ In fact, while CFTC-registered exchanges listed an average of roughly five event contracts per year from 2006 to 2020, that number skyrocketed to approximately 1,600 in 2025 alone.⁵ These event contracts now cover a vast range of topics from the Emmys and the Super Bowl to the mention of specific words in political speeches, the chance of particular activists getting arrested by police, and oil depots exploding.⁶ In 2024, traders on Polymarket bet more than \$3.6 billion on the presidential election alone.⁷

Indeed, many online prediction markets function as *de facto* sports betting operations, marketing them as "event contracts" that are supposedly different from wagering on sportsbooks that are subject to state gaming regulatory and tax frameworks.⁸ Sports betting is now Kalshi's single largest betting category, with an estimated 89 percent of all trading fee revenue in 2025 coming from sports-related betting.⁹ Not surprisingly, most Americans now believe prediction markets are closer to gambling than investing.¹⁰

In a disturbing trend, news reports have also uncovered many high-profile cases of suspicious trading activity on serious public policy and national security matters, including warfare and elections in the United States. Consider these examples:

³ Polymarket recently launched a U.S.-based exchange and therefore is no longer an entirely offshore operation. See Jack Nicastro, Polymarket Returns to U.S. Users After a Nearly 3-Year Hiatus, Reason Magazine (Jan. 4, 2026), <https://finance.yahoo.com/news/polymarket-returns-u-users-nearly-110008492.html>.

⁴ David Yaffe-Bellany, All Bets Are On: The Rise of Prediction Markets, N.Y. Times (Jan. 19, 2026), <https://www.nytimes.com/2026/01/19/technology/polymarket-kalshi-prediction-markets.html>.

⁵ 91 Fed. Reg. 12516, 12517.

⁶ Corbin Hiar, You can bet on climate disasters. Business is booming., Politico (Mar. 21, 2026), <https://www.politico.com/news/2026/03/21/betting-climate-disasters-business-activists-traders-00829074>.

⁷ Benjamin Wallace, Betting on Prediction Markets Is Their Job. They Make Millions., N.Y. Times (Jan. 22, 2026), <https://www.nytimes.com/2026/01/22/business/prediction-markets-polymarket-kalshi.html>.

⁸ Mick Mulvaney, Teens are 'predicting' March Madness. That's a problem., The Wash. Post (Mar. 26, 2026), <https://www.washingtonpost.com/opinions/2026/03/26/march-madness-gambling-prediction-market/>.

⁹ Daniel O'Boyle, Kalshi Fee Revenue In 2025 Was \$263.5 Million, With 89% Coming From Sports, Yahoo! Finance (Jan. 9, 2026), <https://finance.yahoo.com/news/kalshi-fee-revenue-2025-263-145801350.html>.

¹⁰ Am. Inst. for Boys and Men, Jonathan D. Cohen, Most Americans see prediction markets as more like gambling than investing, new AIBM/Ipsos poll finds (Mar. 17, 2026), <https://aibm.org/research/most-americans-see-prediction-markets-as-more-like-gambling-than-investing-new-aibm-ipsos-poll-finds/>.

- Six newly-created Polymarket accounts made \$1.2 million betting on the timing of 2026 U.S. strikes against Iran, with some bets placed within hours of the first explosions in Tehran¹¹;
- At least two candidates for the California governor's race placed bets on Kalshi on their own odds of winning¹²;
- A Polymarket user won \$400,000 after betting on the U.S. invasion of Venezuela and capture of President Nicolás Maduro¹³;
- Bettors on Kalshi wagered \$54 million on the killing of Iran's Ayatollah Ali Khamenei¹⁴; and
- A brand new Polymarket account bet \$40,000 that OpenAI would launch an AI web browser before the end of the month and won shortly thereafter.¹⁵

A number of companies that offer prediction markets (including Kalshi, Polymarket, Crypto.com, and others) are now trying to open the floodgates of people gambling through event contracts nationwide — including in states that outlaw sports betting or gambling outright — while evading the state consumer protections and gaming regulations that have protected the public for generations. Their strategy is to disguise gambling bets as financial derivatives called "swaps" and list them on CFTC-registered trading exchanges, then claim that the CFTC's exclusive federal jurisdiction preempts or overrides every state and tribal authority to regulate gambling.

¹¹ Drew Harwell, Bettors wagered \$54 million on Khamenei's death. Now they're not getting paid, *The Wash. Post* (Mar. 4, 2026), <https://www.washingtonpost.com/technology/2026/03/04/kalshi-khamenei-bet-controversy/>.

¹² Christine Mui and Tyler Katzenberger, Gavin Newsom to ban California officials from insider betting on prediction markets, *Politico* (Mar. 27, 2026), <https://www.politico.com/news/2026/03/27/newsom-to-sign-order-banning-insider-prediction-market-bets-for-state-officials-00847938>.

¹³ Bobby Allyn, A \$400,000 profit on Maduro's capture raises insider trading questions on Polymarket, *NPR* (Jan. 5, 2026), <https://www.npr.org/2026/01/05/nx-s1-5667232/polymarket-maduro-bet-insider-trading>.

