The CFTC should reject these election contracts because under the correct reading of §745 5c of the Dodd-Frank Act, Congress designated such contracts as "contrary to the public interest" because elections betting is both 1) gaming (meaning gambling) and 2) prohibited by law in at least one state, and CFTC should not disregard Congress's legislative judgment.

This comment aims to analyze the phrase "contrary to the public interest" as it appears in §745 5c of Dodd-Frank, as such this comment primarily concerns Question 12 laid out by the Commission (Are the proposed contracts contrary to the public interest? Why or why not?)

For reference, the relevant part of the Dodd-Frank Act is shown:

''(C) SPECIAL RULE FOR REVIEW AND APPROVAL OF EVENT CONTRACTS AND SWAPS CONTRACTS.—

''(i) EVENT CONTRACTS.—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i)), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve— ''(I) activity that is unlawful under any Federal or State law; ''(II) terrorism; ''(III) assassination; ''(IV) war; ''(V) gaming; or ''(VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest. '

'(ii) PROHIBITION.—No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

Based on the majority of the prior comments, it seems that the most common approach towards interpreting "contrary to the public interest" is one where the CFTC is essentially tasked with making arbitrary judgment calls on which proposed contracts are contrary to such, and CFTC comes up with some justification as to why they are contrary to the public interest. Because of this arbitrary approach, some have argued that "contrary to the public interest" is unconstitutionally vague. This is essentially the argument that Former Commissioner Brian Quintenz (now on the board of directors of Kalshi, and therefore is presumed to be advocating for these election contracts on the company's behalf) makes in his release in https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement032521, where he argues that the standard of "contrary to the public interest" is unconstitutionally vague.

Respectfully however, Former Commissioner Quintenz's interpretation is wrong. He argues that the commission must arbitrarily determine what is "contrary to public interest" and therefore is engaging in invalid legislative power, but this is not true, they actually have very specific defined duties under the law ***under a proper interpretation of the law.***

Let's take a look at the relevant part of Dodd-Frank again:

''(C) SPECIAL RULE FOR REVIEW AND APPROVAL OF EVENT CONTRACTS AND SWAPS CONTRACTS.—

''(i) EVENT CONTRACTS.—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i)), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve— ''(I) activity that is unlawful under any Federal or State law; ''(II) terrorism; ''(III) assassination; ''(IV) war; ''(V) gaming; or ''(VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest. '

'(ii) PROHIBITION.—No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

The phrase "contrary to the public interest" appears 3 times here, and the phrase is not explictly defined (which is why some, including Former Commissioner Quintenz, have argued that it is unconstitutionally vague), but ***under the correct reading of this section of the law, that phrase does not have an explicit definition because that is irrelevant to the purpose and intent of this section of the law.***

The correct interpretation of this section of Dodd-Frank concerning event contracts is that ***Congress has designated contracts involving 1) activity unlawful under federal or state law, 2) terrorism, 3) assassination, 4) war, 5) gaming as "contrary to the public interest".*** Read that portion of Dodd-Frank again. The correct interpretation becomes unmistakable. Under this correct interpretation, the CFTC is NOT tasked with making arbitrary judgment calls on what constitutes "contrary to the public interest" and why, rather, ***"contrary to the public interest" is the name of a *category* that Congress has defined that includes, and ONLY includes, contracts involving unlawful activity under federal or state law, terrorism, assassination, war, gaming, and 6) activities that are *similar* to one of the previously mentioned.*** Under this obvious and correct interpretation, CFTC is not tasked with making arbitrary judgment calls at all, it is specifically tasked with the power to place any contract similar to illegal activity, terrorism,

assassination, war, or gaming under the category of "contrary to the public" interest that Congress has established.

