



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

July 20, 2023

Chairman Rostin Behnam
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

RE: Public Citizen response to the request for comment on the proposed gaming contract of KalshiEX that would authorize gambling on election outcomes (Release No. 8728-23)

Dear Chairman Behnam and Commissioners:

Public Citizen is writing to express firm opposition to the contract proposal by KalshiEX, LLC (Kalshi) to allow the firm to run organized and large-scale gambling on election outcomes, in this particular case, betting on partisan control of Congress. Such a government-authorized contract would explicitly run afoul of Commission regulation 40.11(a)(1) and Section 5c(c)(5)(C) of the Commodity Exchange Act that prohibits contracts “contrary to the public interest,” such as those involving injurious gaming practices.

In fact, we are stunned that the Commodity Futures Trading Commission (CFTC) is even considering approval of such a gaming contract that will likely damage both the appearance and the practice of the integrity of American elections.

Public Citizen is a nonprofit consumer advocacy organization that champions the public interest in the halls of power. We defend democracy and fight to ensure that government works for the people – not big corporations. Founded in 1971, we now have 500,000 members and supporters throughout the country.

As a public interest organization dedicated to strengthening the American democracy – and the integrity of elections, in particular, as well as one focused on protecting the markets and financial systems to benefit regular consumers – Public Citizen encourages the CFTC not to provide government sanction for gambling on elections.

COMMENT: ELECTIONS SHOULD NOT BE JUST ABOUT MONEY

The integrity of elections is the cornerstone of a healthy democracy. When the integrity of elections is tainted in appearance or in actuality, democracy itself is threatened. The Kalshi

contract proposal poses precisely such a threat by seeking government sanction of sports betting on election outcomes.

While little can be done about individuals betting on election outcomes in their personal capacity – even though it is illegal at the federal level and in all states – if the CFTC provides its official endorsement of such wagering, the practice is very likely to spread across the nation. The states and the CFTC have appropriately banned gambling on election outcomes through most of American history. Political wagering was briefly allowed in West Virginia in 2020, for about one hour, before the state reversed course and shut it down.¹

The Commodity Futures Trading Commission has generally followed suit. Economists at Victoria University of Wellington in New Zealand requested approval of such gambling from the CFTC in 2014. A couple of years before, the Commission rejected a similar request from Nadex to offer political-event contracts, ruling that such contracts met a federal definition of gambling: “the staking or risking by any person of something of value upon the outcome of a contest of others.”² In 2013, the CFTC had effectively shut down Intrade, an Ireland-based exchange that had accepted millions of dollars in bets on U.S. elections.

But there was a small, noncommercial exception to this rule: the University of Iowa, with permission from the CFTC, had overseen the Iowa Electronic Markets—which accept trades from students and faculty on participating campuses—since 1993. Victoria University proposed expanding on the Iowa model. The CFTC replied that “an academic exercise demonstrating the information gathering and predictive capabilities of markets” would be allowed, so long as Victoria didn’t profit from it. The betting pool was named PredictIt. But the Commission reversed course and shut the pool down after it became evident that PredictIt started reaping huge profits rather than serving just as an academic experiment.³

Shortly after, the CFTC made another surprise announcement in opening up a comment period to consider this Kalshi proposal. Kalshi would allow traders to invest up to \$25,000 on a given political contract, well beyond what PredictIt was allowed to accept.

The Kalshi proposal should also not be allowed to stand. First of all, gambling on election outcomes is fraught with deceptive manipulation and, secondly, can cast a pall over the integrity of elections. In 2012, for example, a high-profile incident involving the prediction market Intrade showed how election wagering can be manipulative, called the “Romney Whale.” In the lead up to the final election contest between Barack Obama and Mitt Romney, the Intrade betting pool led many observers to believe Romney was favored to win. Upon closer investigation,

¹ Anthony Izaguirre, “Presidential betting gets axed quickly in West Virginia,” *Associated Press* (April 8, 2020), available at: <https://apnews.com/article/3748c12d07fefedc6fbd6478842a782>

² Danny Funt, “Betting on elections can tell us a lot. Why is it still mostly illegal?” *New Yorker* (Nov. 2, 2022), available at: <https://www.newyorker.com/news/the-political-scene/betting-on-elections-can-tell-us-a-lot-why-is-it-mostly-illegal>

³ *Id.*

it turned out that a single bettor placed large sums of money to falsely prop up Romney as the likely victor.⁴

Furthermore, wealthy special interests who have large sums of money riding on election outcomes are going to be motivated to affect those outcomes through whatever means are available. This could include pouring more money into outside electioneering groups, such as super PACs, or intimidating election officials and poll workers, or even denying unfavorable election results.

Worse yet, placing large sums of money on the outcome of elections will likely fuel the public perception that elections are all about money rather than an expression of the popular will. Public confidence in the integrity of elections is already at an all-time low. Most Americans lack confidence that the results of American elections reflect the will of the people, a sentiment that has grown steadily since January 2021. And nearly half of Americans polled say they think it is at least somewhat likely that in the next few years, some elected officials will successfully overturn the results of an election because their party did not win.⁵

Turning elections into a financial game for the wealthy will further add to suspicions as to whose interests elections represent. Not only would election results be influenced by wealthy special interests funding campaigns, but those same special interests would then have a very compelling reason to secure self-serving results. The consequences of gambling on elections are far-reaching and alarming. Given the abuses of social media in both the gambling and political spaces, allowing gambling on elections will incentivize more interference and misconduct as gamblers seek to shape political outcomes for financial profit. The public perception that money buys elections would be vastly magnified.

CONCLUSION: THE COMMODITY FUTURES TRADING COMMISSION SHOULD NOT SANCTION GAMBLING ON ELECTIONS

The Commission got it right the first time: gambling and elections are a bad mix that runs contrary to the public interest. There is good reason that federal, state and local governments have long banned betting on elections. The CFTC should continue standing for election integrity and not allow itself to be used as back-door entry for the gaming industry to profit from politics.

Election gaming serves no useful function other than to generate a profit for the few. In the meantime, election gaming can encourage manipulation of the electoral process and risks incentivizing a variety of means to affect election outcomes by those who stand to lose or gain large sums of money, from pouring additional funds into outside electioneering groups to intimidating election workers and perhaps even denying election results.

⁴ John Holden, “Why can’t Americans bet legally on the US presidential election?” Legal Sports Report (Feb. 18, 2020), available at: <https://www.legalsportsreport.com/37949/2020-presidential-election-betting-us/>

⁵ Jennifer Agiesta, “CNN poll: Americans’ confidence in elections has faded since January 6,” CNN Politics (July 21, 2022), available at: <https://www.cnn.com/2022/07/21/politics/cnn-poll-elections/index.html>

Free and fair elections are an essential component of democratic governance. Transforming elections into what many could well perceive as a game for wealthy special interests undermines the democratic body politic.

Sincerely,

Craig Holman, Ph.D.
Government affairs lobbyist, Public Citizen
215 Pennsylvania Avenue, SE
Washington, D.C. 20003

Lisa Gilbert
Executive Vice President, Public Citizen
1600 20th Street, NW
Washington, D.C. 20009