The Department of Justice recently indicted a U.S. soldier for this specific trading activity. See *United States v. Van Dyke*, No. 1:26-cr-00156 (S.D.N.Y.); Dep't of Justice, Press Release, U.S. Soldier Charged With Using Classified Information To Profit From Prediction Market Bets (Apr. 23, 2026), <https://www.justice.gov/opa/pr/us-soldier-charged-using-classified-information-profit-prediction-market-bets>. Rather than showing that the existing enforcement framework is adequate, this case underscores its fatal flaws. The charges hinge entirely on the defendant's status as a government employee who allegedly stole and misused classified military intelligence — a textbook misappropriation case. It took the federal government months to identify a single unsophisticated actor; a more sophisticated actor using anonymous offshore intermediaries and cryptocurrency wallets might never have been caught. More fundamentally, this prosecution does not and cannot address the structural problems identified in this letter, including non-government insiders — such as lobbyists, candidates, and corporate executives — wagering on outcomes they use their own knowledge or influence to produce, i.e., conduct that falls outside the misappropriation framework altogether. A criminal indictment months after the fact also does not reimburse the retail traders who provided the losing-side liquidity that funded this \$400,000 payout.

¹⁴ Drew Harwell, Bettors wagered \$54 million on Khamenei's death. Now they're not getting paid., *The Wash. Post* (Mar. 4, 2026), <https://www.washingtonpost.com/technology/2026/03/04/kalshi-khamenei-bet-controversy/>.

¹⁵ Ece Yildirim, Tracking Insider Trading on Polymarket Is Turning Into a Business of Its Own, *Gizmodo* (Jan. 12, 2026), <https://gizmodo.com/tracking-insider-trading-on-polymarket-is-turning-into-a-business-of-its-own-2000709286>.

Their desired result would transform the CFTC from a financial markets regulator into the nation's gambling czar — a role which the CFTC has no experience, expertise, personnel, technology, budget, or mandate to hold — while stripping states of the consumer protections they have built for their residents over two centuries.

We strongly disagree. This comment letter explains why that outcome is wrong as a matter of law, reckless as a matter of policy, and destructive to American commerce and the American public.

II. The Proliferation of Prediction Markets Is Causing Serious Harm

The rapid expansion of prediction markets is producing concrete, measurable harm to consumers, to the pillars of our democracy, to the integrity of U.S. financial markets, and to the CFTC's own ability to perform its actual functions. We emphasize the broader context for these harms: sophisticated financial actors are counting on a regulatory void for prediction markets, so that they can extract as much wealth as possible, and for as long as possible, from retail participants before any strong, comprehensive regulation and enforcement regime arrives. That is because corrupt speculators, as well as sophisticated traders with superior information, analytical tools, or market expertise, need *someone* to systematically take the losing side of their trades. In other words, they depend on novice retail traders who provide the "liquidity" these markets need to function, much as a poker table full of amateurs enriches the professional at the table.

This business model is a feature of prediction markets, not a bug in the system. Available data bears this out: on Polymarket, the world's largest prediction market by volume, the median bet is only \$10 while the average is \$89,¹⁶ and 70 percent of users lost money while only 30 percent made a profit. One analysis showed that fewer than 0.04 percent of Polymarket traders captured a whopping 70 percent of the total realized profits, or \$3.7 billion.¹⁷

Those on the winning side of these losing parties, who are exploited as easy dupes and chumps, have every incentive to preserve the gross imbalance for as long as possible. Moreover, these common aspects of prediction markets, particularly the popularity of small dollar bets, establish that most people are using them for entertainment and gambling — not for commercial risk management or price basing. ("Price basing" is the use of derivatives' prices to determine the market price of underlying commodities.)

A. Harms to Consumers

Event contracts on sports, entertainment, policy, and political outcomes are gambling products, whatever label their proponents prefer for self-serving reasons. And gambling causes real harm.¹⁸

¹⁶ Todd Shriber, Prediction Market Users Mostly Small, Act Like Day Traders, Casino.org (Mar. 30, 2026), <https://www.casino.org/news/prediction-market-users-mostly-small-act-like-day-traders/>.

¹⁷ Anas Hassan, 70% of Polymarket Traders Lost Money as Top 0.04% Captured Most Profits: Data, Yahoo! Finance (Dec. 29, 2025), <https://finance.yahoo.com/news/70-polymarket-traders-lost-money-192327162.html>.

¹⁸ See, e.g., Brief of Amicus Curiae Stop Predatory Gambling in Support of Defendants-Appellees and in Support of Affirmance, *North American Derivatives Exchange, Inc. d/b/a Crypto.com v. Nevada Gaming Control Board*, No. 25-7187 (9th Cir. Mar. 9, 2026), ECF No. 67, <https://storage.courtlistener.com/recap/gov.uscourts.ca9.9fc03734-91fc-46b5-a8bf-a51e67bd6709/gov.uscourts.ca9.9fc03734-91fc-46b5-a8bf-a51e67bd6709.67.0.pdf>.

The evidence is now overwhelming that the expansion of legalized sports betting in the United States has led to increasing personal bankruptcies, reduced household savings, and higher rates of domestic violence.¹⁹ Problem gambling is also on the rise nationally, with devastating consequences for individuals, families, and communities.²⁰

Prediction markets that operate online around-the-clock, via apps on smartphones that people carry around everywhere, make this problem far worse. The audience for these prediction markets is not sophisticated institutional professionals entering into contracts to protect their commercial operations from market fluctuations. Instead, prediction market operators attract novices and lay consumers who may not fully appreciate that they are gambling and who can least afford to lose — including young adults targeted by aggressive glitzy marketing, people struggling with gambling addiction, and financially vulnerable households. Troublingly, Kalshi is now seeking to offer "margin trading" to allow users to bet on borrowed money,²¹ which magnifies users' potential losses.