To further support the interpretation that "contrary to the public interest" is merely a categorical designation rather than an arbitrary defined phrase meant to be arbitrary applied, suppose that every instance of "contrary to the public interest" in that section of Dodd-Frank were replaced with, say, something completely gibberish like **"QWERTY".** That part of the law would now read like this:

''(i) EVENT CONTRACTS.—In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i)), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are **QWERTY** if the agreements, contracts, or transactions involve— ''(I) activity that is unlawful under any Federal or State law; ''(II) terrorism; ''(III) assassination; ''(IV) war; ''(V) gaming; or ''(VI) other similar activity determined by the Commission, by rule or regulation, to be **QWERTY**. '

'(ii) PROHIBITION.—No agreement, contract, or transaction determined by the Commission to be **QWERTY** under clause (i) may be listed or made available for clearing or trading on or through a registered entity.

You see, "contrary to the public interest" is no longer there anymore, ***yet the meaning of this law hasn't changed at all!*** Congress still designated certain topics under a particular category (this time just named QWERTY instead of "contrary to the public interest"), and Congress gave CFTC power to prohibit contracts in that category, and any contracts that are similar to those initial topics.

This is a robust interpretation of the text of law that is completely unambiguous, as opposed to the more arbitrary approach that may run into reasonable unconstitutional vagueness concerns.

Under this correct interpretation then, we know that ***Congress intended for contracts involving gaming or activity illegal under federal or state law to be placed in a category meant to be prohibited.*** The CFTC should not dismiss Congress's legislative judgment lightly. It is indisputable that elections contracts constitute gaming (gambling, including on the outcome of a competitive contest in the same manner as sports betting is gaming and gambling), and elections betting is also explicitly illegal under state law in a large number of states. There is simply no way to reasonably interpret elections contracts as anything other than gambling on elections.

There are generally two approaches federal courts use when interpreting legislation. The first approach is one that considers the text, and only the text, of the relevant law at hand (this approach is commonly known as textualism, which is the approach I use here to establish the correct interpretation). The other approach also considers external factors such as legislative history, which may take into account the context of statements made by legislators when interpretating legislation.

Regardless of which interpretation method is applied, the law is against Kalshi's side here. Under the textualist approach that considers only the text of the statute and nothing else, we see that elections contracts clearly falls into the category of contracts that Congress gave the CFTC power to prohibit. The other approach that considers legislative history is far worse for Kalshi, as there is a public record of United States Senators explicitly saying that the purpose of the law is to empower CFTC with "the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed event contracts." – Senator Lincoln and Senator Feinstein

Thus, the CFTC can approach with confidence that regardless of how the relevant part of Dodd-Frank is interpreted, it has the power to prohibit elections contracts, and it should because Congress deemed it to be "contrary to the public interest", and CFTC should not disregard Congress's legislative judgment.

Finally, I would like to respectfully respond to some of Commissioner Pham's points in her dissenting statement.

https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement082622

"We must apply our rules fairly. Congress has mandated that the CFTC promote responsible innovation and fair competition.[24] The Commission is already allowing an unregistered event contract market, PredictIt, to continue to operate its political control markets through the November 2022 election cycle and until Feb. 15, 2023" – Commissioner Pham

This point is entirely irrelevant as a matter of law, because PredictIt is not a registered entity pursuant to §745 of Dodd-Frank and other relevant laws, and therefore is not subject to CFTC's 90-day public review procedure. Kalshi, by contrast, is registered DCM pursuant to the relevant laws, and therefore subject to CFTC's processes including the 90-day review period for certain proposed contracts.

"Rule 40.11(a)(1) does not apply to the political event contracts here because they are based upon the underlying activity of political control, which is not an enumerated activity, and there is no additional required public interest test." – Commissioner Pham

The way that "political control" is determined, however, is through an election, specifically *the outcome of an election*, which falls under the category of gaming (gambling) in the same manner that betting on the outcome of a sports event or other indeterminate competitive activity would fall under that category. Gambling on elections is also prohibited by the laws of numerous states, so it falls under two of the enumerated activities.