These are the people who benefit the most from state consumer protections that would be circumvented if the CFTC blesses prediction market operators' attempts to pretend their gambling products are fancy financial instruments. The CFTC's regulatory framework was not designed with these people in mind and offers them no comparable protection, such as the responsible gaming requirements, self-exclusion programs, and financial stability mandates for operators that state-licensed and regulated sportsbooks must observe.

B. Harms to Democracy and Election Integrity

The serious threat that prediction markets pose to democratic institutions is among the most alarming consequences of their unchecked growth. The majority of states have prohibited gambling on elections, some for centuries,²² and they have done so for a simple, powerful, and evergreen reason: allowing people to bet on electoral results creates dangerous incentives to corrupt or sabotage those elections.

The CFTC itself recognized this danger. In its 2023 Order prohibiting Kalshi from offering event contracts on the political party controlling Congress, the agency cited overwhelming opposition from commenters and Members of Congress warning that "[e]stablishing a large-scale, for-profit political event betting market in the United States" would "profoundly undermine the sanctity

¹⁹ See, e.g., Charles Fain Lehman, *Legalizing Sports Gambling Was a Huge Mistake*, *The Atlantic* (Sept. 23, 2024), <https://www.theatlantic.com/ideas/archive/2024/09/legal-sports-gambling-was-mistake/679925/>; Andrew Yang, *Sports Betting Hurts American Men*, *Newsweek* (Dec. 3, 2024), <https://www.newsweek.com/sports-betting-hurts-american-men-time-rethink-its-regulation-opinion-1994180>.

²⁰ See, e.g., Benjamin Schiffrin, *The U.S. Already Has a Gambling Epidemic—24 Hour Stock Trading Would Only Make It Worse*, *Fortune* (Dec. 13, 2024), <https://fortune.com/2024/12/13/the-u-s-already-has-a-gambling-epidemic-24-hour-stock-trading-would-only-make-it-worse/>.

²¹ Emily Nicolle, Lydia Beyoud and Katherine Doherty, *Kalshi Secures License to Offer Margin Trading to Pros*, *Bloomberg* (Mar. 27, 2026), <https://finance.yahoo.com/news/kalshi-approved-margin-trading-lures-183323781.html>.

²² *Commodity Futures Trading Comm'n, In the Matter of the Certification by KalshiEX LLC of Derivatives Contracts with Respect to Political Control of the United States Senate and United States House of Representatives ("Kalshi Order")*, CFTC Order (Sept. 22, 2023) at 11-12, <https://www.cftc.gov/sites/default/files/filings/documents/2023/orgkexkalshiorsig230922.pdf>.

and democratic value of elections."²³ The CFTC's 2024 rulemaking similarly identified multiple pathways for unique harms to our elections, including the use of false news reporting or inaccurate polling to manipulate electoral races, the bets made on those election outcomes, or both.²⁴

Prediction markets' vulnerabilities to dishonest schemes are not hypothetical risks. Researchers from Columbia University found that 25 percent of Polymarket's volume could be attributed to fraudulent trades; they estimate that at a peak in December 2024, as much as 60 percent of trading volume was likely attributable to phony orders.²⁵ Two separate investigations also found signs of "wash trading" on Polymarket, a form of market manipulation where users rapidly buy and sell the same contracts to create a false impression of high trading volume and activity.²⁶

At a time when public confidence in elections is already fragile, for the CFTC to allow and even facilitate large-scale gambling on electoral outcomes would throw explosive fuel onto a fire. Every disputed election result would carry the additional suspicion that moneyed interests had intervened not to support a candidate or a cause, but to win a wager. The corrosive effect on public trust would be difficult to overstate.

C. Harms to Market Integrity

Event contracts create manipulation and insider trading risks that far exceed those in traditional derivatives markets.²⁷ To understand why, we first note that traditional derivatives such as bona fide swaps and futures settle (i.e., determine final payout) against market-determined prices or benchmarks that reflect actual commercial activity, often aggregating thousands of independent expressions of supply and demand. The S&P 500 — a stock market index that tracks the stock performance of 500 leading publicly-traded companies listed on stock exchanges in the U.S. — is one such index. No single actor can easily manipulate these benchmarks and indices, making them resistant to manipulation by individual actors.

In contrast, many event contracts are based on outcomes decided by a single individual or a small group of people — such as a presidential pardon, the exact timing of a politician's press conference, or a Hollywood award show vote. And an event contract that pays out based on what a single government official decides, or how a small committee votes, is inherently susceptible to manipulation by anyone with access to that official or that committee. Event contracts based on the decisions of identified individuals thus raise serious insider trading concerns. That is, a White House staffer who knows about an upcoming presidential pardon, or an aide to a senator who knows how a committee vote will go, possesses material nonpublic information that could be

²³ Kalshi Order, at 19.

²⁴ Commodity Futures Trading Comm'n, Notice of Proposed Rulemaking on Event Contracts, 89 Fed. Reg. 48968, 48983 (June 10, 2024), *withdrawn*, 91 Fed. Reg. 5386 (Feb. 6, 2026).

²⁵ AJ Dellinger, Study Finds Around a Quarter of Polymarket Trades Are Fake, Gizmodo (Nov. 7, 2025), <https://gizmodo.com/study-finds-around-a-quarter-of-polymarket-trades-are-fake-2000683231>.

²⁶ Leo Schwartz, Exclusive: Election betting site Polymarket gives Trump a 67% chance of winning but is rife with fake 'wash' trading, researchers say, Fortune (Oct. 30, 2024), <https://fortune.com/crypto/2024/10/30/polymarket-trump-election-crypto-wash-trading-researchers/>.

²⁷ This subsection addresses the ANPRM's Question 2(c) on manipulation and Questions 26-30 on inside information.

easily exploited for profit, especially given the anonymous or pseudonymous nature of trading on today's top prediction markets.

As one influential legal scholar has explained, this tight connection between individual decisions and contract settlement is "unprecedented in the derivatives space and brings unprecedented risks of manipulation."²⁸ But the CFTC has no experience policing this type of conduct and no existing framework for doing so. Existing securities and commodities law was not designed to address this type of insider trading, and the CFTC has no capacity to detect or prosecute it in the context of political events.

The CFTC's promises to address these insider trading risks through enforcement are misleading. In announcing the agency's intention to police "insider trading" in prediction markets, CFTC Enforcement Director David Miller framed the agency's approach narrowly: the CFTC will prosecute those who tip or trade on "misappropriated information," but not those who use their "own legitimate knowledge."²⁹ That distinction, borrowed from traditional commodities law, may make sense for soybean farmers who trade on knowledge of their own crop yield. But applied to policy or political event contracts on prediction markets, it is woefully inadequate.

Consider White House insiders who participate in the drafting and staging of a presidential speech. Were these actors to bet on specific words contained in the speech or its timing, they would be trading on their "own knowledge." Yet this is precisely the type of conduct that threatens market integrity and public trust. Despite not possessing clearly "misappropriated" information from anyone, they would still hold the kind of informational advantage that, in the securities context, insider trading law was designed to prevent.

The misappropriation framework also fails entirely to reach the distinct and even more treacherous problem of individuals who can cause outcomes, not merely predict them — such as the political candidate who bets on his own race, the corporate executive who trades on her own company's decisions, and the sports official who can influence the outcome of a game. In short, Director Miller's enforcement promise covers only a narrow slice of the misconduct that prediction markets invite — all the while leaving the most structurally dangerous forms of insider trading and manipulation beyond the CFTC's self-declared reach.

D. Harms to the CFTC and the Markets It Was Created to Protect

The CFTC is one of the smallest regulatory agencies in the federal government, with a budget frozen at \$365 million in recent years³⁰ and a staff of fewer than 550 employees as of February after losing more than 20 percent of its staff since the end of fiscal year 2024.³¹ In stark contrast,

²⁸ Ilya Beylin, Comment Letter to CFTC on Proposed Rule 91 FR 12516 Regarding "Prediction Markets" (Mar. 24, 2026), <https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35821>.

²⁹ Director of Enforcement David I. Miller, Remarks at NYU Law School – CFTC Enforcement Priorities, Insider Trading in the Prediction Markets, and Cooperation with the CFTC (Mar. 31, 2026), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamiller1>.

³⁰ Mark Schoeff Jr., Lawmakers seek to boost CFTC budget to take on crypto oversight, Roll Call (Feb. 24, 2026), <https://rollcall.com/2026/02/24/lawmakers-seek-to-boost-cftc-budget-to-take-on-crypto-oversight/>.

³¹ Ben Miller, Crypto Bill Languishes in Senate, Leaving Tiny CFTC in Limbo, Bloomberg Law (Apr. 17, 2026), <https://news.bloomberglaw.com/securities-law/crypto-bill-languishes-in-senate-leaving-tiny-cftc-in-limbo>.

the Securities and Exchange Commission's (SEC) budget is more than \$2 billion per year, with approximately 4,100 staffers³² — a budget eleven times greater and a staffing level more than seven times greater than the relatively tiny CFTC. With those limited resources, the CFTC already must oversee the U.S. derivatives markets worth \$400 trillion.³³

Given these serious limitations, the expansion of prediction markets under the CFTC's ambit threatens the agency itself and, by extension, the critical financial markets it oversees.³⁴ Even if the CFTC did have the legal authority to do so, which the agency does not, piling on even more responsibility for sports, entertainment, policy, and political gambling bets all across the country would overwhelm an agency that is already stretched too thin to fulfill its actual mandate. If the agency cannot adequately oversee the derivatives markets because its resources are diverted away to sports bets and political wagers, the result will be less transparent, less reliable, and less stable markets for the commodities that underpin the American economy. And the consequences of an overwhelmed CFTC would fall on everyone — including farmers, energy companies, manufacturers, and ultimately consumers.

III. The CFTC Does Not Have Legal Authority Over Sports, Entertainment, Policy, And Political Event Contracts

The threshold question that this ANPRM raises is whether the CFTC even has legal jurisdiction over event contracts that involve sporting contests, entertainment events, election results, policy or political outcomes, and other such non-commercial occurrences. The CFTC does not.³⁵

Section 3(a) of the Commodity Exchange Act (CEA) independently limits the transactions subject to the CEA to the following: "The transactions subject to this Act are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities."³⁶ Furthermore, the CEA grants the CFTC "exclusive jurisdiction"³⁷ only over

³² U.S. Securities And Exchange Comm'n, Fiscal Year 2026 Congressional Budget Justification Annual Performance Plan (accessed Apr. 23, 2026), <https://www.sec.gov/files/fy-2026-congressional-budget-justification.pdf>.

³³ Commodity Futures Trading Comm'n, Agency Financial Report, Fiscal Year 2025, at 4 (Jan. 16, 2026), available at <https://www.cftc.gov/media/13096/2025AFR/download>.

³⁴ This discussion corresponds to ANPRM, Question 2(d) on manipulation.

³⁵ For a more detailed discussion of CFTC jurisdiction, see, e.g., Brief of Amicus Curiae Better Markets, Inc. in Support of Defendants-Appellees, *North American Derivatives Exchange, Inc. d/b/a Crypto.com v. Nevada Gaming Control Board*, No. 25-7187 (9th Cir. Mar. 10, 2026), ECF No. 68.1, <https://bettermarkets.org/wp-content/uploads/2026/03/Better-Markets-Amicus-Brief-Crypto.com-v.-Nevada-3-10-2026.pdf>.

³⁶ 7 U.S.C. § 5(a).

³⁷ We do not accept the legal arguments advanced by prediction market proponents that "exclusive jurisdiction" under this provision of the CEA necessarily means preemption of state gaming law. For a detailed discussion, see, e.g., Answering Brief of State Defendants, *North American Derivatives Exchange, Inc. d/b/a Crypto.com v. Nevada Gaming Control Board*, No. 25-7187 at 46-60 (9th Cir. Mar. 3, 2026), [https://storage.courtlistener.com/recap/gov.uscourts.ca9.9fc03734-91fc-46b5-a8bf-a51e67bd6709.61.0.pdf](https://storage.courtlistener.com/recap/gov.uscourts.ca9.9fc03734-91fc-46b5-a8bf-a51e67bd6709/gov.uscourts.ca9.9fc03734-91fc-46b5-a8bf-a51e67bd6709.61.0.pdf); Per Curiam Order, *KalshiEX LLC v. Matthew Schuler*, No. 26-3196 at 7 (6th Cir. Apr. 24, 2026) (denying Kalshi's motion for injunction pending appeal and stating "We remain unconvinced" by Kalshi's arguments that "Congress preempted Ohio's state-gaming laws"), <https://storage.courtlistener.com/recap/gov.uscourts.ca6.158038/gov.uscourts.ca6.158038.26.2.pdf>.

transactions involving "swaps" that are "traded or executed" on a designated contract market (DCM). 7 U.S.C. § 2(a)(1)(A). Sports, entertainment, policy, and political event contracts do not satisfy any of these requirements.

A. The CEA Remains An Independent Textual Bar to CFTC Jurisdiction Over Sports, Entertainment, Policy, and Political Event Contracts

Section 3(a) of the CEA defines the scope of the statute, limiting the Commodity Exchange Act's coverage to transactions that "are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities."³⁸ Although Congress repealed a formal "economic purpose test" in 2000 as part of a broader deregulatory effort, the underlying principle remains embedded in this statutory provision.³⁹ That clear statutory language limits the CFTC's jurisdiction to financial instruments that serve a bona fide commercial or economic utility.

Contracts on sports, entertainment, policy, and political events fundamentally fail this test. They do not help anyone with "managing and assuming price risks," because they are not linked to the price of any commodity, financial instrument, or economic interest in the real economy. The CFTC's own 2024 rule proposal recognized as much, finding that event contracts cannot be reasonably expected to serve the core functions of the derivatives markets — "hedging and/or price basing" — because their economic impact "generally is too diffuse and unpredictable to correlate to direct and quantifiable changes in the price of commodities or other financial assets or instruments."⁴⁰ And because the retail participants engaging in these prediction markets generally lack pre-existing commercial exposure to the event's outcome, the contracts do not provide a means for "managing and assuming price risks."

These types of event contracts also do not serve the CEA's price discovery or price dissemination functions. When Congress introduced the terms "price discovery" and "price dissemination" in the Commodity Futures Modernization Act of 2000, which enacted the statement of purpose in Section 3(a), these terms referred specifically to the discovery and dissemination of prices relevant to *underlying cash markets* — not to aggregating probabilistic predictions about non-commercial events.⁴¹ (For our grassroots readers, cash markets are where commodities like wheat bushels are paid for and received right away at the point of sale, in contrast to derivatives markets like futures markets where buyers buy the right to receive something in the future.)

Whatever informational value may be conveyed by contracts on sports, entertainment, policy, or political events, it is not the kind of "price" that the CEA was enacted to cover. Instead, these contracts are merely vehicles for speculation, entertainment, and gambling, and they serve no bona fide economic purpose as defined by Congress.

³⁸ 7 U.S.C. § 5(a).

³⁹ This subsection addresses ANPRM, Question 9 on the "economic purpose test."

⁴⁰ Commodity Futures Trading Comm'n, Notice of Proposed Rulemaking on Event Contracts, 89 Fed. Reg. 48968, 48981-82 (June 10, 2024), *withdrawn*, 91 Fed. Reg. 5386 (Feb. 6, 2026).

⁴¹ For further discussion, see Ilya Beylin, Comment Letter to CFTC on Proposed Rule 91 FR 12516 Regarding "Prediction Markets" (Mar. 24, 2026), <https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35821>.

B. Sports, Entertainment, Policy, and Political Event Contracts Are Not "Swaps"

A "swap" is a form of a hedging agreement whereby two counterparties (a buyer and a seller) swap or transfer risk from a particular commercial or financial activity (like the possibility that a third party defaults on a loan).⁴² Swaps are, at their core, a financial risk-management tool that helps a business protect itself against a risk it already faces in the real economy.

A classic example is a "credit default swap," in which one party pays the other a periodic fee in exchange for protection against the risk that a borrower will default on a loan.⁴³ Unregulated credit default swaps infamously contributed to the 2008 global financial crisis, which prompted Congress to bring swaps under the CEA's coverage through the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).⁴⁴

A wager on who will win the Oscars, the Super Bowl, or a U.S. Senate election is nothing like a bona fide swap.⁴⁵ Those event contracts do not transfer any pre-existing commercial or financial risk; instead they create new risk out of thin air — risk that exists only because someone has decided to gamble.

The CEA's statutory text confirms this distinction. CEA Section 1a(47)(A)(ii) defines a "swap" as a contract "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency *associated with a potential financial, economic, or commercial consequence*" (emphasis added).⁴⁶ The outcome of a football game or an election does not have the kind of direct, quantifiable financial or commercial consequence that this provision requires. As the CFTC itself recognized in its 2008 Concept Release on the appropriate regulatory treatment of event contracts, event contracts are fundamentally distinct because they are linked to "eventualities or measures that *neither derive from, nor correlate with*, market prices or broad economic or commercial measures" (emphasis added).⁴⁷

⁴² This discussion pertains to ANPRM Questions 33-34 on the definition of "swaps."

⁴³ See, e.g., *Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.*, 375 F.3d 168, 172 (2d Cir. 2004).

⁴⁴ Pub. L. 111-203.

⁴⁵ The ANPRM also raises the question whether event contracts may be considered "futures," i.e., a contract to buy or sell a quantity of a commodity at a specified price on a future date. They are not. A futures contract contemplates the future delivery of a commodity at a market-determined price — meaning either the physical transfer of the commodity itself (such as barrels of oil or bushels of corn) or, in cash-settled contracts, payment of the cash difference between the agreed-upon price and the commodity's actual market price at the time the contract expires. Event contracts that pay a fixed sum based on a binary outcome bear no resemblance to this structure; they involve no commodity, no delivery, and no market-determined price. Furthermore, corn farmers do not grow corn in order to make a bet on corn prices; they grow corn and use a futures contract to reduce the risk that prices drop before they can sell. As with swaps, futures serve a commercial hedging function that the event contracts in question do not.

⁴⁶ 7 U.S.C. § 1a(47)(A)(ii).

⁴⁷ Commodity Futures Trading Comm'n, Concept Release on the Appropriate Regulatory Treatment of Event Contracts, 73 Fed. Reg. 25669, 25670 (May 7, 2008), <https://www.federalregister.gov/documents/2008/05/07/E8-9981/concept-release-on-the-appropriate-regulatory-treatment-of-event-contracts>.

The CFTC's own 2012 joint rulemaking with the SEC to further define "swap" reinforces this conclusion.⁴⁸ In that rulemaking, the CFTC emphasized that swaps typically involve "risk-shifting arrangements with financial entities."⁴⁹ The CFTC also noted that contracts entered into primarily for "personal, family, or household purposes" — a description that plainly encompasses sports betting and other wagers placed for entertainment — are excluded from the swap definition.⁵⁰

As discussed, the CFTC further explained in its 2024 rule proposal defining "gaming" that the economic impact of wagers on contests "generally is too diffuse and unpredictable to correlate to direct and quantifiable changes in the price of commodities or other financial assets or instruments"⁵¹ and therefore cannot be reasonably expected to serve the hedging or price basing functions of the derivatives markets. The CFTC concluded that such contracts are traded predominantly "to enable gambling" and "used predominantly by speculators or participants not having a commercial or hedging interest."⁵²

Political and policy event contracts fare no better than sports and entertainment event contracts. The CFTC's 2023 Order denying Kalshi's application to list election contracts found that such contracts lack the necessary financial significance, do not serve as reliable risk hedging or price discovery mechanisms, and are not based on reliable data.⁵³ Furthermore, event contracts that settle on the decisions of a single individual or a small group of people — such as presidential pardons, award show outcomes, or congressional votes — do not fall within the plain meaning of "commodity," which refers to fungible items.⁵⁴ These event contracts are not commodities, they are not swaps, and, as discussed in a later section, they are not the type of financial instruments Congress intended the CFTC to regulate.

C. Even If These Event Contracts Were Swaps, They Cannot Lawfully Be "Traded or Executed" on a Designated Contract Market

The CFTC's "exclusive jurisdiction" extends only to swaps that are "traded or executed" on a Designated Contract Market (DCM).⁵⁵ However, the CEA also provides standalone authority for the CFTC to determine that an event contract involving certain enumerated activities is "contrary to the public interest" and therefore may not be "listed or made available for clearing or trading on or through a registered entity."⁵⁶ The enumerated activities include "gaming" and "activity

⁴⁸ This discussion pertains to ANPRM Question 37 on the 2012 rulemaking.

⁴⁹ Commodity Futures Trading Comm'n & Securities and Exchange Comm'n, Further Definition of "Swap," 77 Fed. Reg. 48208, 48248 (Aug. 13, 2012), <https://www.federalregister.gov/documents/2012/08/13/2012-18003/further-definition-of-swap-security-based-swap-and-security-based-swap-agreement-mixed-swaps>.

⁵⁰ *Id.* at 48246.

⁵¹ Commodity Futures Trading Comm'n, Notice of Proposed Rulemaking on Event Contracts, 89 Fed. Reg. 48968, 48981-82 (June 10, 2024), *withdrawn*, 91 Fed. Reg. 5386 (Feb. 6, 2026).

⁵² *Id.* at 48982.

⁵³ Kalshi Order, CFTC Order (Sept. 22, 2023) at 15-21,

<https://www.cftc.gov/sites/default/files/filings/documents/2023/orgkexkalshiorsig230922.pdf>.

⁵⁴ See Ilya Beylin, Event Contracts Are a Step Too Far for Derivatives Regulation, 4 U. Chi. Bus. L. Rev. 78, 82 (2025), <https://businesslawreview.uchicago.edu/print-archive/event-contracts-are-step-too-far-derivatives-regulation>.

⁵⁵ 7 U.S.C. § 2(a)(1)(A).

⁵⁶ 7 U.S.C. § 7a-2(c)(5)(C). This provision is referred to as the "Special Rule."

that is unlawful under any Federal or State law."⁵⁷ This provision is a backstop, not an expansion of the CFTC's exclusive jurisdiction.⁵⁸ By regulation, the CFTC has in fact prohibited event contracts that involve, relate to, or reference gaming or activity that is unlawful under any state or federal law.⁵⁹

Sports betting is "gaming" under any ordinary understanding of the term, and a handful of states — including California and Texas, the nation's two most populous states — ban sports betting, while some states ban gambling entirely.⁶⁰ And as discussed earlier, the majority of states have similarly outlawed election wagering. Thus even if sports, entertainment, policy, or political event contracts could somehow be characterized as swaps under an untenable misreading of the CEA, they would be independently prohibited from being traded on CFTC-registered exchanges.⁶¹ And because they cannot be lawfully "traded or executed" on a Designated Contract Market, the CFTC's exclusive jurisdiction provision under the CEA does not apply.

IV. Congress Never Intended the CFTC to Regulate Gambling, Let Alone Open The Floodgates To Prediction Markets

A. Congress Never Intended The CFTC To Oversee Gambling Nationwide

Nothing in the CEA's text, structure, or history suggests that Congress ever contemplated the CFTC overseeing sports betting, election wagering, entertainment gambling, or other forms of non-commercial event contracts surging on today's prediction markets. As one federal court put it, the argument that the CEA transforms derivatives exchanges "into nationwide gambling venues on every topic under the sun to the exclusion of state regulation and with no comparable

⁵⁷ *Id.*

⁵⁸ For a more detailed explanation, see Brief of Amicus Curiae Professor Todd Phillips in Support of Defendants-Appellees, *KalshiEX, LLC v. Hendrick*, No. 25-7516 at 11 (9th Cir. Jan. 30, 2026), available at <https://ssrn.com/abstract=6153469>.

⁵⁹ 17 C.F.R. § 40.11.

⁶⁰ American Gaming Association, State of Play | Explore more state-by-state details on gaming across the U.S. (accessed Apr. 23, 2026), <https://www.americangaming.org/research/state-of-play-map/>.

⁶¹ We take note that in *KalshiEX LLC v. CFTC*, No. 23-cv-3257 (D.D.C. Sept. 12, 2024), one district court effectively approved Kalshi listing political event contracts under the CEA; the CFTC voluntarily dismissed its appeal of this ruling in May 2025. We urge the CFTC not to treat this single unreviewed district court opinion as settling the matter nationally, particularly given that political event contracts still fail the other statutory tests for jurisdiction and given that other federal courts have reached the opposite conclusion about the relationship between event contracts and state gambling law. See *KalshiEX, LLC v. Hendrick*, No. 2:25-cv-00575-APG-BNW, Order Granting Motion to Dissolve Preliminary Injunction, ECF No. 237 (D. Nev. Nov. 24, 2025), https://storage.courtlistener.com/recap/gov.uscourts.nvd.173903/gov.uscourts.nvd.173903.237.0_2.pdf; *N. Am. Derivatives Exch., Inc. v. Nevada*, ECF No. 105 at 18 (D. Nev. Oct. 14, 2025) (holding that event contracts on sports are not swaps and stating that "Had Congress intended such a sea change in the regulatory landscape, it surely would have said so."), https://storage.courtlistener.com/recap/gov.uscourts.nvd.175006/gov.uscourts.nvd.175006.105.0_3.pdf; *KalshiEX LLC v. Martin*, ECF No. 70 at 25 (D. Md. Aug. 1, 2025) (stating that "the weight of the evidence strongly confirms that Congress did not intend for Dodd-Frank to constitute legislation not only legalizing sports betting nationwide, but displacing states' authority to regulate it."), https://storage.courtlistener.com/recap/gov.uscourts.mdd.581016/gov.uscourts.mdd.581016.70.0_2.pdf.

federal regulator" is an "absurd" one that has no basis in law.⁶² Indeed, attempting to shoehorn gambling oversight into this framework would produce a regulatory regime that is disastrous for consumer protection and the financial markets that the CFTC was actually designed to serve.

The reason why the CFTC exists is to regulate commodity futures and, later, swaps — financial instruments used by businesses for commercial risk management or price discovery. Congress affirmed this mission and focus for the CFTC when it revisited the agency's mandate and authority in the aftermath of the 2008 global financial crisis, including to add "swaps" to the CEA. Congress passed the Dodd-Frank Act in 2010 to address the causes of that financial crisis, which was exacerbated by unregulated derivatives and credit default swaps in particular. The goal was to bring risky financial products out of the shadows and impose transparency, clearing, and trading requirements on them. More broadly, the Dodd-Frank Act was designed to *expand* the role of the states in financial regulation, not contract it. Congress had learned the hard way that federal preemption of state consumer-protection laws — particularly in the mortgage context — had contributed to the global financial meltdown.⁶³

It is implausible that Congress, as part of this comprehensive legislative response to the crisis, *also* silently intended to legalize nationwide sports gambling, preempt two centuries of state laws, and anoint the CFTC as the nation's gaming regulator. Congress wanted to close loopholes, not create new ones. And as the Supreme Court has explained, Congress "does not . . . hide elephants in mouseholes."⁶⁴ Contorting the CEA to preempt state gambling laws would repeat the same mistake in a different context and invite economic disaster once again.

This concern is especially pertinent given that the CFTC has itself acknowledged that it is not equipped for such a role, noting that the agency believes that it has neither the "statutory mandate nor specialized experience appropriate to oversee" gambling and that it lacks the "specialized experience appropriate" for investigating election outcomes.⁶⁵ In contrast, state regulators possess decades of specialized experience, dedicated investigative staff, and comprehensive legal frameworks designed specifically for gambling oversight. Nevada alone has an elaborate regulatory apparatus, including integrity and financial stability requirements for licensees, responsible gaming mandates, and protections for young and vulnerable consumers. Dozens of other states have comparable regimes. The CFTC has none of this infrastructure and no realistic plan or mandate for building it.

B. Prediction Markets For Event Contracts Are Inherently Dangerous And Recreate Moral Hazards Solved Centuries Ago

The manipulation risks inherent in today's event contracts are not novel. They are actually a recurrence of a policy problem that the law solved centuries ago in the insurance context. Before

⁶² *KalshiEX, LLC v. Hendrick*, No. 2:25-cv-00575-APG-BNW, Order Granting Motion to Dissolve Preliminary Injunction, ECF No. 237 (D. Nev. Nov. 24, 2025), https://storage.courtlistener.com/recap/gov.uscourts.nvd.173903/gov.uscourts.nvd.173903.237.0_2.pdf.

⁶³ See, e.g., Arthur E. Wilmarth Jr., *The Dodd-Frank Act's Expansion of State Authority to Protect Consumers of Financial Services*, 36 J. Corp. L. 893 (2011), https://scholarship.law.gwu.edu/faculty_publications/1006/.

⁶⁴ *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001).

⁶⁵ Commodity Futures Trading Comm'n, Notice of Proposed Rulemaking on Event Contracts, 89 Fed. Reg. 48968, 48982–83 (June 10, 2024), *withdrawn*, 91 Fed. Reg. 5386 (Feb. 6, 2026).

legal reforms, anyone could take out a life insurance policy on a stranger, or a marine insurance policy on a ship in which they had no stake. The predictable result was widespread gambling on people's lives, creating strong perverse incentives to murder insured strangers and sink insured ships.⁶⁶ The British Parliament responded with the Life Assurance Act of 1774 and other enactments, which established and reinforced the insurable interest doctrine⁶⁷: you may only insure against an event that would cause you genuine economic loss.⁶⁸

This doctrine, which ultimately became a bedrock of U.S. insurance law,⁶⁹ reflects a deep legal insight — that contracts whose payout depends on bad things happening are dangerous unless the holder has an aligned interest, meaning they lose from the underlying event even as the contract compensates them.

Unfettered prediction markets and event contracts recreate exactly the perverse incentive structure that the insurable interest doctrine was designed to eliminate. A contract that pays out if a military strike occurs, or if a particular candidate wins, or if a presidential pardon is issued, creates a pure profit opportunity from a discrete event — with no requirement that the contract holder have any preexisting economic exposure to the outcome, and no safeguard against the holder's ability to influence or cause it. Three centuries of insurance law teach us that this structure is inherently dangerous and destructive. Yet the CFTC framework offers no equivalent of the insurable interest doctrine for prediction markets, and prediction market operators have proposed none.

V. Conclusion

For the foregoing reasons, we urge the CFTC to recognize the legal, practical, and institutional limits of its authority: Event contracts based on sports, entertainment, policy, or political events are not swaps, and even if they were, they cannot lawfully be traded on Designated Contract Markets under CFTC authority. The CFTC does not have jurisdiction over these gambling products under current law, nor should the agency seek such legal authority.

⁶⁶ See, e.g., Marine Insurance Act, 1745, 19 Geo. 2, c. 37 (Gr. Brit.). The British Parliament found that insurance policies taken out without any interest in the insured vessel had been "productive of many pernicious Practices, whereby great Numbers of Ships, with their Cargoes, have either been fraudulently lost and destroyed," and that "by introducing a mischievous kind of Gaming or Wagering, under the Pretence of assuring the Risque on Shipping, and fair Trade, the Institution and laudable Design of making Assurances, hath been perverted."

⁶⁷ See, e.g., Life Assurance Act, 1774, 14 Geo. 3, c. 48 (Gr. Brit.) (also known as the Gambling Act 1774). Section 1 of the Act voided any insurance policy "on the life or lives of any person, or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering."

⁶⁸ A century and a half ago, the U.S. Supreme Court adopted the insurable interest doctrine in *Warnock v. Davis*, 104 U.S. 775, 779 (1882), holding that without "a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured," an insurance contract is "a mere wager" that is "condemned as being against public policy."

⁶⁹ Blake Berscheid, *Gambling with the Future of Property Insurance*, Tort, Trial & Insurance Practice Law Journal (Winter 2023), https://www.americanbar.org/groups/tort_trial_insurance_practice/resources/journal/2023-winter/gambling-future-property-insurance/.

The CFTC should instead focus its energy and scarce resources on its mission under the law: ensuring the integrity and efficiency of the derivatives markets on which American businesses and consumers rely. The regulation of gambling properly belongs with state gaming and consumer protection authorities, who have the expertise, the legal tools, and the democratic accountability to do the job.

Thank you for considering our views. We appreciate the opportunity to comment on this important proceeding.

Sincerely,

Americans for Financial Reform Education Fund
Demand Progress Education Fund
Public Citizen